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OVERSIGHT OF THE INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS (ICANN)

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS, TECHNOLOGY, AND THE INTERNET

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

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OVERSIGHT OF THE INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS (ICANN)

THURSDAY, JUNE 4, 2009

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS, TECHNOLOGY,
AND THE INTERNET,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:07 a.m., in Room 2123 of the Rayburn House Office Building, Hon. Rick Boucher [chairman of the subcommittee] presiding.

Present: Representatives Boucher, Eshoo, Doyle, Inslee, Matsui, Christensen, Castor, Space, McNerney, Dingell, Weiner, Stearns, Upton, Shimkus, Shadegg, Terry, and Blackburn.

Staff Present: Amy Levine, Subcommittee Counsel; Roger Sherman, Chief Counsel; Shawn Chang, Counsel; Tim Powderly, Counsel; Greg Guice, Counsel; Sarah Fisher, Special Assistant; Liz Eralzer, Intern; Pat Delgado, Chief of Staff, Mr. Waxman; Amy Bender, Minority Counsel; Neil Fried, Minority Counsel; and Garrett Golding, Minority Legislative Analyst.

OPENING STATEMENT OF HON. RICK BOUCHER, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF VIRGINIA

Mr. BOUCHER. The subcommittee will come to order.

Our discussion this morning focuses on the activities of the Internet Corporation for Assigned Names and Numbers, commonly referred to as ICANN.

Since 1998, ICANN has managed the designation and allocation of Internet domain names and addresses under various contractual arrangements with the United States Department of Commerce. The original Memorandum of Understanding that was signed in November of 1998 has been renewed on several occasions, most recently as a Joint Project Agreement, which is now scheduled to expire on September 30 this year.

One matter upon which we will focus this morning is whether Department of Commerce oversight should be retained through renewal of that agreement or, in the alternative, whether the time has come for that oversight to be relinquished, and for ICANN to operate, after September 30, without supervision, with respect to the allocation and designation of Internet domain names and addresses and associated functions. It should be noted that, under a

separate contract, which is not scheduled to expire, the Department of Commerce has conferred upon ICANN the management of the master files of the domain name system, generally known as the root zone files. Under that non-expiring contract, ICANN also manages and coordinates the allocation of IP addresses.

In considering whether the expiring contract should be renewed or should expire without renewal, key questions are whether ICANN's decision-making is sufficiently transparent, or whether improvements are needed, and whether, under its existing structure and practices, ICANN is sufficiently accountable to Internet stakeholders and the global community of Internet users. I am sure that today's witnesses and members of this panel will have a number of views to express, and the members will have questions about those key matters.

A second focus of today's hearing is on ICANN's proposal to introduce new generic top-level domains, which could involve descriptions of various types of activities, locations, brands, or trademarked names. It is suggested that the creation of new top-level domains would promote competition among registry operators of the TLDs, and would enhance consumer choice.

Among the concerns that have been raised about a proliferation of new TLDs is the cost to companies associated with protecting their brands, if they have to purchase additional second level domain registrations under the new top-level domains. Not only do they purchase their exact brand names as a common practice under the various TLDs, but they generally also purchase common misspellings of their brand names in order to protect the brand name itself, so a buffer area, in effect, is acquired around the brand name, through the second level TLDs. So, as the number of top level TLDs grows, the cost to companies to protect their brand names grows exponentially. Does the added competition and consumer choice that would arise from the new TLDs offset that cost, as a matter of public policy, a key question for us to consider.

Other questions relate to ICANN's capacity to manage all of the new top-level domains and assure the overall stability and security of the domain name system, and whether ICANN can assure that an adequate amount of competition would, in fact, arise in the bidding process for new TLDs.

We will welcome our testimony this morning. We thank our witnesses for being with us, and sharing their views on these very important subjects, with regard to the future of Internet management and governance.

Mr. BOUCHER. And at this time, I am pleased to recognize the ranking Republican on our subcommittee, the gentleman from Florida, Mr. Stearns.

OPENING STATEMENT OF HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. STEARNS. Good morning, and thank you, Mr. Chairman. For more than a decade, ICANN has played a vital role in maintaining a stable and reliable Internet, and I think that is a very high achievement.

ICANN has the critically important responsibility for managing the domain name system, the hierarchy of IP addresses and associ-

ated domain names that enable Internet users around the globe to communicate with each other. ICANN has succeeded, both because it has been a private sector led effort, not controlled, for example, by the United Nations, or any other government, and thanks to the advice, guidance, and engagement of the United States through a series of arrangements, including the Joint Projects Agreement.

The key question before this committee is will the expiration of the JPA in September put the stability and security of the Internet at risk. I have some concerns, and want to hear from the panel on this matter.

The JPA with the Department of Commerce has played an important role in ensuring that ICANN is accountable for its decisions, and conducts its mission in a manner that provides for stakeholders' participation. The JPA should be extended, and the NTIA is in the process of seeking public comment on this issue.

One major question for this hearing is whether there is a need to renew the JPA when it expires, and what the nature of U.S. engagement with ICANN would be in its absence. While it can never please all its stakeholders all the time, it needs appropriate governance mechanisms that will ensure its openness and accountability. Apart from ICANN's agreement with the Department of Commerce, what other external mechanisms are in place today to simply safeguard that accountability? If there are none, or if there are insufficient controls, perhaps ICANN's ongoing relationship with the Department of Commerce should then continue.

Ultimately, though, through the global Internet community will need to develop an appropriate governance structure to ensure its accountability. One of its functions is to create generic top-level domains, or GTLDs, which is a unit of letters or words beyond the rightmost dot, such as .com or .gov or .net. Over time, the number of GTLDs has expanded to 21.

Last June, ICANN proposed to further expand the number of GTLDs. Under the proposal, which was put out for public comment, and must be finalized and approved by the Board of Directors, new GTLDs could include the names of organizations, companies, locations, or additional generic words. However, before ICANN expands this list, it should address concerns about the proposed expansion, and provide further opportunity for comments by all the stakeholders.

In a letter to ICANN last December, NTIA raised a number of questions regarding the way in which it was proposed to administer the rollouts of these new GTLDs. Specifically, NTIA wondered whether it is prepared to implement measures to promote competition on registry prices, terms, and conditions, ensure the application process will respect, with respect to national and international laws, including intellectual property rights, enforce contract compliance, and design a rational fee structure. NTIA recommended that ICANN can resolve a number of these issues before expanding the GTLDs.

My colleagues' trade holders are concerned that without sufficient protection for intellectual property rights, they will have to engage in costly defensive registration of domains that are identical or similar to their trademarks across GTLDs to prevent others from registering them, or pursue costly and time-consuming admin-

istrative or legal processes against cybersquatters. I hope our witnesses will address these legitimate concerns also.

Another and final point, that since ICANN is considered a not for profit organization, does a transparent mechanism exist to address any excess revenues. According to data from the Technology Policy Institute, its revenues have increased from $5 million in 2000 to over $60 million in 2009, while expenses have increased from under $3 million in 2000 to over $54 million in 2009. Thus, it will have a surplus of close to $7 million from Financial Year 2009.

ICANN's largest expense is personnel, accounting for close to $20 million of the $54 million. According to its annual report, it employees 100 staff members. Although salary information and administrative costs were not available, I hope the witnesses today will address these issues on finance.

Thank you, Mr. Chairman, for holding this hearing.

Mr. BOUCHER. Thank you very much, Mr. Stearns. The gentleman from Pennsylvania, Mr. Doyle, is recognized for two minutes.

OPENING STATEMENT OF HON. MICHAEL F. DOYLE, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF PENNSYLVANIA

Mr. DOYLE. Thank you, Mr. Chairman, and I want to thank you for holding this important hearing.

I own a few domains, and I have benefited from the competition among domains in who I can buy them from. I believe that because the Internet is truly global, significant input from around the world is important to its governance, which is why it pains me to say that I hope that the Department of Commerce continues the JPA with ICANN, and not relinquish control at this time.

I am afraid ICANN seems better at furthering its own interests than those of the millions of Internet users that it is supposed to look out for. My constituents are still receiving misleading solicitations that look like invoices from a registrar, despite a court injunction and despite FTC intervention. Why does ICANN allow them to continue to sell domain names? This is domain slamming and it continues today. When ICANN attempted to curb the abuse of domain tasting, the five day window when purchased domains were able to be returned and refunded, their solution was to make their fee nonrefundable. Well, that helped curb the abuse, but the money didn't go for consumer protection or coordination towards IPv6, it went to the general budget, executive compensation, and cushioning ICANN's $4.6 million stock market loss last year. If they can afford to lose that much money in the market, why are they collecting the fees from us in the first place?

I am glad to see witnesses talking about the GTLD issue today, which I have grave reservations. I fear that the primary beneficiary is not the consumer, who might suffer from increased confusion, or the businesses who would need to register new domains to defend their trademark across a near infinite number of top-level domains. On the other hand, it might act as a needed market-based solution to ensure that rates and fees for .com are kept low in this economic downturn.

Small domain users like me and companies that need and use thousands of domain names to run their businesses, and the tens of millions of Internet users who place their trust in the Internet today, need assurance that someone is looking out for them. I don't see it from ICANN.

Thank you, Mr. Chairman.

Mr. BOUCHER. Thank you very much, Mr. Doyle. The gentleman from Illinois, Mr. Shimkus, is recognized for two minutes.

Mr. SHIMKUS. Thank you, Mr. Chairman.

We have a new Administration, everyone knows. We have a new individual getting close to being confirmed in NTIA. We have a change in the administration at the ICANN. This is now not a time to make changes. I would be supportive of extending the Joint Project Agreement.

I look forward to the hearing, and I yield back my time.

Mr. BOUCHER. Thank you very much, Mr. Shimkus. The gentlelady from the Virgin Islands, Mrs. Christensen, is recognized for two minutes.

Mrs. CHRISTENSEN. Thank you Mr. Chairman and the ranking member for this hearing, and for giving me yet another list of new acronyms to add to others that I still haven't committed to memory, but I am beginning to understand the concepts, and that is more important.

We are here to review the progress ICANN has made, and whether it is ready for the Joint Project Agreement to expire on 9/30/09, and for the management of the DNS to transfer from the MOU with the U.S. Government to the global community. Whether it is fully able to meet its mandates and the goals of stability, competition, bottom-up coordination, security, and broad representation, as well as transparency. There seem to be many concerns that it is not ready, and we need to determine if this is just a fear of the risks that any change would bring, whether they are legitimate concerns that still need to be addressed first, as some panelists will suggest.

I am particularly interested in the bottom-up coordination and, of course, security, as well as understanding whether the projected plans ICANN has are not only realistic, but responsible, and whether or not they jeopardize stability and security.

I want to applaud our chair and ranking member once again for the excellent oversight on yet another pressing issue, and look forward to the testimony that will be presented.

Thank you, everyone, for being here and sharing your views with us on this issue.

Mr. BOUCHER. Thank you, Mrs. Christensen. The gentlelady from Tennessee, Mrs. Blackburn, is recognized for two minutes. She was here a moment ago. All right, we will await her arrival at a later time. The gentleman from Nebraska, Mr. Terry, is recognized for two minutes.

OPENING STATEMENT OF HON. LEE TERRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. TERRY. Thank you, Mr. Chairman, and appreciate you holding this hearing on what I believe could actually be a matter of national security.

ICANN serves a very important role in being responsible for managing the domain name system which, as you know, is the hierarchy of IP addresses and associated domain names that enable Internet users around the globe to communicate with each other.

This interconnectedness that allows us to communicate with one another is the reason that ICANN should renew the Joint Project Agreement, or sign a similar agreement when the current agreement expires later this year. The goals of the JPA should continue to work towards increasing ICANN's transparency, accountability, and openness, while developing mechanisms and procedures to transition the domain name system functions to the private sector, in a manner that promotes stability, security, competition, bottom-up coordination, and representation.

Should a rogue nation get the chance to control the DNS, it is a definite possibility that they could use it to harm the U.S., or to dismantle and interfere with our ability to communicate globally through the Internet. I would hope that my colleagues would join me in saying that, quite simply put, the United States Government created the Internet, and it needs to be in charge, as it could very well be vital to our Nation's security.

Thank you, Mr. Chairman, and I yield back my time.

Mr. BOUCHER. Thank you very much, Mr. Terry. The gentlelady from Florida, Ms. Castor, is recognized for two minutes.

Ms. CASTOR. Well, thank you, Mr. Chairman, very much for calling this interesting hearing on the Internet Corporation for Assigned Names and Numbers.

I appreciate the witnesses' willingness to be here today to discuss these important business issues and consumer issues, and how we continue to modernize the Internet. I yield back the rest of my time.

Mr. BOUCHER. Thank you very much, Ms. Castor. The gentleman from Michigan, Mr. Upton, is recognized for two minutes.

Mr. UPTON. Thank you, Mr. Chairman. I would just like to say that I, too, join many of my colleagues, hoping that the JPA can be extended in a timely fashion, and I look forward to being a partner in that, and I believe that it will be certainly a bipartisan one as well.

Since we have Ms. Alexander here, we have a pretty big date coming up, on a little bit more than a week away here, and you may expect to have some questions on the transition to digital, just to see where we are. I know a lot of Americans are concerned about that, and don't have quite the publicity we had back in February, but we all hope that it will be a pretty smooth transition, and we look forward to your thoughts about that as well.

Mr. Chairman, I yield back.

Mr. BOUCHER. Thank you very much, Mr. Upton. The gentlelady from California, Ms. Matsui, is recognized for two minutes.

OPENING STATEMENT OF HON. DORIS O. MATSUI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. MATSUI. Thank you, Mr. Chairman. Thank you for calling today's hearing. I applaud your leadership in addressing this impor-

tant issue. I would also like to thank our panelists for being with us here this morning.

As we all know, ICANN was created in 1998 to govern the allocation and designation of Internet domain names and addresses. Although certain responsibilities for the domain name system were transferred from the Department of Commerce to ICANN, Department of Commerce continues to exercise limited oversight of ICANN, through the Joint Project Agreement. Under this Agreement, the Department of Commerce affirmed its policy goals of preserving the security and stability of the Internet domain name system. This agreement is now set to expire on September 30 of this year.

While I understand some of the reasons that ICANN does not want to extend the JPA agreement, such as how the U.S. role is viewed abroad, now may not be the time to say that ICANN should be on its own. Just last year, NTIA initiated a review of the agreement, and found that although ICANN has made progress in key areas concerning security and stability of the domain name system, important work still remains. We must ensure the Internet domain system is transparent, accountable, and has a strong governance structure. Moving forward, I urge the Administration to carefully consider its agreement and partnership with ICANN.

I thank you, Mr. Chairman, for holding this important hearing today, and I yield back the balance of my time.

Mr. BOUCHER. Thank you very much, Ms. Matsui. Ms. Blackburn hasn't returned. The gentleman from the State of Washington, Mr. Inslee, is recognized for two minutes.

Mr. INSLEE. Thank you. I will reserve. Thank you, Mr. Chair.

Mr. BOUCHER. Thank you, Mr. Inslee. You will have two minutes of time added to your questioning period.

The gentleman from California, Mr. McNerney, is recognized for two minutes.

Mr. MCNERNEY. Thank you, Mr. Chairman.

This is an interesting and important hearing, so I am looking forward to it. It is important that we work together, to ensure that we have a fair and transparent system, maintaining and improving the Internet, in order to avoid potential difficulties. It is essential that we keep the Internet accessible and easily navigated to all, and I look forward to the testimony this morning.

Thank you.

Mr. BOUCHER. Thank you, Mr. McNerney. The gentlelady from California, Ms. Eshoo, is recognized for two minutes.

OPENING STATEMENT OF HON. ANNA G. ESHOO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. ESHOO. Thank you, Mr. Chairman, and good morning to all of the witnesses.

Like any new organization, ICANN has gone through its share of growing pains, and since it was created 11 years ago, it has been a target for criticism among the global Internet community.

I will have some questions today about the operation, and where you are right now, but I do think that progress has been made, and on the other hand, that many of the concerns, I think, have been

appropriate, and ICANN continues to develop itself, and to do the thorough oversight over the technical and administrative functions under its jurisdiction, and that is a plus.

I think that you have been successful in introducing competition to both the retail and the wholesale domain name business, added a whole new host of Internet domains, and stepped in to ensure that the country code top-level domains are properly designated.

I think the most important and heavily trafficked domains, .com and .net, are operated by VeriSign, a company headquartered in my district in Mountain View, California, and I know that Mr. Silva is here today, and I welcome him. VeriSign has maintained a 100 percent uptime for .com. It has never failed. That is something in and of itself, so to be congratulated for that.

It is important to remember that ICANN was founded in a response to growing concerns about U.S. domination of the Internet, and today, I think many countries believe the U.S. continues to exert undue influence over ICANN and the administrative functions of the Internet, and we can talk about that.

But I understand the concerns about this whole issue of excessive U.S. control over Internet governance, but the alternative right now, I think is clearly unacceptable. ICANN doesn't have the independent authority and the governance structure to prevent other governments from using power over the DNS to interfere with innovation, competition, and freedom of expression.

So, I look forward to the discussion and the questions that I will ask, as well as my colleagues, and welcome all of you here, and I thank the chairman for having you here today, because I think it is important that you are.

Yield back.

Mr. BOUCHER. Thank you very much, Ms. Eshoo. The gentlelady from Tennessee, Mrs. Blackburn, is recognized for two minutes.

OPENING STATEMENT OF HON. MARSHA BLACKBURN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Ms. BLACKBURN. Thank you, Mr. Chairman. I do thank you for the hearing today, and for our witnesses, welcome. We are delighted that you are here with us, as we do have multiple hearings going on this morning. So, we are going to be jumping up and down and in and out, but please excuse us for that.

Few international organizations quietly wield the power in the global community that ICANN currently wields. While most Americans have probably never heard of ICANN, it is this California-based organization, which is a nonprofit, and that is responsible for the management and the assignment of virtually IP address and domain name worldwide. Wow. That is the growing side of things. It is an enormous responsibility to be overseen by a nongovernmental organization. That reason alone necessitates this committee's time and attention to provide proper oversight, notwithstanding the fact that our government's only functional tool for overseeing ICANN activities stems from the JPA. And that does expire on September 30, which brings us to today.

Now, there is a letter from Chairman Thrush, the January 25 letter, in which he states that ICANN does not believe it should an-

swer directly to the U.S. Government, and that the Memorandum of Understanding it signed in November '08 is no longer necessary, and I am quoting from that letter.

Now, many disagree, and believe that additional oversight, not less, is necessary to provide a check and balance regarding decisions made by an international organization comprised of unelected officials. The Internet, and this is what is so interesting to me, and I think it is really exciting, when you look at commerce and the growth of, especially small business commerce. The Internet consists of 174 million Web sites, 570 million computers, and more than 1.5 billion users. Coordination of this intricate web necessitates transparent decision-making, technical expertise, and even-handed governance. Only U.S. sponsored oversight for a body tasked with overseeing the domain name and IP address system, for which ICANN is responsible, can ensure the Internet's continued viability and fairness, as Twenty First Century Internet architecture evolves.

It is, therefore, imperative for the U.S. Government to remain integrally linked to the organization, thereby securing the historic role, American role in the development and commercial governance of the Internet architecture.

So, we are looking forward to hearing from you, and working with you, and Mr. Chairman, I yield back.

Mr. BOUCHER. Thank you very much, Mrs. Blackburn. The gentleman from Michigan, Mr. Dingell, Chairman Emeritus of the full committee, is recognized for five minutes.

OPENING STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. DINGELL. Mr. Chairman, I thank you for your courtesy. I comment your for this hearing. It is very much needed. It is not a new issue.

At issue today are a number of matters related to oversight of the Internet Corporation for Assigned Names and Numbers, ICANN. In particular, we will examine the pending expiration of the Joint Project Agreement, JPA, between National Telecommunications and Information Agency, NTIA, and ICANN, ICANN's proposed plans to expand the number of available generic top-level domains, GTLDs, and the future of ICANN's contract with VeriSign for registration of the .com top-level domain.

Each of these interesting issues requires a number of careful considerations and ample participations by all affected stakeholders, before any change in policy is either ratified or understood. I am not satisfied that this has been the case with the matters I have just mentioned, and this committee has had troubles with these matters before. And I intend to ask such questions of our witnesses as will enable us to get very frank answers about all of them, and I urge my colleagues to do like.

Before, however, engaging in a substantive dialog with the witnesses today, I would like to note the following. First, with regard to the expiration of the JPA between NTIA and ICANN, I wish to reiterate my insistence that ICANN remains far from a model of

effective and sustainable self-governance, and I hope they are listening to that comment.

Legitimate concerns about the lack of fairness, transparency, and accountability in ICANN's functionings continue to be raised by stakeholders and the Internet community. Particularly, in a time of increased cyberattacks on the U.S. Government and domestic businesses, I find it wholly unwise to reduce further the participation of the Federal Government in determining the course of the Internet's future development.

Similarly, and limited through the oversight NTIA exercises over ICANN may be, given the recent observable effects of deregulation and inadequate oversight on the economy, I believe that here, we have an analogy. The JPA between NTIA and ICANN should be extended.

Second, concerning GTLDs. I consider ICANN's attention to the effect of dramatically increasing the number of available GTLDs on competition, pricing, and consumer choice clearly inadequate. Moreover, I have suspicions that expanding the number of top-level domains could, in fact, give rise to increased instances of fraud perpetrated on consumers, and the practice of cybersquatting, an unhealthy and dangerous situation.

Finally, I continue to maintain that ICANN's contract with VeriSign for the registry of the ".com" domain is characterized by a deplorable lack of transparency. If this is not going to be a government undertaking, and is not going to be adequately regulated, it has to be transparent, which it clearly is not.

In brief, I have grave misgivings about the wisdom of extending this contract after it expires in 2012, and I will expect this hearing to produce some answers as to whether or not that should be extended, and whether or not it needs to have additional safeguards to assure that it is properly extended, with proper transparency or, in the alternative, more regulation.

Thank you for your courtesy, Mr. Chairman. I look forward to a constructive discussion with our witnesses today, and in answer to the questions which this committee has to ask.

Thank you.

Mr. BOUCHER. Thank you very much, Mr. Dingell. The gentleman from Arizona, Mr. Shadegg, is recognized for two minutes.

OPENING STATEMENT OF HON. JOHN B. SHADEGG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. SHADEGG. Thank you, Mr. Chairman, and thank you for holding this hearing today.

I want to welcome all of our witnesses, but I particularly want to welcome to Washington the Go Daddy Group, and its representative, Christine Jones, whom I have known and worked with for many years. The Go Daddy Group plays an important role in the economy of Arizona. They are a key component of our business community, and they have, I think, great insight and perspective in this particular topic, about which we are discussing today. I welcome Ms. Jones, and look forward to her testimony, along with that of the other witnesses.

ICANN has played a vital role in the development of the Internet, and has carried a huge burden, but as has been adequately ex-

pressed here, and I will be brief in my remarks, there are certainly problems, and it is apparent that a great deal of work needs to be done.

With the looming expiration of the Joint Project Agreement, it is clear that a plan must be put in place to ensure the security, stability, and viability of the Internet remains intact. I applaud the work of ICANN to date, but I believe there are areas, indeed, significant areas, for improvement.

Again, Mr. Chairman, I thank you for this hearing. I believe it is important that we learn more about how ICANN affects all of us, and both the key players in the Internet world, but all Americans, all people around the world who use the Internet, and I am interested in hearing how it affects the organizations that are represented here today.

Again, I thank the witnesses, and I look forward to your testimony.

Mr. BOUCHER. Thank you very much, Mr. Shadegg. The gentleman from New York, Mr. Weiner, is recognized for two minutes.

Mr. WEINER. Mr. Chairman, in the interests of hearing from the panel, I will relinquish my time for opening statement.

Mr. BOUCHER. Thank you very much, Mr. Weiner.

We now turn to our panel of witnesses, and we welcome each of them to the subcommittee this morning. I will just say a brief word of introduction with respect to each.

Ms. Fiona Alexander is Associate Administrator in the Office of International Affairs at the National Telecommunications and Information Administration. In that position, she is the primary liaison between the Department and ICANN.

Dr. Paul Twomey is President and Chief Executive Officer of ICANN.

Mr. Kenneth Silva is Senior Vice President and Chief Technology Officer for VeriSign, the registry for the .com top-level domain.

Ms. Christine Jones is the General Counsel and Corporate Secretary for Go Daddy.

Ms. Sarah Deutsch is Vice President and Associate General Counsel for Verizon Communications.

And Dr. Thomas Lenard is President and Senior Fellow of the Technology Policy Institute.

We welcome each of our witnesses, and without objection, your prepared written statement will be made a part of the record. We will welcome your oral summaries, and we would ask that, in the interest of time and giving us plenty of opportunity to question you, that you keep those oral summaries to approximately five minutes.

Ms. Alexander, we will be pleased to begin with you.

STATEMENTS OF FIONA ALEXANDER, ASSOCIATE ADMINISTRATOR, OFFICE OF INTERNATIONAL AFFAIRS, NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE; PAUL TWOMEY, PRESIDENT AND CEO, ICANN; KENNETH J. SILVA, SENIOR VICE PRESIDENT AND CHIEF TECHNOLOGY OFFICER, VERISIGN; CHRISTINE N. JONES, GENERAL COUNSEL AND CORPORATE SECRETARY, THE GO DADDY GROUP, INC.; SARAH DEUTSCH, VICE PRESIDENT AND ASSOCIATE GENERAL COUNSEL, VERIZON COMMUNICATIONS; AND THOMAS M. LENARD, PH.D., PRESIDENT AND SENIOR FELLOW, TECHNOLOGY POLICY INSTITUTE

STATEMENT OF FIONA ALEXANDER

Ms. ALEXANDER. Chairman Boucher, Ranking Member Stearns, and members of the committee, thank you for this opportunity to testify on behalf of the National——

Mr. BOUCHER. Ms. Alexander, if you could pull that microphone slightly closer, and we can hear you better.

Ms. ALEXANDER. Better?

Mr. BOUCHER. That is better, thank you.

Ms. ALEXANDER. Chairman Boucher, Ranking Member Stearns, and members of the subcommittee, thank you for this opportunity to testify on behalf of the National Telecommunications and Information Administration on issues related to the Internet's domain name and addressing system.

The Internet has become a significant and important medium for conducting research, communicating with others, and conducting business. 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 infrastructure remain stable and secure. Consequently, the Department of Commerce takes very seriously its responsibilities with respect to the Internet DNS, including the Joint Project Agreement between the Department and ICANN.

ICANN was created out of an effort to bring more coordination and sustainability to the management of the Internet DNS, as the Internet grew into a large scale global network. A 1997 Executive Memorandum directed the Secretary of Commerce to privatize Internet DNS in a manner that increases competition and facilitates international participation in its management.

In June 1998, the Department issued a statement of policy on the privatization of the Internet DNS that concluded that the core functions should be primarily performed through private sector management. ICANN was formed by private sector interests for this purpose, and in the fall of 1998, the Department of Commerce entered into the Memorandum of Understanding, or MoU, with ICANN.

The MoU did not simply turn over management of the DNS to ICANN. Rather, the purpose of this agreement was to design, develop, and test mechanisms, methods, and procedures to ensure that the private sector has the capability and the resources to assume important responsibilities related to the technical coordination and management of the DNS. This Agreement does not give

the Department of Commerce the ability to exercise oversight in the traditional context of regulation, and we play no role in the internal governance or day to day operations of ICANN.

Since 1998, the MoU has evolved through several iterations and revisions, as ICANN tested these principles, learned valuable lessons, and matured as an organization. In 2006, NTIA and ICANN signed a Joint Project Agreement extending the current MoU for three more years, until September 30 of this year. In anticipation of the September 30 expiration of the JPA, NTIA released a Notice of Inquiry on April 24, seeking comments regarding the progress of the transition, as well as a model of private sector leadership and bottom-up policy development which ICANN represents. The comment process for this docket closes on Monday, June 8.

The Department's commitment to preserving the security and stability of the Internet DNS, and the public record developed as a result of this comment process, will inform any decision about the JPA's future. It is important to note, however, that regardless of whether the JPA is terminated, modified, or extended, the Department, through NTIA, will continue to be an active participant in ICANN, by representing the United States Government in ICANN's Governmental Advisory Committee, and by filing comments as appropriate in ICANN's various public consultation processes.

In addition, the Department's relationship with ICANN will continue, as ICANN currently performs the Internet Assigned Numbers Authority functions under contract to the Department.

In addition to important institutional confidence issues associated with the JPA, the Department is actively engaged in discussion with stakeholders related to the introduction of new generic top-level domain names, or GTLDs. The Department acknowledges that the introduction of new GTLDs has been a longstanding goal of the JPA relationship, and that, subject to ongoing public consultation process at ICANN. The Department, in coordination with an interagency group has, in fact, filed public comments in this consultation, asking the threshold question of whether the potential consumer benefits outweigh the potential costs as a result of this exercise, and have been adequately addressed and determined, and recommending further economic study of the issue is called for by the ICANN Board.

The Department also identified a series of initial items that needed to be resolved prior to moving forward, including expanding the marketplace before effective and meaningful tools are in place to protect consumers and brand owners, as well as the need to preserve the security and stability of the DNS.

The Department believes it is critical to keep in mind the core principle, as articulated in the very first MoU, of the need to manage the Internet DNS in a manner that permits market mechanisms to support competition and consumer choice, so that lower costs are realized, innovation is promoted, and user choice and satisfaction are enhanced.

Lastly, I would like this opportunity to update the committee on our efforts to improve the security of the DNS. I am happy to report that NTIA and its roots and management partners, ICANN and VeriSign, recently reached agreement to move forward with an

interim approach to the deployment of the security technology known as Domain Name System Security Extensions, or DNSSEC, at the root zone level. This action is an important step toward protecting the integrity of DNS data, and mitigating attacks such as cache poisoning or other data modification threats.

Given the importance of the Internet as a global medium to support economic growth and innovation, continuing to preserve the security and stability of the Internet DNS will guide any decisions that the Department of Commerce makes with respect to its future relationship with ICANN.

NTIA looks forward to working with you, members of the committee, and the Congress on this important issue, as the September 30, 2009 JPA expiration date approaches.

Thank you again, Mr. Chairman, for this opportunity to testify this morning, and I will be happy to answer your questions.

[The prepared statement of Ms. Alexander follows:]

Testimony of Fiona M. Alexander
Associate Administrator, Office of International Affairs
National Telecommunications and Information Administration
United States Department of Commerce

Before the

House Subcommittee on Communications, Technology and the Internet
Committee on Energy and Commerce
United States House of Representatives

Hearing on
Issues Concerning the Internet Corporation for
Assigned Names and Numbers (ICANN)

June 4, 2009

Introduction

Chairman Boucher, Ranking Member Stearns, and members of the Subcommittee, thank you for this opportunity to testify on behalf of the National Telecommunications and Information Administration (NTIA) on issues related to the Internet's domain name and addressing system (DNS). Although the importance of the DNS may not be apparent to Internet users, the DNS is a critical component of the Internet infrastructure that works like a telephone directory, allowing users to reach websites using easy-to-understand domain names (e.g., http://www.commerce.gov) rather than the numeric network server addresses (e.g., http://170.110.225.163) necessary to retrieve information on the Internet.

The Internet has become a significant and important medium for conducting research, communicating with others, and conducting business. In fact, e-commerce sales by retail establishments reached $31.7 billion during the first quarter of 2009 - a 20 percent increase over first quarter 2006, according to the U.S. Census Bureau. 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 infrastructure - remain stable and secure. This is the primary concern of the Department of Commerce (Department). Consequently, the Department takes very seriously its responsibilities with respect to the Internet DNS. including the Joint Project Agreement (JPA) between the Department and the Internet Corporation for Assigned Names and Numbers (ICANN).

In my testimony today, I will provide details on the Department's relationship with ICANN as well as the Department's views on ICANN's proposed introduction of new generic top-level domain names (gTLDs) for the Internet.

The Foundation of the Department's Relationship with ICANN

ICANN was created out of an effort to bring more coordination and sustainability to the management of the Internet DNS, as the Internet grew into a large-scale global network. A July 1, 1997, Executive Memorandum directed the Secretary of Commerce to privatize the Internet DNS in a manner that increases competition and facilitates international participation in its management. In June 1998, the Department issued a statement of policy on the privatization of the Internet DNS, known as the *DNS White Paper*.

The White Paper concluded that the core functions relevant to the DNS should be primarily performed through private sector management. To this end, the Department stated that it was prepared to enter into an agreement with a new not-for-profit corporation formed by private sector Internet stakeholders to coordinate and manage policy for the Internet DNS. ICANN was formed by private sector interests for this purpose, and, in the fall of 1998, the Department of Commerce entered into a memorandum of understanding (MOU) with ICANN to transition technical DNS coordination and management functions to the private sector.

The MOU did not simply turn over management of the DNS to ICANN. Rather, the purpose of this agreement was to design, develop, and test mechanisms, methods, and procedures to ensure that the private sector has the capability and resources to assume important responsibilities related to the technical coordination and management of the DNS. The agreement between the Department and ICANN does not give the Department of Commerce the ability to exercise oversight in the traditional context of regulation, and the Department of Commerce plays no role in the internal governance or day-to-day operations of ICANN.

Evolving Relationship

Since 1998, the MOU has evolved through several iterations and revisions as ICANN tested these principles, learned valuable lessons, and matured as an organization. Amendments to the MOU were agreed to in 1999, 2000, 2001, and 2002. In 2003, the Department of Commerce noted the progress that ICANN had made since its inception. Accordingly, the Department of Commerce and ICANN collaboratively established more specific milestones to further assist ICANN in meeting the objectives of the DNS Project. At that time, both the Department of Commerce and ICANN recognized that much work remained for ICANN to evolve into an independent, stable, and sustainable DNS management organization, and the agreement was extended through September 30, 2006 to allow sufficient time for ICANN to meet these milestones and objectives.

On May 23, 2006, NTIA issued a Notice of Inquiry (NOI) and announced a public consultation on the continued transition of the technical coordination and management of the Internet DNS. This consultative process resulted in over 700 contributions from individuals, private corporations, trade associations, non-governmental entities, and foreign governments. The consultation evidenced broad support for both continuing the

transition and the ongoing involvement of the Department of Commerce. On September 29, 2006, NTIA and ICANN signed a Joint Project Agreement (JPA) extending the current MOU between the Department of Commerce and ICANN for three more years, until September 30, 2009.

The JPA called for a midpoint review of ICANN's progress toward becoming an organization with greater transparency and accountability in its procedures and decision making. NTIA conducted this review by releasing an NOI on November 2, 2007, and conducting a public meeting on February 28, 2008. This review process revealed that, while some progress had been made, there remained key areas where further work was required to increase institutional confidence in ICANN. Specifically, these areas included: long-term stability; accountability; responsiveness; continued private sector leadership; stakeholder participation; increased contract compliance; and, enhanced competition.

In anticipation of the September 30, 2009 expiration of the JPA, NTIA released an NOI on April 24, 2009 seeking comments regarding the progress of the transition of the technical coordination and management of the Internet DNS to the private sector, as well as the model of private sector leadership and bottom-up policy development which ICANN represents. The comment process for this docket closes on Monday, June 8, 2009.

The Department's commitment to preserving the security and stability of the Internet DNS and the public record developed as a result of this comment process will inform any decision made about the JPA's future. It is important to note however, that regardless of whether the JPA is terminated, modified, or extended, the Department, through NTIA, will continue to be an active participant in ICANN by representing the United States government in ICANN's Governmental Advisory Committee (GAC) and by filing comments, as appropriate, in ICANN's various public consultation processes. In addition, the Department's relationship with ICANN will continue, as ICANN currently performs the Internet Assigned Names Authority (IANA) functions under contract to the Department.

The Introduction of New Generic Top-Level Domain Names (gTLDs)

In addition to important institutional confidence issues associated with the JPA, the Department is actively engaged in discussions with stakeholders related to the introduction of new generic top-level domain names (gTLDs). The Department acknowledges that the introduction of new gTLDs has been a long standing goal of the JPA relationship and the subject of an ongoing public consultation process at ICANN. The Department, in coordination with an interagency group, has in fact filed public comments in this consultation asking if the threshold question, of whether the potential consumer benefits outweigh the potential costs as a result of this exercise, has been adequately addressed and determined ,and recommending further study of the issues as called for by the ICANN Board. The Department also identified a series of initial items that need to be resolved prior to moving forward. These include issues related to:

maintaining the security and stability of the DNS; expanding the marketplace before effective and meaningful tools are in place to protect consumers and brand owners; clarifying the fee structure and the disposition of excess revenues given ICANN's status as a non-profit entity; and developing mechanisms to address dispute resolution recognizing the appropriate role of governments with respect to public policy issues.

ICANN has recognized the complexity associated with the introduction of new gTLDs and, as a part of its public consultation process, has initiated further work on a number of overarching issues. The Department believes it is critical to keep in mind the core principle, as articulated in the very first MOU, of the need to manage the Internet DNS in a manner that permits market mechanisms to support competition and consumer choice so that lower costs are realized, innovation is promoted, and user choice and satisfaction are enhanced.

Conclusion

Lastly, I would like to take this opportunity to update the Committee on our efforts to improve the security of the DNS. I am happy to report that NTIA and its root zone management partners – ICANN and VeriSign – recently reached agreement to move forward with an interim deployment of a security technology known as Domain Name System Security Extensions (or DNSSEC) at the root zone level. This action is an important step toward protecting the integrity of DNS data and mitigating attacks such as cache poisoning and other data modification threats.

Given the importance of the Internet as a global medium to support economic growth and innovation, continuing to preserve the security and stability of the Internet DNS will guide any decision that the Department of Commerce makes with respect to its future relationship with ICANN. NTIA looks forward to working with you, members of the Committee, and the Congress on this important issue as the September 30, 2009 JPA expiration date approaches.

Thank you again, Mr. Chairman for the opportunity to testify this morning.

I will be happy to answer your questions.

Mr. BOUCHER. Thank you, Ms. Alexander. Dr. Twomey.

STATEMENT OF PAUL TWOMEY

Mr. TWOMEY. Thank you, Chairman Boucher, Ranking Member Stearns, and esteemed members of the committee. Thank you for this opportunity to appear before you today, and to speak about the Joint Project Agreement conclusion and new generic top-level domains.

The Joint Project Agreement, Memorandum of Understanding process has helped to grow ICANN to be a remarkable success story. The unique U.S. Government/ICANN relationship has been, is, and will continue to be critically important to ICANN's success. The original Memorandum of Understanding used the word "test" when it was commenced almost 11 years ago.

It was a test of whether a multi-stakeholder, private sector-led, California-based not for profit corporation could perform a narrow but crucial technical coordination function. After those 11 years, ICANN is a success for U.S.-based organization with global support and participation. It has been key to supporting a single, interoperable Internet on which 1.5 billion rely. In simple terms, it works. It has passed the test.

Like other organizations, it must continually improve itself, but unlike many, this organization has continual improvement written into its bylaws. It also has an assertive community that keeps driving us to improve, and will never allow us to stop striving for the best that we can be. We are not seeking less accountability to this multi-stakeholder community. We want more.

The question at hand is how to ensure that what works is made permanent. One thing the Joint Project Agreement is clearly not is an oversight mechanism. Now, Ms. Alexander has just pointed out again that the Department of Commerce has consistently said that the JPA is not an oversight agreement.

Chairman Boucher, you made the point in your introductions about the IANA contract, the procurement contract. This is the key instrument for oversight from the United States Government, and I think you already, potentially, have some misapprehensions about the difference between the Joint Project Agreement and the IANA contract, is something we should explore.

What we have been working together on for 11 years, with advice from the United States Government, is a model all about private sector bottom-up partnership with guidance from government. This is the time to have confidence to state this model works. Any new instrument, no matter how temporary, implicitly says that we, the United States Government and ICANN don't have the confidence in that model. That will cause the international community to continue to look for alternatives. Indeed, with the mere speculation as to the possibility of renewal, they already are.

If the U.S. does not have the confidence in a private sector-led model, we should not expect other governments to have confidence in the model. If we continue to question the private sector-led community's ability to lead itself through the ICANN model, we should expect ongoing challenges and alternatives from others.

A hypothetical eighth temporary agreement would suggest that the basic principles are open to debate. Across the global technical

registry and governments community, the question I get posed regularly is does the United States Government agree with and have confidence in the private sector-led model? If the answer is yes, still yes, then let us confirm that and enshrine it.

A more permanent approach, that enshrines what is working, is vital. As the JPA concludes, the Department of Commerce and ICANN should use that opportunity to commit ICANN to retain a narrow mission, remain based in the United States, remain a not for profit, remain an independent organization, as it has been for almost 11 years, remain private sector, multi-stakeholder led, with international support, remain committed to continuous improvement, reinforcing that the IANA contract is the source of oversight, where responsibility for the global coordination of the DNS root, IP addressing, and other resources is found. None of these should rely on any temporary agreement, and being a California-based organization ensures ICANN is subject to Congressional oversight and U.S. legal process.

Let me speak briefly to the issues of generic top-level domains, that portion of an Internet address that is to right of the dots, such as .com or .org. Currently, there are 21 GTLDs. ICANN is currently deciding how to lift that artificial limit. There are crucial concerns about trademark and intellectual property protections, once the expansion of GTLDs begins, if that is decided.

We have heard those concerns, and we are acting to fix them. The ICANN Board has invited those who have voiced concern to give us solutions before we open up the application process. We have already received the recommendations. We are focusing on other concerns as well, to do with malicious behavior, security, and demand. And I can assure members of the committee that we will not move forward with any progress in implementation until we have addressed these issues. We will get it right. We will not rush the answer.

We are often asked why are we expanding the top-level domain space. First, we were asked to by the community and the United States Government. It was called for in the white paper that foreshadowed ICANN, and it is in the JPA.

Second, there is demand. Geographic names like .nyc and .berlin are being proposed, along with others like .sport, .eco, and .green. Finally, billions of non-English speakers want to see top-level domains look like their language. It is not ICANN's role to set artificial and arbitrary limits on innovation and community use of a public resource. Simply, competition in the domain space is embedded in our values and our bylaws.

So, in conclusion, it is no surprise that the ICANN model is producing opportunities for choice, commerce, and individual expression, and doing so, while being attentive to our core mission, security, and stability.

The United States Government has imbued these values into the ICANN model, and ICANN is made all the stronger for that.

Thank you for inviting me, and I would be happy to take any questions.

[The prepared statement of Dr. Twomey follows:]

The Internet Corporation for Assigned Names and Numbers

Written Testimony of

Dr. Paul Twomey

Chief Executive Officer of the

Internet Corporation for Assigned Names and Numbers

on

"Issues concerning the Internet Corporation for Assigned Names and Numbers (ICANN), including the expiration of the Joint Project Agreement between the U.S. Department of Commerce and ICANN at the end of September and the creation of new global top level domains (gTLDs)."

Before the Subcommittee on Communications, Technology, and the Internet

of the

United States House of Representatives

June 4, 2009

Background

The JPA/MOU process has helped to grow ICANN to be a remarkable success story. The unique US Government-ICANN relationship has been, is and will continue to be critically important to ICANN's success.

The original MOU[1] used the word "Test" when it was commenced almost 11 years ago. It was a test of whether a multi-stakeholder private sector lead, California-based not for-profit corporation could perform a narrow but crucial technical function.

After those 11 years, ICANN is a successful US based organization with international support and participation. It has been key to producing a single, interoperable Internet that we, and countless businesses rely on every day. In simple terms "it works".

Accountability

Like other organizations ICANN will - indeed must - continually improve. But unlike many organizations ICANN has continual improvement through review written into its bylaws[2] and, as a community that drives us to improve and that will never allow us to stop striving for the best we can be.

The JPA/MOU process has been a major stabilizer for the organization. It has encouraged worthy, sensible and careful organization building through 7 versions of the MOU and 13 report cards from ICANN over 11 years[3].

But one thing the JPA clearly is not and never has been is an oversight mechanism. The Department of Commerce has said that historically and says it again in its latest Notice of Inquiry.

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[1] http://www.icann.org/en/general/icann-mou-25nov98.htm

[2] http://www.icann.org/en/general/bylaws.htm#IV

[3] http://www.icann.org/en/general/agreements.htm

Somehow overtime the language of the JPA has become the language of separation: "ICANN is leaving home"; "ICANN is seeking independence"; "ICANN wants to become less accountable". That language is wrong and has confused the understanding of what the JPA is and what conclusion means.

ICANN is not seeking independence; we have been independent since 1999.

ICANN is not leaving home. The US will always be our corporate headquarters.

ICANN is not seeking less accountability. We are actively seeking more.

In fact only this week ICANN released materials for community reflection which suggested the ICANN Bylaws should be amended to establish a new Independent Review Tribunal with powers to review the exercise of decision-making powers of the ICANN Board under three general rubrics – fairness, fidelity to the power, or cogency of decision-making.[4]

The Independent Review Tribunal would consist of a standing panel of internationally recognized relevant technical experts as well as internationally recognized jurists, including persons with senior appellate judge experience. Members would be appointed for either a set period of five years or until they resign.

This proposal would build on the existing accountabilities that operate in the ICANN environment. These were outlined in the document, "Accountability and Transparency Frameworks and Principles published in January 2008.[5]

Three Spheres of Accountability

ICANN is accountable in at least three ways:

1. ***Public sphere accountability*** that deals with mechanisms for assuring stakeholders that

[4] http://www.icann.org/en/announcements/announcement-2-01jun09-en.htm

[5] (http://www.icann.org/en/transparency/acct- trans-frameworks-principles-10jan08.pdf)

ICANN has behaved responsibly. The mechanisms holding ICANN accountable in the sphere include:

•3 public meetings per year – free to all and in a different global location;

•Monthly Board meetings with minutes on website in under 5 days[6];

•Correspondence inbound and outbound is posted;

•Annual report[7];

•Ombudsman[8];

•External financial audit;

•Independent review of Structure every three years;

•Transcription of Meeting discussions and posting to website[9];

•Translation into 5 UN languages for major consultations;

•Mp3's of supporting organization meetings back to 2003;

•Congressional hearings and an Information Disclosure Policy[10].

2. ***Corporate and legal accountability*** that covers the obligations that apply to ICANN through the legal system and under its bylaws. The mechanisms holding ICANN

[6] http://www.icann.org/en/minutes/

[7] http://www.icann.org/en/annualreport/

[8] http://www.icann.org/ombudsman/

[9] http://www.icann.org/en/translations/

[10] http://www.icann.org/en/transparency/didp-en.htm

accountable in the sphere include:

•By Laws – anyone materially affected by an action of ICANN may request review or reconsideration of that action[11];

•ICANN is a Californian Not For Profit (NFP) corporation bound by state laws and federal laws[12];

•Those laws include laws applicable to contracting, tortious and monopolistic behaviour;

•The Californian Attorney General is the legal overseer of NFP's like ICANN and can conduct investigations and actions to ensure ICANN can't stray from its responsibilities;

•All Directors have fiduciary responsibilities;

•All Directors have Duty of prudent investment and loyalty;

•ICANN can have action taken against it in a United States Court.

3. ***Participating community accountability*** that ensures that the Board and Executive perform functions in line with the wishes and expectations of the ICANN community. The mechanisms holding ICANN accountable in the sphere include:

•There 15 voting members on the Board

•6 elected by Supporting organizations of the community;

•8 are from a nominating committee (nomcom) plus CEO[13];

•There is a "bottom up" selection process – nomcom is made up of representatives of the

[11] http://www.icann.org/en/general/bylaws.htm#IV

[12] http://www.icann.org/en/general/articles.htm

[13] http://nomcom.icann.org/

community ;

•There is a Government Advisory Committee: over 120 members, United States included[14];

•Plus 6 Liaisons from Technical, Security, Users, Internet Engineering Taskforce;

•ICANN's Budget, Strategic and Operating Plans are consulted on and scrutinized by community.[15]

Enshrining What Works

Whilst the JPA is not an oversight mechanism what JPA conclusion could and should signal is in fact permanence and entrenchment of the good work done in building this successful model.

As an organization with international stakeholders we know that to extend JPA would be greeted with concern. It galvanizes other governments and government institutions to demand an additional role too. After 11 years of 'testing', renewing or extending JPA – the possibility of another "temporary" agreement (the 8th in a row) - causes those with an interest to 'model shop' as they wait for some further period for the original model to be confirmed.

It is now time to end the 11 years of temporary MOUs and tentative acceptance of this model. In fact it is a unique time to show that the model within which stakeholders can address issues is the right one – and there are not other models, this is the one and it is designed to continuously improve.

The better route is to enshrine the fundamental principles that have served all stakeholders so well as ICANN's permanent charter going forward. ICANN will always:

[14] http://gac.icann.org/

[15] http://www.icann.org/en/planning/

Retain a narrow mission[16];

Remain based in the US;

Remain a not for profit;

Remain an independent organization;

Remain private sector, multi stakeholder lead;

Ensure the role of Governments in the ICANN model through the Governmental Advisory Committee;

Remain committed to continuous improvement.

IANA Contract

The Internet Assigned Numbers Authority (IANA)[17] is what affords ICANN the responsibility for the global coordination of the DNS Root, IP addressing, and other Internet protocol resources. The IANA contract is held by the Department of Commerce.[18]

When the JPA concludes in September, the U.S. Government role will and must continue through IANA contract for the organization's own legitimacy and purpose. And being a California-based company ensures ICANN is subject to Congressional oversight and US legal process. Like any contract, ICANN must perform the function with excellence. The USG and the Congress will always hold oversight hearings and reach out to the business community, with or without any temporary agreements.

New gTLDs

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[16] http://www.icann.org/en/general/bylaws.htm#I

[17] http://www.iana.org/

[18] http://www.icann.org/en/general/bylaws.htm#IV

Generic Top-Level Domains or gTLDs, are that portion of an Internet address that is to the right of the dot, such as dot-com or dot-org.

Currently there are 21 of those gTLDs. ICANN is currently deciding how to lift that artificial limit.

There are crucial concerns about trademark and intellectual property protections once the expansion of gTLDs begins. We have heard them and we are acting to fix them. The ICANN Board has invited those who have voiced concern to give us solutions before we open up the application process. Indeed they produced and made public their report[19] only this week and it will be considered at ICANN's next global meeting to be held in Sydney, June 21-26, 2009[20].

ICANN will not open up the process until such concerns have been addressed.

The question is often asked why ICANN is expanding the top-level domain space. The answer is: we were asked to by the community and the US Government. It was a key-stone in the Whitepaper[21] that established ICANN, has been an objective of each of the temporary agreements, and the JPA, and was the subject of a two-year, intensive, broad-based community driven policy development discussion that could not have taken place anywhere – except of ICANN.

Concerns were raised last year by the United States' Department of Commerce and the US Department of Justice and we have conducted an economic study[22] evaluating many of the points raised and have continued the dialogue as part of the implementation process to deal with those concerns.

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[19] http://www.icann.org/en/announcements/announcement-4-29may09-en.htm

[20] http://syd.icann.org/

[21] http://www.ntia.doc.gov/ntiahome/domainname/6_5_98dns.htm#N_16_

[22] http://www.icann.org/en/announcements/announcement-04mar09-en.htm

In addition, competition in the domain space is embedded in our values and in our bylaws.

So in conclusion, it's no surprise that the ICANN model is producing opportunities for choice, commerce and individual expression and doing so while being attendant to our core mission - security.

The United States Government imbued these values into the ICANN model – along with accountability, freedom, democracy – following the great tradition of pursuit of these in this country – and ICANN is made all the stronger for that.

Mr. BOUCHER. Thank you very much, Dr. Twomey. Mr. Silva.

STATEMENT OF KENNETH J. SILVA

Mr. SILVA. Good morning, Chairman Boucher, Ranking Member Stearns, and other distinguished members of the subcommittee. My name is Ken Silva, and I serve as the Chief Technology Officer for VeriSign.

Thank you for the opportunity to testify today. VeriSign operates digital infrastructure that enables and protects billions of interactions every day across the world's voice and data networks. The company is headquartered in Mountain View, California. We have additional offices in Virginia, Delaware, and Massachusetts. Because our responsibility is global, we are also in 30 different countries.

At a time of economic challenges and uncertainty, it would be easy to focus on the many pressing near-term issues that affect our Nation, but it is critical that we also focus on the Internet, because the infrastructure is not only integral to the economic recovery of our country, but our national security as well.

As the operator of the .com and .net domain registries, as well as the steward for 2 of the 13 root servers that serve as the nerve center of the Internet, VeriSign understands what it is at stake. Over the last 10 years, VeriSign has operated its infrastructure with 100 percent uptime. In other words, the systems that ensure the Internet is functional have never gone down. But the Internet is not a static system. It is a dynamic network of networks that continues to change.

It is growing dramatically overseas, raising questions about its future governance, and the role of nations who do not share our values about freedom of expression, content, and commerce. It is increasingly relied upon by citizens, businesses, organizations, and governments, raising questions about whether it can continue to scale to meet the needs of over 2 billion users in the future.

It is a target of attacks that expand exponentially in volume, scope, and sophistication, raising questions about whether enough is being done to protect those critical networks that serve as the lifeline for commerce and communications. Recent incidents in China, India, Pakistan, and Estonia underscore that importance.

I would like to address three challenges in my testimony: Internet governance, scaling of the Internet, securing the Internet.

With respect to Internet governance, when it became clear that the Internet would have a profound impact on every facet of society, the Clinton Administration took the lead in establishing ICANN to serve as the technical coordinating body. The Department of Commerce was given the task of helping guide ICANN and provide a governmental backstop. We must consider how to ensure that the Internet and the community that guides it are insulated as much as possible from domestic political pressures, or the goals of those in the world who want to restrict what has made the Internet so dynamic, namely, its innovative force and capacity to create businesses and jobs.

With that, we look forward to the outcome of the discussions between ICANN and the Department of Commerce over the JPA, par-

ticularly as it relates to its impact on the security and stability of the Internet and its responsible stewardship.

From our point of view, while ICANN has continued to make progress in certain areas, the basic circumstances giving rise to widespread community concerns over an expiration of the JPA remain largely unanswered. The overall goal in this process must be the strengthening of the security and stability of the Internet.

With respect to scaling the Internet, because .com and .net never go down, users and even some companies who rely on it for their business model take it for granted, but VeriSign, other private sector players, and government cannot. We must continually invest and work to improve in its capacity. To keep up with the demand, VeriSign systems that manage .com and .net traffic can now handle more than 10,000 times the query volume that they could handle in 2000. To put that in perspective, that increase is about 600 times greater than Moore's Law, the theory that computing power doubles every 18 months. VeriSign's systems handle more than 50 billion queries a day, and that is a 67 percent increase in just two years. Our investments include increasing capacity to support up to 4 trillion queries per day.

We all know that the Internet that we use today is far different than it was 10 years ago, and we know that 10 years from now, it will be dramatically different than it is today. That is why VeriSign is continually investing and looking into strengthening that infrastructure that we all rely upon.

With respect to securing the Internet, we are pleased that President Obama's cybersecurity czar will sit at the National Economic Council and the National Security Council, as it underscores the threat that cybersecurity attacks pose to our Nation. As CTO, I have had to identify and manage attacks every day. Cybercriminals cleverly manipulate the Internet's advances, and the increased bandwidth and computing power available to them literally gives hackers more ammunition to utilize against the infrastructure.

There are many issues that we must address as an Internet community. We must continue to invest and deploy infrastructure upgrades such as DNSSEC and IP version 6, in a way that is least disruptive to Internet users, developers, businesses, and governments. We must continue to work together to invest and develop in the infrastructure, so that it can continue its role as a platform for commerce and communications.

I know that VeriSign, ICANN, and the rest of the Internet community will work diligently to ensure that the infrastructure remains reliable and secure.

I thank you very much for your time, Mr. Chairman.

[The prepared statement of Mr. Silva follows:]

Ken Silva

Testimony Before the
House Energy and Commerce Subcommittee on Communications, Technology, and the Internet

June 4, 2009

Good morning, Chairman Boucher, Ranking Member Stearns and distinguished Members of the Subcommittee. My name is Ken Silva and I serve as Chief Technology Officer of VeriSign.

Thank you for the opportunity to testify today. I have a prepared statement, which I would request be inserted in the record.
By way of background, VeriSign operates digital infrastructure that enables and protects billions of interactions every day across the world's voice and data networks. The company is headquartered in Mountain View, California and it has additional corporate facilities in Virginia, Delaware and Massachusetts.

I want to commend and thank you for holding this hearing. At a time of economic challenges and uncertainty, it would be easy to focus on the many pressing near-term issues that affect our nation. But it is critical that we also focus on the Internet, because the infrastructure is not only integral to the economic recovery of our country, but to our national security as well.

Simply put, the Internet is now the platform for an enormous portion of our economic activity, our entertainment and communications. President Obama put it best last week when he said. "None of these 21st century challenges can be fully met, without America's digital infrastructure -- the backbone that underpins a prosperous economy and a strong military and an open and efficient government. Without that foundation we can't get the job done."

As the operator of the .com and .net domain registries as well as the steward for two of the 13 root servers that serve as the nerve center for the Internet infrastructure, VeriSign understands what's at stake. Over the last 10 years, VeriSign has operated its infrastructure with 100% uptime – in other words, the systems that ensure the Internet is functional have never gone down.

But the Internet is not a static system. It's a dynamic and continually changing network of networks.

It is growing dramatically overseas, raising questions about its future governance and the role of nations who may not share our values about freedom of expression, content and commerce.

It is increasingly relied upon by citizens, businesses, organizations and governments, raising questions about whether it can continue to scale to meet the needs of over 2 billion global users, increasingly rely it upon.

It is the target of attacks that expand exponentially in volume, scope and sophistication. Some have raised questions if enough is being done to protect the critical networks that serve as a lifeline for commerce and communications.

I would like to address all three of these challenges in my testimony.

Internet Governance

When it became clear that the Internet would have a profound impact on every facet of society, the Clinton Administration took the lead in establishing ICANN to serve as the technical coordination body. The Department of Commerce was given the task of helping guide ICANN and provide a governmental "backstop" to the global Internet community.

More than a decade later, ICANN has continued to grow and develop. It has not been without its challenges, or issues with the Internet community, but it has served an important role in creating stability with the community. Now the Internet community has grown to every corner of the globe, prompting questions about whether the Commerce Department, or any one government, should serve as that backstop.

As policymakers around the world grapple with that question, we believe that must consider how to ensure that the Internet, and the community that guides it, are insulated as much as possible from domestic political pressures or the goals of those in the world who, in the name of stability, want to restrict what has made the Internet so dynamic – namely its innovative force.

With that, we look forward to the outcome of the discussions between ICANN and the Department of Commerce over the Joint Partnership Agreement (JPA), particularly as it relates to its impact on the security and stability of the Internet and its responsible stewardship.

From our point of view, while ICANN has continued to make progress in certain areas since these recent public proceedings, the basic circumstances giving rise to widespread community concerns over an expiration of the JPA remain largely remain unchanged and further progress is critical prior to an expiration of the agreement and end to all governmental oversight of ICANN.

Among the issues we know being discussed are how to continue to ensure that the goals of accountability and transparency continue to be worked on throughout the ICANN process. The overall goal in this process must be the strengthening of the security and stability of the Internet.

Scaling the Internet

Because the Internet never goes down, users, and even some companies who rely on it for their business model, take it for granted it. But VeriSign, other private sector players and governments cannot take security and stability for granted. We must continually invest and work to improve its capacity.

To keep up with the demand, VeriSign's primary computers managing .com and .net traffic can now handle more than 10,000 times the DNS query volume they could handle in the year 2000. To put that in perspective, that increase is 600 times greater than Moore's Law, the theory that computing power doubles every 18 months.

Two years ago, the .com and .net systems handled more than 30 billion queries a day. Today, they handle more than 50 billion queries a day – a 67 percent increase in just two years. In other words, DNS capacity is increasing at a rate that is 3 times faster than domain name registrations. VeriSign is committed to building a network infrastructure that can support up to 100 times that level of volume in the next few years.

That is why VeriSign launched a global initiative called Project Titan to expand and diversify its Internet infrastructure by ten times by the year 2010. These investments include increasing capacity 10 times over, from 400 billion DNS queries a day to 4 trillion DNS queries a day to prepare for attacks and new usage that continues to increase daily. We have also expanded our infrastructure both domestically and internationally through the deployment of over 70 DNS constellation sites that ensure that attacks can be isolated and Internet traffic is not disrupted.
Even this is not enough. We are now in intense discussions about what the future of the Internet will look like and how the infrastructure must be fortified and adapted to ensure it can keep up with those changes.

Securing the Internet

President Obama's order that his new cyber security czar sit on his National Economic Council and National Security Council underscores the threat that cyber attacks pose to our nation.

As Chief Technology Officer I have had to identify and manage attacks every day. Cyber criminals cleverly manipulate the Internet's advances. The growth in the number of computers world wide means that more devices can be turned into botnets to stage attacks on corporate networks. Now that computers are always-on, they are more easily accessible to hackers and other bad actors to hijack. And the increased bandwidth and computing power available literally gives hackers more ammunition to utilize against the infrastructure.

There are many issues that we must address as an Internet community. We must resolve the issue of creating internationalized domain names while ensuring that they are technically stable and provide a consistent Internet experience for users around the world. We must continue to invest and deploy infrastructure upgrades such as DNSSEC and IPv6 in a way that is least disruptive to Internet users, developers, businesses and governments.

What we cannot afford is to play politics with the Internet infrastructure. We must continue to work together to invest and develop the infrastructure so that it can continue its role as a platform for commerce and communications.

I know that VeriSign, ICANN and the rest of the Internet community will work diligently to ensure that the infrastructure remains reliable and secure.

Thank you very much for your time.

Mr. BOUCHER. Thank you very much, Mr. Silva. Ms. Jones.

STATEMENT OF CHRISTINE N. JONES

Ms. JONES. Chairman Boucher, Ranking Member Stearns, and members of the committee, I am Christine Jones. I am from Go Daddy.

At the outset, I would like to thank you, Chairman Boucher, for all of your work, and the committee's work, and for holding this hearing. We are happy to be here with ICANN and VeriSign. We are ICANN's largest registrar benefactor and VeriSign's largest customer, so we are always happy to participate with them.

As the world's largest registrar, Go Daddy works daily with ICANN, in its role as the coordinating body for the Internet. We believe it is essential for world commerce, as well as the security and the stability of the Internet, that the relationship between the NTIA and ICANN be continued, along with appropriate improvements in accountability, transparency, and democracy in governing principles.

Continuing the JPA between ICANN and the NTIA will not only provide the framework for ensuring a continued focus on Internet security and stability issues, but will prevent ICANN from vulnerability to capture by another government, international organization, or business that does not have an open, secure and stable Internet as its top priority.

On the renewal of the JPA, the DNS white paper, first published back in 1998, articulated that principles of accountability, competition, private bottom-up coordination and representation are necessary for guiding the transition to a private sector management of Internet DNS.

We believe those principles, even 11 years later, remain relevant. ICANN has made great progress toward achieving some, but not all, of these goals. Specifically, ICANN has not yet achieved competition, nor the private bottom-up coordination and representation called for in the ICANN bylaws. We believe the renewed JPA must be revised to include openness and transparency as overall guiding principles, if we are ever to see an effective transition of Internet DNS management to the private sector through ICANN. And of course, we would be happy to be involved in the process of determining appropriate revisions to the JPA, if such assistance would be helpful.

I want to talk about the extension of the JPA that you mentioned, Mr. Chairman, for a minute. I want to reiterate, we are in favor of renewal of the JPA between ICANN and the NTIA for a multitude of reasons, not the least of which are a failure to accomplish its mission and abide by its stated core values, we believe ICANN will benefit from continued relationship. But we are aware that both VeriSign's ex parte letter and the recent letter from Senators Nelson and Snow mention considering a one year extension of the current JPA. If that arrangement would provide time to consider new or additional terms of a renewed JPA, then we would support such an extension as well.

On the new GTLDs, we are not opposed, Go Daddy is not opposed to the concept of introducing new GTLDs. In fact, as Mr. Twomey said, the community has been calling for that for quite

some time, but we have taken exception to the methodology by which they have been introduced. Loud voices, from both the intellectual property community and the registrant community have been virtually ignored in this process, and ICANN can't seem to establish a guideline by which the new GTLDs will be chosen.

In the interests of time, I am going to defer the IP expert on this panel to talk about GTLDs, but I would love to get back to this, if anybody has questions on it.

I want to focus on security and stability, because like all of us at this table and in this room, Go Daddy believes that security and stability of the Internet is vital. Indeed, we devote a considerable amount of time and resources to working with law enforcement on preserving the integrity and safety of the Internet, by quickly closing down Web sites and domain names engaged in illegal activities. We work with law enforcement agencies at all levels, and routinely assist in a wide variety of criminal and civil investigations and, like our friends at VeriSign, we respond to and fight cyberattacks on our hosting, email, and domain name systems every single day. I personally, and this company in general, have made it a high priority to use our position as the world's largest registrar to make the Internet a better and safer place, and we could not agree more with President Obama's decision to make cybersecurity and Internet privacy issues a top priority in his Administration.

As the President said on Friday: "America's economic prosperity in the 21st century will depend on cybersecurity. This is also a matter of public safety and national security. It is now clear the cyberthreat is one of the most serious economic and national security challenges we face as a Nation." We wholeheartedly agree.

So, thank you again, Mr. Chairman, for holding this hearing. We are in support, again, of the extension of the JPA.

I would be happy to answer any questions for you or other members of the panel. Thank you.

[The prepared statement of Ms. Jones follows:]

Before the House Committee on Energy and Commerce
Subcommittee on Communications, Technology, and the Internet
United States House of Representatives

Hearing on "Oversight Of The Internet Corporation For Assigned Names And Numbers"

Statement of Christine N. Jones
General Counsel and Corporate Secretary
The Go Daddy Group, Inc.

June 4, 2009

Introduction

As the world's largest registrar, Go Daddy works daily with ICANN, the coordinating body for the Internet. We believe it is essential for world commerce, as well as the security and stability of the Internet, that the relationship between the United States Government, specifically the Department of Commerce via the National Telecommunications and Information Administration, and ICANN, be continued, along with appropriate improvements in accountability, transparency and democracy in governing principles. Continuing the Joint Project Agreement between ICANN and the NTIA will not only provide the framework for ensuring a continued focus on Internet security and stability issues, but will prevent ICANN from vulnerability to capture by another government, international organization, or business that does not have a secure and stable Internet as its top priority.

Background

The Go Daddy Group, Inc. is an Arizona company which consists of eight ICANN Accredited registrars, including GoDaddy.com. Today, we have over thirty-four million domain names under management, and are the number one registrar in the world. We register a domain name once every second or less. Go Daddy is also a large hosting provider. We currently employ over 2100 people and do not utilize offshore outsourcing of any kind.

A domain name registrar serves as the point of entry to the Internet. If you wanted to register the domain name www.ChairmanBoucher.com, you could go to www.GoDaddy.com to register that domain name. A domain name registrar is different from a traditional Internet Service Provider (ISP), such as AOL, MSN, or EarthLink, in that the ISP provides access to the Internet whereas the registrar provides the registration service for .com names and the like.

Once www.ChairmanBoucher.com is registered, you would need to build a website and find a place to store, or "host," that website. Again, you could go to www.GoDaddy.com for storage, or hosting, services. A hosting provider differs from a traditional ISP in that

the hosting provider supplies space on a computer that is accessible from the Internet rather than access to that computer which is provided by the ISP.

Renewal of the Memorandum of Understanding

The *DNS White Paper*, first published in 1998, articulated that principles of accountability, competition, private, bottom-up coordination, and representation are necessary for guiding the transition to private sector management of the Internet DNS. We believe those principles remain relevant. The Internet Corporation for Assigned Names and Numbers (ICANN) has made progress toward achieving some, but not all, of these goals. Specifically, ICANN has not yet achieved competition, nor the private, bottom-up coordination and representation called for in the ICANN bylaws.

The Joint Project Agreement (JPA) between ICANN and the Department of Commerce should be extended and modified, or renewed and modified, to stress the need to correct these deficiencies and require a clear roadmap from ICANN as to how it will regain the confidence of the community upon which its existence relies. This Committee's commitment to ensuring ICANN appropriately administers that system is vital.

Private, bottom-up coordination, and representation should be a guiding principle in the ICANN policy making process. While we have repeatedly urged ICANN to abide by this principle, they have chosen instead to conduct business behind closed doors and without input from the ICANN community

Unfortunately, ICANN has yet to commit to or is unable to commit to openness, transparency, and accountability. ICANN is responsible for an important public trust. To preserve this public trust, it is vital that all stakeholders have access to and recognized input in these types of discussions. The entire Internet community should be made to fully understand the reasons for ICANN's decisions, and to have effective and unbiased recourse if they have reason to question those processes and decisions. In fact, it is bigger than the Internet community; these decisions impact the overall economy in a significant way. President Obama has repeatedly emphasized the significance of the

Internet to overall economic and security success in the United States. Indeed, the president has established two new roles in his administration: a chief technology officer *and* a cyber advisor. Importantly, President Obama said last July, "[a]s president, I'll make cyber security the top priority that it should be in the 21st century." ICANN should be held to that same standard.

ICANN's bylaws state: "ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness," and "In carrying out its mission as set out in these Bylaws, ICANN should be accountable to the community for operating in a manner that is consistent with these Bylaws."[i]

Despite those provisions of the bylaws, there are no appropriate accountability mechanisms in place to impartially review ICANN Board actions. There are currently three accountability and review mechanisms defined in ICANN's bylaws:

- Reconsideration – This is basically the Board reviewing itself.
- Independent Review – This mechanism is entirely untested and has never been used.
- Ombudsman – The Board has ultimate review here, not providing any accountability at all.

We believe there needs to be an independent evaluation of how these accountability mechanisms have worked, or will work, and the implementation of any adjustments recommended as a result of that evaluation should be undertaken before any final transition can be contemplated. (*See also*, "Ensuring ICANN is Accountable" below.)

We believe the JPA must be revised to include openness and transparency as overall guiding principles if we are to ever see an effective transition of the Internet DNS management to the private sector through ICANN. We would be happy to be involved in

the process of determining appropriate revisions to the JPA, if such assistance would help move the ball forward.

Security and Stability

Go Daddy believes that the security and stability of the Internet is vital. Indeed, Go Daddy devotes considerable time and resources to working with law enforcement on preserving the integrity and safety of the Internet by quickly closing down websites and domain names engaged in illegal activities. We work with law enforcement agencies at all levels and routinely assist in a wide variety of criminal and civil investigations. We are also quick to respond to complaints of spam, phishing, pharming, and online fraud and work closely with anti-fraud and security groups such as the Anti-Phishing Working Group, Digital Phish Net, the National Center for Missing and Exploited Children, and CyberTipLine. We have made it a high priority to use our position as a registrar to make the Internet a better and safer place.

According to its website, "ICANN ... is a not-for-profit public-benefit corporation with participants from all over the world dedicated to keeping the Internet secure, stable and interoperable. It promotes competition and develops policy on the Internet's unique identifiers."[ii] We agree that ICANN can and should play an active role in keeping the Internet secure and stable. In fact, this fits well into the president's focus on cyber security. We cannot understand, however, why ICANN has not insisted on basic steps that will lead to enhanced security and stability, such as an infrastructure investment requirement in the recently renewed registry operator agreements. This Committee should insist that the JPA require ICANN to ensure continued investment in Internet security infrastructure in the future.

Safeguarding ICANN Against Capture

In February of 2009, ICANN issued a draft Implementation Plan for Improving Institutional Confidence (Plan).[iii] That such a Plan was necessary is telling in itself. The Plan recommended, inter alia, that ICANN must 1) Be safeguarded against capture; 2) Be accountable and responsive; 3) Meet the needs of the global community of the future; 4)

Be financially and operationally secure; and, 5) Maintain its focus on securing safe and stable operations relating to unique identifiers. We generally agree with these findings and recommendations. However, we do not believe that the recommendations in the Plan go far enough. Items 1 and 2 above, in particular, should form the foundation upon which the other areas will rest and so underpin any successful effort to improve confidence in ICANN and its processes.

The Plan states: "The PSC [President's Strategy Committee] notes ICANN's existing Accountability Frameworks and Management Operating Principles and considers these a strong protection against capture." The Plan also refers to broadening participation, including active participation by governments, improving GAC [Governmental Advisory Committee] working methods, ICANN's bylaws and other documents, consensus requirements, more diverse funding sources, anti-trust laws, transparency, Staff conduct, and best corporate practices – all as safeguards against capture.

Those are all excellent goals, but none of them, either individually or as a group, can serve as a guarantee against capture. All of the aspects mentioned are part of structures that undergo periodic review and are subject to change, and/or the participants themselves change. This is unavoidable as the Internet is an ever evolving structure and tool.

We believe that an adequate protection from capture, or takeover, of ICANN by a government, international organization, or business, would be a structure or tool designed for and dedicated to that specific purpose. In addition, it would provide the accountability that is currently lacking.

Ensuring ICANN is Accountable

The Plan first mentions the three accountability mechanisms already in place – Reconsideration, Independent Review, and the Ombudsman. However, these mechanisms simply illustrate the need for true accountability since all three leave any final decision

with the Board itself, ultimately leaving the Board accountable only to itself. The Plan proposes two new mechanisms.

The first is to allow the community to require the Board to re-examine a Board decision. This seems to be much like the existing Reconsideration process but can be invoked by either two-thirds majority vote of two-thirds of all the Councils or two-thirds of all the Advisory Committees. Such an onerous threshold is not likely to ever be met. In addition, the Board proposes to once again reserve the right to any final decision - it cannot be forced to change its mind.

The second proposed mechanism is the "no confidence" vote. It isn't clear what threshold would be required for this vote, and it isn't clear if the pre-designated resignations of the Directors would be voluntary or required. If pre-designated resignations are voluntary, the mechanism actually holds no real value. If pre-designated resignations are required it does provide a so-called nuclear option that would result in replacing or reconfirming the entire Board. Again, this is a scenario that is highly unlikely to find wide support within either the Supporting Organizations or the Advisory Committees.

It is possible that both of these proposed mechanisms could be useful if properly defined. However, we believe an adequate mechanism that ensures accountability would be encapsulated within one that also guarantees against capture.

A Single Solution for Avoiding Capture and Ensuring Accountability

Recently, variations on the concept of a supervisory panel have been proposed. The make-up of such a panel varies from one proposal to another, but in general we believe that this is a concept that has merit and should be carefully explored. If properly constituted, such a panel would serve both as a protection against capture and a mechanism for true accountability on the part of the ICANN Board. The composition of the panel should reflect the goal of private sector leadership, and its functions should be to: 1) preserve bottom-up consensus policy making; 2) ensure long-term stability by

protecting against capture; and, 3) provide sufficient recourse for stakeholders affected by ICANN policies and decisions.

ICANN's Mission and Core Values

As stated in Article I of the ICANN bylaws (Rev. Mar 2009)[iv], "the mission of The Internet Corporation for Assigned Names and Numbers ("ICANN") is to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems."

We have concerns about whether ICANN can or will achieve its stated mission, without oversight from the National Telecommunications and Information Administration (NTIA), and without accountability to adhere to said mission without overstepping its purpose. To fulfill it stated mission, ICANN must resist calls from interest groups within the community to unilaterally expand its mission. ICANN must not venture into areas of content regulation, determination of intellectual property rights, or unnecessarily interfere with market forces. Each of these is a possibility in the absence of a relationship with the NTIA to provide boundaries and accountability to the mission.

Furthermore, ICANN has a set of Core Values[v] (CV). These values are not mere suggestions; they are the second item in the ICANN bylaws. The CV can be paraphrased in short, as follows:

1. Stability, Reliability, Security and Global Interoperability,
2. Limited activities to those matters requiring or benefiting from global coordination,
3. Delegating coordination functions to responsible entities that reflect the interest of affected parties,
4. Seek and support broad, informed participation,
5. Depend upon market mechanisms to sustain a competitive environment,
6. Introduce and promote competition in the domain registration industry,
7. Open and transparent policy development, with the assistance of those most affected,

8. Apply policies neutrally and objectively,
9. Act with speed to be responsive to the needs of the Internet,
10. Remain accountable to the Internet community,
11. Remain rooted in the private sector, while taking in to account the recommendations of governments.

We have serious concerns about ICANN's need to act in accordance with its CV in at least the following specific examples. These examples show at least that ICANN is not prepared to operate as an independent organization, free of all governmental involvement.

- ICANN must not expand its mission, in accordance with CV2. As a global coordinator, it should explore responses to out-of-scope issues by encouraging participation in industry / technical groups (CV3), rather than addressing them directly. This is particularly true in cases involving abuse, non-technical security, and Internet content.

- ICANN must do more to ensure that policy development, policy implementation, contractual compliance and investment decisions are open (CV7) and accountable to the community (CV10). As an example, the implementation of policy authorizing the expansion of gTLD space recalls many incidents of closed-door decision making with regard to application fees, hiring outside consultants, developing Staff incentive programs, and the Implementation Recommendations Team.

- ICANN should require stakeholder and constituency representatives to appropriately demonstrate that they do in fact speak for the community that they claim to represent (CV4). This process should be supported by quantified data / research, and possibly demonstrable outreach activities within the stakeholder group.

- Other issues raise concerns regarding accountability (CV10) and transparency (CV7), particularly with respect to individual members of the ICANN Board. We continue to call for the development of a mechanism to remove a single board member

from office, for cause. And ICANN should disclose any interests, including staff compensation plans that could impact decisions made in policy development or implementation activities.

- When implementing policy or auditing compliance, ICANN does not consistently consult with affected parties (CV7). A specific example would be the Whois Problem Reporting System, in which several registrars offered guidance and recommendations, but much of which was disregarded. Additionally, this systems places the burden of proof on the registrar to show that Whois data is indeed accurate (CV8). ICANN should consider issuing any necessary clarification to ensure that registrars and complainants understand their rights and obligations under this system.

- Similarly, ICANN's Uniform Domain Name Dispute Resolution Policy (UDRP) is inconsistently applied by the panelists engaged by the various dispute resolution service providers, who in some cases consider the privacy / proxy service provider to be the respondent in UDRP proceedings. This is contrary to the Supplemental Rules, and the spirit of the UDRP itself. ICANN should issue any necessary clarifications to ensure that all UDRP panelists understand these conventions, and apply them consistently (CV8).

- ICANN introduced a transfer dispute resolution policy (TDRP), which has been perceived by many in the community as a new obligation for registrars to protect registrants from unauthorized transfers (CV8). Yet it is not clear that registrars have the ability to act in this capacity, and that registrars were willing to assume the added costs and liability potential associated with this policy (CV7).

- There is frequent and ongoing debate within the ICANN community on striking the appropriate balance between registrant privacy, and the need for an authoritative Whois directory. ICANN must recognize that the popularity of privacy / proxy services is an innovative market solution to this issue (CV5), and the popularity of these services indicates broad support on the part of registrants (CV4). Vocal minorities within the community must not be allowed to dictate policy development in this area (CV8)

- ICANN must refrain from any undue interference in market-driven processes (CV5), which includes adopting measures that would either curtail innovation, or would subsidize services demanded only by a vocal minority. Uncompetitive entities must not be artificially protected (CV6) from entities offering equivalent services more efficiently (CV8).

- ICANN must continue to respect and consider the positions and recommendations of local governments (CV11), but at the same time recognize that the country code top level domain (ccTLD) space is the appropriate arena for them to set and enforce policy. Local control cannot be allowed to extend into the shared gTLD space.

Conclusion

It is essential for both international commerce and the security and stability of the Internet that the relationship between the NTIA and ICANN continue. Whether that comes in the form of an extension or renewal of the JPA, Go Daddy urges a continuation of the relationship. Continuing the JPA will not only provide the framework for ensuring a continued focus on Internet security and stability issues, but will prevent ICANN from vulnerability to capture by another government, international organization, or business that does not have a secure and stable Internet as its top priority.

We sincerely appreciate the opportunity to present this written testimony and the Committee's attention to this important issue. Go Daddy is committed to working together with others in the Internet community, including ICANN, to continue to make the Internet more secure, stable, and safe for all those who chose to use it.

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[i] http://www.icann.org/en/general/bylaws.htm#I

[ii] http://www.icann.org/en/about/

[iii] http://icann.org/en/announcements/announcement-12mar09-en.htm

[iv] http://www.icann.org/en/general/bylaws.htm#I

[v] http://www.icann.org/en/general/bylaws.htm#I

Mr. BOUCHER. Thank you very much, Ms. Jones. Ms. Deutsch, we will be happy to hear from you.

STATEMENT OF SARAH DEUTSCH

Ms. DEUTSCH. Chairman Boucher, Ranking Member Stearns, and members of the subcommittee. Thanks for the opportunity to participate in this important hearing addressing issues related to ICANN.

Verizon supports ICANN. We wish to see it succeed as an independent and accountable model of private sector leadership. ICANN must be given the time and support it needs to make that smooth transition.

My focus today is on ICANN's plans to expand the existing domain name space. ICANN plans to accept as many as 500 initial applications for new generic top-level domains, or GTLDs. I will refer to GTLDs simply as names. In the future, there may be unlimited number of new names. Future names could include anything one could imagine, from .bank to .health to .congress. ICANN financially benefits from this expansion. It will bring in more than $90 million from the initial round of applications alone. It will also collect ongoing fees of $75,000 per applicant from manual renewals of each new name, and it collects a $0.25 transaction fee from every domain name registered.

As a result, however, businesses and consumers will face higher costs. This isn't very helpful in the current economic climate. Hundreds of diverse parties, including consumer groups, business organizations, trademark owners, and Internet security experts, have raised concern. ICANN has acknowledged the many concerns, but it has not adequately addressed them. Nevertheless, it plans to begin accepting applications for the new TLDs starting in early 2010.

Verizon believes there are four fundamental concerns that ICANN needs to address fully before commencing any introduction of new TLDs. First, ICANN must complete an impartial and comprehensive economic study of the domain name marketplace. That study must explore whether there is even a need for so many new names in the first place. ICANN's Board supported that study in 2007, yet it was never undertaken.

Second, ICANN must ensure that consumers are adequately protected from online confusion and fraud. If, as predicted, there are more than 1,000 new names in the next three years, consumers will be the victims of more online confusion, more fraud, and more malicious activity. Consumers already have difficulty today finding the legitimate Web sites they want to reach, so consumers must be confident when they go to verizon.phone, for example, that they have reached an authorized Verizon Web site, versus one set up by a cybersquatter or an international phishing scam.

Third, ICANN's rapid expansion may be at odds with its responsibility to increase the long-term safety and stability of the domain name system. ICANN may not have the ability to manage such a rapid expansion.

Fourth, trademark and brand protection remain a critical concern. Trademark protection, of course, is directly tied to consumer protection. Trademarks help consumers reach the Web sites and

brands they know and trust. When users go online, however, they can easily be confused or diverted, and unfortunately, brands like Verizon, household brands, have been targets for cybersquatters. Cybersquatters have registered tens of thousands of variations of our trademarks over the past few years, and here is a little stack.

You need to know that many of these cybersquatters are ICANN-accredited registrars. They have set up large scale operations, earning millions of dollars a year from their illegal activities. To protect our customers, we have brought many high profile lawsuits against ICANN registrars in recent years. ICANN's registrars contractually agree to comply with all laws, yet we have observed little, if any enforcement by ICANN against registrars who are found to violate anti-cybersquatting laws.

We are very pleased that ICANN acknowledges the concerns raised by trademark owners, by convening a small group of experts to offer possible solutions to address cybersquatting in an expanding GTLD space. We urge ICANN to adopt all these proposals as a package, and continue to work with trademark owners on improving them. Verizon has specific ideas for such improvements, as discussed in our written statement.

In sum, any new TLD rollout must be delayed until all threshold concerns are fully addressed. ICANN should proceed slowly and cautiously in expanding the domain name space, to protect the Internet and its users.

Finally, one note on the JPA. Numerous thoughtful suggestions have been made to improve ICANN processes while still preserving the model of private sector leadership. It is important to allow sufficient time to consider and implement these suggestions as well.

We commend the subcommittee for addressing this important subject. Thanks again for the opportunity to testify.

[The prepared statement of Ms. Deutsch follows:]

Prepared Testimony of Verizon Vice President and Associate General Counsel Sarah Deutsch

U.S. House of Representatives Committee on Energy and Commerce Subcommittee on Communications, Technology and the Internet,

"Internet Corporation for Assigned Names and Numbers"

June 4, 2009

Thank you for the opportunity to participate in this important hearing examining issues related to the Internet Corporation for Assigned Names and Numbers (ICANN). Verizon is among the world's leading providers of communications and entertainment products and services. Verizon Wireless owns and operates the nation's largest wireless network, serving more than 80 million voice and data customers. Verizon Business delivers innovative business solutions to customers over a global footprint covering 150 countries across six continents, serves over 70,000 customers, including 98 percent of the Fortune 500. Verizon Telecom brings customers the benefits of converged communications and entertainment products and services over the nation's most advanced fiber-optic network.

Verizon applauds the Subcommittee for examining the issues arising from the upcoming expiration of the Joint Project Agreement (JPA) between the U.S. Department of Commerce and ICANN as well as ICANN's proposed plan to expand the number of new generic top level domains (gTLDs). Our testimony today focuses primarily on the gTLD issue. We would like to make clear at the outset that we support ICANN and wish to see it succeed as an independent and accountable model of private sector leadership. ICANN must be given the time and support it needs to make that smooth transition. In the JPA, ICANN committed to maintaining the security and stability of the domain name system, including improving accountability and responsiveness to its multi-stakeholder community, ensuring contract compliance and root server security. This hearing comes at a critical time as businesses and consumers increasingly rely on domain names to provide certainty in conducting business and personal communications in the global online environment. In these challenging economic times, the stability of the Internet as a global platform for E-Commerce remains a critical concern for businesses worldwide.

Despite our strong support for ICANN and its future success, we are concerned that its current plans for the expansion of the domain name system may not compatible with its larger goal of ensuring a stable transition to private sector management and leadership. ICANN must be able to avert the many major challenges it will face that threaten the domain name system and its internal operations while avoiding potential capture by third parties. The future of ICANN's transition requires that it focus narrowly and effectively on its core functions, including administering the DNS in a manner that places priority on preserving the security and stability of the Internet over other interests.

ICANN has chosen to pursue one of the most controversial policy initiatives in its history. It intends to rapidly expand the existing domain name space, ***accepting as many as 500***

applications for new gTLDs in its initial round. In subsequent rounds, it will expand to allow potentially unlimited new numbers of gTLDs. The existing domain name space includes 21 gTLDs such as .com, .net; .org, .edu, .info, and .biz and some 240 country-code TLDs (ccTLDs). ICANN explains that the expansion of gTLDs will allow for more innovation, choice and change to the Internet's addressing system. However, the many existing TLD choices, combined with over 175 million registered domain names confirm that consumers already benefit from significant competition in the domain name space.

Despite the financial challenges facing many companies and organizations today, ICANN has amassed more than adequate reserves beyond the "cost recovery principle" first espoused by ICANN's Board ten years ago. See http://www.icann.org/en/committees/tff/final-report-draft-30oct99.htm. If its initial round of applications is successful, ICANN stands to bring in more than $90 million. ICANN also will collect ongoing fees of $75,000 per applicant from annual renewals of each new gTLD as well as a .25 cent transaction fee from every domain name registered in every gTLD.

The idea of dramatically expanding the domain name system has met with considerable resistance from hundreds of diverse commentators, including consumer groups, major business organizations (such as the National Association of Manufacturers, the International Trademark Association, U.S. Chamber of Commerce, Coalition against Domain Name Abuse, U.S. Council for International Business, and Internet Commerce Coalition to name a few), trademark owners like Verizon, and Internet security experts. ICANN released two versions of its "Draft Applicant Guidebook," which acknowledged – but did not address adequately – the many fundamental concerns its stakeholders raised. ICANN recently confirmed that it still intends to proceed with the application process for new TLDs starting in early 2010.

Verizon believes that there are four fundamental concerns that ICANN needs to address fully *before* commencing any introduction of new gTLDs:

First, ICANN must complete an impartial and comprehensive economic study of the domain name marketplace which explores whether there is even a need for new gTLDs in the first place. The impartial study should examine the potential unintended consequences and costs to businesses, consumers and the safety and stability of the Internet from a rapid expansion of the domain name system. ICANN's Board supported an empirical study in 2007, yet this kind of study was never undertaken. ICANN continues to move its process down the path toward accepting applications for new gTLDs. Verizon believes that even after such study is conducted, any roll-out of new gTLDs should be conducted in a responsible, slow and controlled manner. Rollout should initially be limited only to some sponsored gTLDs and perhaps a limited number of international domain names (IDNs) (*e.g.*, Chinese and Arabic scripts).

The second threshold issue is ensuring that consumers are adequately protected from online confusion and fraud. If, as predicted, there are more than 1000 new gTLDs in the next three years, consumers will inevitably be the victims of increased online confusion, malicious activity and fraud. Due to the unimpeded growth of cybersquatting activities, consumers already have difficulty today finding legitimate websites and the trusted brands they rely upon for quality products, services and information. How will consumers know that when they navigate to

www.verizon.phone, for example, whether they have reached an authorized Verizon website or one set up by a cybersquatter or an international phishing or spyware scam? Any large rollout of generic TLDs increases the opportunity for cybercrimes, such as phishing, malware and other online abuses. A study released by Gartner, Inc. in 2007 revealed that phishing attacks in the United States alone cost Internet users over $3.2 billion. These numbers are only likely to escalate as new TLDs provide an easy platform for further abuse. We believe that the generic sounding gTLDs (*e.g.*, .phone, .car, .bank or .health) may be particularly attractive places for cybersquatting and malicious activity.

Third, although the JPA requires ICANN to increase the long-term safety and stability of the domain name system, ICANN's rapid expansion may jeopardize Internet safety and stability. Some have noted that ICANN may not have the ability to manage such a rapid expansion of the gTLD space. NTIA, for example, has cautioned that ICANN ensure that introducing large numbers of domain names into the root system not jeopardize Internet stability and security. Similar concerns relate to how ICANN will deal with potential registry failure.

Fourth, trademark and brand protection remains a critical threshold concern. Trademark protection, of course, is integrally linked to consumer protection. Trademarks serve a critical role in helping consumers reach the websites, products and services they know and trust. When consumers navigate online, they can easily be confused or diverted from the true source of products or services they seek or from the source of reliable and accurate information. Verizon owns a globally famous and trusted brand. Unfortunately, household brands like Verizon have been targets for cybersquatters. Cybersquatters have registered tens of thousands of variations of our trademarks. It has now been ten years since the passage of the Anti-Cybersquatting Consumer Protection Act (ACPA). When Congress first enacted ACPA, it intended this law to protect consumers from confusion and fraud and to serve as a deterrent. In the late 1990's, cybersquatting involved small entities and individuals registering small numbers of domain names. In recent years, the practice rapidly grew into a large-scale, sophisticated business operation conducted principally by ICANN accredited registrars who used various shell companies to register variations of trademarks as domain names and monetize them.

Until its recent change in policy, ICANN permitted registrants to engage in "domain name tasting." Registrants would register variations on and misspellings of famous brands and other trademarks, park them on websites (known as "domain name parking"), serve up pay-per-click ads and measure the traffic in a five day period. If the website generated enough diverted traffic in the five day period to warrant paying the $6 or $7 registration fee, the registrant would keep the domain name. If the name did not generate enough traffic, the name would be dropped and the registrant would receive a full refund. Another cybersquatter would inevitably pick up the dropped domain name and the monetization process would begin again. Some ICANN registrars have earned millions of dollars a year from engaging in this illegal activity. Certain ICANN registrars also actively engage in domain name kiting (registering and dropping the same domain names again and again). Verizon has spent millions of dollars over the past several years to protect consumers from confusion, including suing many ICANN accredited registrars under the ACPA and filing proceedings under the Uniform Dispute Resolution Policy (UDRP). Our ACPA complaints typically contain an exhibit showing examples of infringing domain names in

the defendants' portfolios, which are usually an alphabet soup of infringements containing the domain names of famous global brands from A-Z.

Last December, Verizon received a $33.15 million default judgment against OnlineNIC, a large ICANN accredited registrar who owned approximately 650 Verizon-related domain names in its portfolio. Verizon also recently sued an Indian accredited registrar, Lead Networks, who was cybersquatting on the Verizon brand and offering other cybersquatters the ability to hide valuable trademarked domain names in India. Because India has no specific law prohibiting cybersquatting, other U.S. companies have been forced to use the expensive and inefficient UDRP process to win back their domain names one at a time. When companies filed a UDRP against this Indian registrar for cybersquatting, the registrar would file a procedurally deficient complaint in a local Indian court. Because a UDRP proceeding is typically stayed if the defendant files a lawsuit in their local jurisdiction, Lead Networks could intentionally hold up (potentially for years) the pending UDRP actions against it. Trademark owners have been forced to pay thousands of dollars to win these valuable domain names back from this registrar, which to our knowledge is still ICANN accredited.

Because enforcement in the existing domain name system is already a significant challenge, we are concerned that existing remedies to protect consumers against cybersquatting will not scale in a future with unlimited numbers of new gTLDs. The Coalition Against Domain Name Abuse estimates that brand owners worldwide could suffer from over $1 billion in losses as a result of diverted traffic and the loss of consumer trust and goodwill. In these uncertain economic times, companies cannot afford to expend unnecessary additional costs to register trademarks defensively across hundreds of new TLDs. Nor should they be forced to expend resources attempting to monitor and enforce across these new spaces. Verizon is concerned that U.S. companies will face significant jurisdictional barriers to future enforcement when ICANN approves registries and registrars located outside the United States. Many countries have no laws specifically prohibiting cybersquatting and offer no remedies, like ACPA, to deter cybersquatting. In cases where jurisdictional barriers arise, trademark owners can often file UDRP actions with dispute resolution providers, such as the World Intellectual Property Organization, but they will need to spend $6000 or more per infringement in order to win back a single domain name. However, in some cases where the TLD registry is located in a foreign country that does not have laws prohibiting cybersquatting, there may be no remedy available to the trademark owner.

We urge ICANN to continue to improve on its JPA commitments to increase contractual compliance. Part of that compliance program should include greater enforcement against ICANN's noncompliant registrars and registries. Although ICANN has recently beefed up its compliance office, we are not aware that it has taken significant action against any accredited registrar for cybersquatting, including those found by federal courts to have violated U.S. laws. Accredited registrars specifically agree in their Registrar Accreditation Agreement to comply with *all laws*. Yet we have observed little if any enforcement against registrars who are found to violate ACPA or those repeatedly found to have acted in bad faith in UDRP proceedings. If ICANN cannot adequately police and enforce the problems of today, Verizon remains concerned about its ability to enforce against the larger problems of the future. How will ICANN effectively police not only for trademark violations but for the myriad of problems that will

inevitably arise in the expanded domain name space? Administration of Internet enforcement and cybersecurity are inversely related. Less oversight means more security problems for consumers and businesses. Too much is at stake to allow the release of new gTLDs without significant commitment to enforcement.

We are pleased that ICANN acknowledged the concerns raised by trademark owners by convening a small group of trademark experts (the IRT group) to offer solutions ("rights protections mechanisms") to address trademark infringements in an expanding gTLD space. The IRT group deserves commendation for their hard work, detailed proposals and thoughtfulness. They developed a complex set of recommendations in an unrealistically tight deadline. The IRT acknowledged, however, that by agreeing to engage in this process, their suggestions should not be viewed in any way as an acknowledgment by the trademark community that the widespread introduction of new gTLDs are either necessary or desirable. Regardless, if new gTLDs move forward, these recommendations represent a comprehensive set of solutions that must be adopted as a whole. We are troubled, however, by ICANN's recent comment that it may not adopt the full set of IRT recommendations. ICANN may ultimately adopt a few solutions that fail to provide a comprehensive or effective set of remedies for trademark owners.

Verizon strongly supports many of the ideas the IRT has proposed for trademark protections in the new TLDs including: a low cost mechanism to obtain a rapid suspension of infringing domain names, a clearinghouse that would enable companies to notify others of their rights and obtain information necessary to enforce their rights, a globally protected marks list to protect global brands, a standard sunrise provision allowing early registration of valuable domain names, a dispute mechanism that allows parties to raise complaints against registries and registrars and thick access to WHOIS data. We believe, however, that there is still room for improvement in implementation of the details. We question how much these mechanisms will cost trademark owners to administer and how effective they will be in practice. For example, as part of any rapid suspension mechanism, trademark owners should be offered the ability, at their option, to obtain a transfer of valuable domain names back into their portfolios. Verizon owns thousands of valuable domain names, including many won back from cybersquatters. Through these enforcement efforts, formerly infringing domain names now take customers to the correct Verizon websites. This year, Verizon is on target to help 9 million visitors, including those who were intentionally diverted by cybersquatters, navigate back to our websites. Any new remedies to address trademark concerns must avoid an outcome that results in trademark owners filing many more lawsuits and UDRP actions to address the theft of their valuable domain names across potentially thousands of new gTLDs.

Verizon also endorses the idea of a Globally Protected Marks List, which prevents third parties from registering globally protected marks either as the name of a new gTLDs or as a domain names within each new gTLD. Although global brands like Verizon could ultimately qualify for a proposed Globally Protected Marks List, this proposal currently only allows the registration of one's exact brand (*e.g.*, Verizon) but would not permit the inclusion of the other common extensions of that brand (*e.g.*, Verizon Communications, Verizon Wireless, Verizon Business). Trademark owners should not being forced to register the many variations of their trademarks preemptively (for pure defensive reasons) in the riskier new gTLDs or by spending extensive sums afterward on enforcement efforts.

We believe we speak for many in the business community, including trademark owners, in reiterating our strong preference for the delay of this gTLD plan until all threshold concerns are fully addressed. While we have not testified today on the JPA, we note that numerous thoughtful suggestions have been made for ways that the structure and processes of ICANN can be improved while still preserving the fundamentally sound model of private sector leadership. It is important to allow sufficient time to consider and implement these suggestions as well as the views Verizon is presenting today. Even assuming all threshold issues concerning the new gTLD rollout are eventually addressed and resolved, ICANN should proceed slowly and cautiously in expanding the domain name space to protect the Internet and its users.

We commend the Subcommittee again for taking on this important subject and thank you for the opportunity to testify today.

Mr. BOUCHER. Thank you very much, Ms. Deutsch. Dr. Lenard.

STATEMENT OF THOMAS M. LENARD

Mr. LENARD. Thank you, Chairman Boucher, Ranking Member Stearns.

Mr. BOUCHER. And Dr. Lenard, if you could turn on your microphone and move it over, that would help us hear you.

Mr. LENARD. Thank you, Chairman Boucher, Ranking Member Stearns, and members of the subcommittee. My name is Thomas Lenard, and I am President and Senior Fellow at the Technology Policy Institute.

TPI is a nonpartisan, nonprofit think tank that focuses on the economics of innovation, technical change, and related regulation in the United States and around the world. I appreciate the opportunity to present my views on ICANN.

The expiration of the JPA this September provides a much needed opportunity for a thorough evaluation of the structure, governance, and mission of ICANN, and the subcommittee's examination of these issues is very important.

One of those issues is ICANN's lack of accountability, which is a recurring issue, and which is an issue that we recently addressed in a study that was published by TPI, that I co-authored with Professor Lawrence White of the NYU Stern School of Business.

The problem of the lack of accountability is not an indictment of ICANN's staff or leadership. It is simply a function of ICANN's institutional design, its non-corporation status, combined with the way it is funded and governed. ICANN's customers have nowhere else to go. Its Board members are not answerable to any shareholders, and its decisions can't be appealed to any court in the way that regulatory decisions in the U.S. routinely are. ICANN's funders, the registries and the registrars, can't stop funding ICANN without going out of business themselves.

To study ways in which ICANN could become more accountable, we examined the structures of a number of organizations that perform similar coordination and standard setting functions. We learned a couple of things. First, none of the organizations we considered operates with the independence that ICANN enjoys, even under the current nominal oversight by the Department of Commerce.

In addition, virtually all of these other organizations are governed by their direct users, thereby building accountability into their structures. We believe this would be a good model for ICANN as well. The registries and the registrars have a strong incentive to assure that ICANN fulfills its responsibilities of managing the domain name system efficiently, and this is in the interests of the businesses and the consumers who are the Internet's end users. We recognize that this proposal may be viewed as radical, but it has already served to stimulate a discussion of ICANN governance issues that otherwise might not have taken place.

Our study also addressed ICANN's mission. ICANN's scope should be clearly delineated. It should hew closely to the technical functions in administering the domain name system. ICANN also, we believe, should have a clear mission of encouraging competition and a minimal role as a regulator. This means allowing relatively

free entry into the market for GTLDs, in order to bring the benefits of competition to consumers and, as we have heard, ICANN is moving in that direction currently.

But as part of this, and in order for the, and really, for the free entry of GTLDs to work well, protections for incumbent domain name holders must be strengthened, so that they are not subject to nuisance or ransom demands from new registries. There needs to be a thorough examination of how this should be done and who should do it. As was alluded to, ICANN is doing that now, but ICANN is not particularly well equipped to be a regulator, and probably not particularly well equipped to be an adjudicator of intellectual property disputes.

Issues as important and complex as these merit a thorough evaluation, which probably cannot be completed by September. Therefore, we believe that the agreement with the Department of Commerce should be extended in some form beyond its current expiration, while reforms are being considered and, hopefully, becoming established.

Reforming ICANN in a way that makes it truly accountable and clearly defines its scope of operations will ultimately make it feasible to end the JPA and, more importantly, ensure a vibrant, innovative, and competitive Internet for the future.

Thank you very much.

[The prepared statement of Dr. Lenard follows:]

TECHNOLOGY POLICY INSTITUTE

Studying the Global Information Economy

TESTIMONY OF

THOMAS M. LENARD, PH.D.
PRESIDENT AND SENIOR FELLOW, THE TECHNOLOGY POLICY INSTITUTE

ISSUES CONCERNING THE INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

BEFORE THE
SUBCOMMITTEE ON COMMUNICATIONS, TECHNOLOGY
AND THE INTERNET

COMMITTEE ON ENERGY AND COMMERCE

U.S. HOUSE OF REPRESENTATIVES

JUNE 4, 2009

STATEMENT OF
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JUNE 4, 2009

Chairman Boucher, Ranking Member Stearns and members of the Subcommittee. My name is Thomas Lenard and I am president and senior fellow at the Technology Policy Institute. TPI is a non-partisan, non-profit think tank that focuses on the economics of innovation, technical change and related regulation in the United States and around the world. Thank you for the opportunity to present my views on the issues associated with ICANN. The expiration of the Joint Project Agreement (JPA) this September provides a much-needed opportunity for a thorough evaluation of the structure, governance, and mission of ICANN and the Subcommittee's examination of these issues is very important.

In a recent TPI study, which I am submitting along with my testimony, my coauthor Professor Lawrence J. White of the NYU Stern School of Business and I addressed the recurring issue of ICANN's accountability. ICANN attempts to be responsive to the "Internet

* The views expressed here are those of the author and not necessarily those of the TPI board, fellows, or staff.

community," but in fact is largely accountable to no one. This lack of accountability is not an indictment of ICANN's staff or leadership; it is a function of its institutional design. ICANN's non-profit corporation status, combined with the way it is funded and governed make accountability a serious problem. Its customers can't go anywhere else, its board members are not answerable to any shareholders, and its decisions can't be appealed to any court in the way that regulatory actions in the United States can. ICANN's funders—the registries and registrars—can't stop funding ICANN without going out of business themselves.

To study ways in which ICANN could become more accountable, we examined the structures of a number of organizations that perform a roughly comparable range of private-sector and quasi-governmental coordination and standard-setting functions. None of the organizations we considered operates with the independence that ICANN enjoys, even under the current nominal oversight by the Department of Commerce. In addition, virtually all of these other organizations are governed by their direct users, thereby building accountability into their structures.

We believe ICANN, too, should be governed by its direct users—the registries and registrars—rather than the vaguely specified "Internet community" at large. The registries and registrars have a strong incentive to assure that ICANN fulfills its responsibilities of managing the domain name system efficiently. Their incentives in this respect align with those of businesses and individuals, who are the Internet's end users. For example, if ICANN were governed by the registries and registrars, it might have acted more quickly to address the incumbent domain name holders' intellectual property protection issues. Moreover, because such a governance structure builds in its own external accountability, it could also more easily

allow for ending the current ties with the U.S. Government, which provide very imperfect accountability and are unpopular internationally.

We recognize that this proposal may be viewed as radical. But it has already stimulated a discussion of ICANN governance issues that otherwise might not have taken place.

Our study also addresses ICANN's mission. ICANN's scope should be clearly delineated. It should hew closely to the technical functions involved in administering the Domain Name System—i.e., coordinating the allocation of IP addresses, managing the DNS "root," and ensuring the stability of the DNS.

ICANN should have a clear mission of encouraging competition and a minimal role as a regulator. This means allowing relatively free entry into the market for generic top-level domains (gTLDs) in order to bring the benefits of competition to consumers. ICANN's recent proposal to expand the number of gTLDs is consistent with a pro-competition mission, though it is probably possible to go further.

For freer entry of gTLDs to work well, however, protections for incumbent domain name holders must be strengthened, so that they are not subject to "nuisance" or "ransom" demands from new registries. As part of the current review, there needs to be a thorough examination of how this should be done and who should do it. ICANN is not well-equipped to be a regulator or an adjudicator of intellectual property disputes.

Issues as important and complicated as these merit a thorough evaluation, which cannot be completed by September. Therefore, we believe that the agreement with the Department of

Commerce should be extended in some form beyond its current expiration date while reforms are being considered and, hopefully, established. Reforming ICANN in a way that makes it truly accountable and clearly defines its scope of operations will ultimately make it feasible to end the JPA and, more importantly, ensure a vibrant, innovative, and competitive Internet in the future.

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ICANN AT A CROSSROADS:
A PROPOSAL FOR BETTER GOVERNANCE AND PERFORMANCE

Thomas M. Lenard and Lawrence J. White

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1401 EYE STREET, NW ▫ SUITE 505 ▫ WASHINGTON, DC 20005
PHONE: 202.828.4405 ▫ E-MAIL: info@techpolicyinstitute.org ▫ WEB: www.techpolicyinstitute.org

ICANN AT A CROSSROADS: A PROPOSAL FOR BETTER GOVERNANCE AND PERFORMANCE

By

Thomas M. Lenard and Lawrence J. White*

EXECUTIVE SUMMARY

The Internet Corporation for Assigned Names and Numbers (ICANN)—the non-profit company that is at the center of the Internet—has operated under a Memorandum of Understanding (MOU) with the U.S. Department of Commerce (DOC) since 1998. The MOU was replaced in September 2006 by the Joint Project Agreement (JPA) between ICANN and the DOC, which expires in September 2009. At that time, a decision needs to be made about ICANN's future. Should the JPA tie with the U.S. Government be retained? Or should the link be wholly severed, as ICANN advocates? And, in either case, what governance structure would best promote Internet efficiency and innovation?

This paper evaluates the structure and governance of ICANN to help inform the upcoming decision. In particular, it reviews ICANN's structure and functions, and also the structures of a number of other organizations that perform a roughly comparable range of private-sector and quasi-governmental coordination and standard-setting functions, to explore what might be applicable to ICANN.

We find that although ICANN has control over extremely important aspects of the Internet, it is largely accountable to no one. No organization with ICANN's level of responsibility operates with the independence that ICANN enjoys, even under the current arrangement of nominal oversight by the DOC. ICANN's proposal for complete privatization and termination of the DOC's oversight would make the accountability problem worse.

Virtually all of the organizations that we reviewed are governed by their direct users, and we believe that this would be a good model for ICANN as well; it would also be consistent with the reduced regulatory role that we envision for ICANN. Governance by its direct users—the registries and the registrars—would provide the external accountability that could allow for eventually ending ICANN's ties with the U.S. Government. However, we recommend that the new structure be permitted to operate for a while, to allow time for evaluation, before severing those ties.

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* Thomas M. Lenard is President and Senior Fellow at the Technology Policy Institute. Lawrence J. White is Professor of Economics at the NYU Stern School of Business. The authors thank Michael Abramowicz, John Asker, Stanley Besen, Steve DelBianco, Arlene Holen, Michael Katz, Paul Levins, John Mayo, Gregory Rosston, W. Kenneth Ryan, Michael Uretsky, Scott Wallsten, Norman White, and the participants at the "ICANN at a Crossroads" seminar hosted by TPI on May 8, 2009, for very helpful comments on an earlier draft and James Riso for very able research assistance. This paper reflects the views of the authors but not their respective institutions.

We also address the issue of ICANN's status as a *de facto* regulator. ICANN's recent proposal to expand the number of generic top-level domains (gTLDs) highlights a distinct choice between alternative regulatory approaches: On the one hand, ICANN could proceed under the assumption that the market for gTLDs is not (and perhaps cannot be) at least workably competitive (as the U.S. Government apparently believes). ICANN would then assume greater public-utility type regulatory responsibilities. Alternatively, ICANN could allow relatively free entry into the domain space, in order to bring the benefits of a competitive gTLD market to consumers. We favor the latter approach, which is consistent with our proposal concerning governance reform. For free entry to work well, however, ICANN needs a less costly mechanism for protecting the intellectual property associated with domain names in order to address the problems of defensive registrations and cybersquatting.

Our specific recommendations are as follows:

- The JPA should be extended beyond its current expiration date. In the absence of changes in governance along the lines that we recommend, the JPA is particularly important. If our recommended changes are adopted, they should be permitted to become established before allowing the JPA to expire.

- ICANN should remain as a nonprofit organization, but its governance should be restructured, so that it is governed by and directly accountable to its direct users: the registries and the registrars. Seats on ICANN's board of directors could be rotated among the major operators in a manner that would reflect the diversity of viewpoints among registries and registrars.

- ICANN should have a clear mission of encouraging competition. This implies a minimal role as a regulator with respect to the creation of new gTLDs. Instead, ICANN should adopt a relatively automatic way of introducing gTLDs, whereby any entity that meets a set of minimum technical and financial qualifications for being a registry should be able to be certified to become a registry for any gTLD that is not already taken.

- For this "open entry" policy to be workable and beneficial, ICANN must also strengthen the protections for incumbent domain name holders, so that they are not subject to "nuisance" or "ransom" demands from new registries; adopting an IP registry and strengthening ICANN's "uniform dispute resolution policy" (UDRP) could be part of these improved protections.

These four recommendations are complementary, and combined they would significantly further the goals of Internet efficiency and innovation.

INTRODUCTION

"One problem with Internet governance as a concept...is that there is no natural institutional home for all of the issues that are involved." Mathiason (2009, p. 133).

"In the new Internet governance regime, private and intergovernmental conflict over the ownership of the root was resolved through the establishment of a central authority that, in effect, owns the entire name space and grants limited privileges of use to suppliers and consumers." Mueller (2002, p. 259).

The central governance structure of the Internet is a puzzle. Governments and for-profit companies are involved in various aspects of the operation of the Internet, but only weakly and indirectly in its governance. Instead, a non-profit corporation—the Internet Corporation for Assigned Names and Numbers (ICANN)—is solely responsible for governance. It attempts to be responsive to the "Internet community" at large, but in fact is largely accountable to no one.

ICANN's website, which devotes extensive attention to proposals concerning potential changes in Internet policies and requests for public comment on these proposals (with specified comment periods), gives the impression of strong similarities with the regulatory processes of U.S. Government agencies. But the impression is just that, since the link between ICANN and the U.S Government is weak.

That link is now at issue. ICANN has operated under a Memorandum of Understanding (MOU) with the U.S. Department of Commerce since 1998. The MOU was replaced in September 2006 by the Joint Project Agreement (JPA), which runs through September 2009. ICANN believes that it is meeting its responsibilities under the JPA and that therefore the JPA is no longer necessary.[1] ICANN argues that its long-planned transition to the private sector should now be completed and that any formal tie to the Department of Commerce should be concluded.

This is, therefore, a good time to evaluate the governance structure of ICANN and determine how it can be improved. That is the purpose of this paper.

Our analysis indicates that a lack of accountability is the major issue surrounding ICANN. Accountability requires some meaningful external checks. We do not believe that it

[1] Comments of Peter Dengate Thrush, Chairman of the Board of Directors, ICANN, January 9, 2008.

can be improved by adopting new procedures over which ICANN has control. Thus, measures such as those proposed through ICANN's Improving Institutional Confidence Consultation are not likely to be effective.[2]

Accountability also cannot be improved by making ICANN even less accountable than it is now.[3] Moreover, if ICANN's progress in meeting its responsibilities under the JPA is related to the existing tie to the Department of Commerce, then terminating that arrangement might be counterproductive. Therefore, we oppose severing the tie with the Department of Commerce at the present time.

Instead, our review of other institutional models suggests that a change in governance that puts ICANN's direct users effectively in control would make the organization more accountable and would improve incentives for efficient operation. We also recommend that ICANN adopt a less regulatory approach in designating and creating new generic top-level domains (gTLDs). These recommendations are complementary, since both would further the goals of greater Internet efficiency and innovation.

ICANN's STRUCTURE, RESPONSIBILITIES, AND PERFORMANCE

The Domain Name System

In order for the parties connected through the Internet to be able to communicate—whether through e-mail or through the accessing of a web page—they need unique "addresses" to which the relevant communications will be sent. Those addresses, for the purposes of the computers that do the routing, are simply unique strings of numbers, which are called Internet Protocol (IP) addresses.

The coordination of the allocation of IP addresses is the responsibility of ICANN through the Internet Assigned Names Authority (IANA), which is operated by ICANN. IANA is responsible for managing the domain name system (DNS) "root"—the master file of top-level

[2] See http://www.icann.org/en/jpa/iic/index.htm
[3] ICANN's accountability and "legitimacy" have been longstanding issues. See, for example, Weinberg (2000) and Mueller (2002).

domains.[4] The root file is continuously copied by 13 main root servers: ten in the United States, two in Europe, and one in Japan.[5] These are the computers that actually direct Internet communications to the appropriate locations.

Although the IP addresses (the strings of numbers) could also be the addresses that individuals use when directing their computers to send a communication, most individuals find alphabetic letters and words (or mnemonics) easier to recognize, remember, and organize. Hence, e-mail addresses and web page locations are represented by letters and words (sometimes with a few numbers or symbols interspersed), rather than just by the IP addresses. This alphabet-based set of addresses is the "domain name system" (DNS). The logic of the communication system's requiring unique addresses means that each complete domain name must be unique and must be uniquely linked to the appropriate IP address (with these links again kept in master files in those 13 root servers). Further, the DNS requires some coherence or hierarchy (instead of, say, just being random strings of letters).

Every server on the Internet has a unique Internet Protocol number. The purpose of the DNS is to assure that every server (and, as a consequence, every URL and every email address that is linked to an individual server) resolves (i.e., is linked) to a unique IP address. The failure to achieve this is called "instability," which might occur if there were alternative or competing roots. In that event, queries made by different people at different computers might resolve to different IP addresses.

The DNS that was developed in the early 1980s relies on the Roman alphabet[6] and is hierarchical in structure. The hierarchy is demarcated by periods or "dots" between strings of characters. The string of characters to the right of the rightmost dot represents the first- or top-level domain (TLD), with strings progressively to the left indicating progressively lower-level domains.

Originally, there were eight generic TLDs (gTLDs): .com, .edu, .org, .net, .gov, .int, .mil, and .arpa. Subsequently, a large number of two-letter country code TLDs (ccTLDs) were added.

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[4] IANA has a contract with the U.S. Department of Commerce that specifies this responsibility.
[5] The VeriSign Corp. is responsible for maintaining these master files, under a contract from the U.S. Department of Commerce.
[6] ICANN is currently developing and testing the protocols that would allow non-Roman lettering systems to be part

Today, there are 252 two-letter ccTLDs and 21 gTLDs: the original eight plus seven additional gTLDs that were added in 2001 (.info, .biz, .coop, .aero, .museum, .pro, and .name) and another six gTLDs (.travel, .tel, .jobs, .asia, .cat, and .mobi) that have been added in recent years.[7]

There is a single "registry" responsible for the coordination and coherence of each gTLD—i.e., making sure that IP and domain name addresses are unique and are properly linked and stored.[8] The registry maintains the database (zone file) of all the registrations—second-level domain names—under the TLD. The registries operate under contracts with ICANN.

Each registry, in turn, deals with (possibly multiple) "registrars," which register specific second-level domain names (e.g., "aol.com" or "delta.com") within that TLD to the individuals or organizations that desire that second-level domain name. Thus, the registry acts as the "wholesaler" with respect to the distribution of domain name addresses within a TLD, and the registrars act as "retailers."

The entity with the second-level domain name can, in turn, assign third-level domain names (e.g., "stern.nyu.edu"), etc.

Placed at the top of this overall hierarchy is ICANN, with the powers to create gTLDs, to select and contract with registries for the gTLDs, to accredit and contract with the registrars with whom the registries deal, and to coordinate with the country code managers of the ccTLDs.

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of the DNS. This is being done under ICANN's "internationalized domain names" (IDN) program.

[7] As of early 2009, ICANN was proceeding toward the creation of additional gTLDs.

[8] For example, VeriSign, Inc., is the company that is the registry for the .com and .net domains. For ccTLDs, the registry function is performed by a country code manager.

A Brief History[9]

As is well known, the Internet started in the late 1960s as a small, computer-based telecommunications network that was fostered by the U.S. Department of Defense (DOD), through the Information Processing Techniques Office (IPTO) of the DOD's Advanced Projects Research Administration (ARPA). The network initially connected about 200 people at 21 nodes and was known as ARPANET.

A decade later, in the late 1970s and early 1980s the key software programs of the Transport Control Protocol and Internet Protocol (TCP/IP) were worked out, which provided the basis for the current Internet address space system and the transport of messages between those addresses. During the 1980s the Internet grew by linking to the internal networks that were in place in agencies of the U.S. Government, such as the National Science Foundation (NSF), the National Aeronautic and Space Administration (NASA), and the Department of Energy, and linking to the networks in universities and research institutions in the United States and abroad. Also, in the late 1980s the NSF began to take a more active role in supporting the Internet backbone and in encouraging educational and research institutions to link to it.

Throughout the 1970s and 1980s the various protocols and procedures for implementing the structural features of the Internet, such as the DNS that evolved as a consequence of the TCP/IP address system, were developed and instituted by computer scientists and software engineers, operating through working groups and relying on the processes of rough consensus among the major interested parties. The Internet Engineering Task Force was formed in 1986, formalizing what had been done informally until then through the circulation of "requests for comments" (RFCs). This was followed in 1992 by the formation of the Internet Society, which became the locus for these development efforts.

In 1992 legislation was enacted that removed restrictions on the interconnection of commercial traffic with the NSFNet. This was followed, in 1993, by the awarding of a contract to

[9] This section draws heavily on Mueller (2002) and Mathiason (2009); see also Abbate (1999), Kesan and Shah (2001), and National Research Council (2005, ch. 3).

Network Solutions, Inc. (which was absorbed by VeriSign in 2000[10]) to provide registration services for entities that wanted to obtain second-level domain names and establish websites. This expansion of the commercial use of the Internet came on the heels of reduced involvement by the DOD and the NSF. In 1997 the Clinton Administration transferred the remaining U.S. Government role to the National Telecommunications and Information Administration (NTIA) of the U.S. Department of Commerce (DOC), but with explicit direction for the DOC to privatize the governance of the domain name system. The DOC released an initial proposal (the "Green Paper") in January 1998 and a final proposal (the "White Paper") in June 1998.

Simultaneously, in the summer of 1998, Jon Postel, one of the leaders of the Internet Society, drew up plans for a non-profit corporation to be incorporated in California that would be the private entity that would absorb from the federal government the responsibility for administering the DNS. That entity—ICANN—came into existence in September 1998. The DOC entered into a memorandum of understanding (MOU) with ICANN in November 1998 and officially recognized ICANN as the private non-profit entity that would be responsible for the DNS in February 1999.

ICANN's memorandum with the DOC has been renewed a number of times since 1998. The most recent renewal, signed in August 2006, is called the Joint Project Agreement (JPA) and runs for three years.

ICANN's Functions

As the administrator of the DNS, ICANN has a number of functions:

- Decide on the number of gTLDs, the potential categories of coverage that apply to each domain (e.g., what kinds of organizations can register for a website in a specific domain), and the specific letters or mnemonic that will be the suffix for that domain;[11]

[10] Network Solutions was subsequently sold by VeriSign and is now a separate company that provides, among other things, Internet registrar services to companies, while VeriSign is a registry for the .com and .net gTLDs (see the text below for further explanation).
[11] This function includes decisions as to whether non-Roman alphabets can be part of the DNS.

- Designate and contract with specific organizations to serve as the registries for specific gTLDs;
- Accredit and contract with the registrars with whom the registries deal;
- Negotiate with the country code managers for each ccTLD to ensure that they carry out registry-like functions;[12]
- Maintain a system for settling disputes among website holders (e.g., as to who is entitled to specific character strings in their second-level domain name);[13]
- Generally maintain the compatibility, capacity (in terms of IP addresses), and stability (in terms of the uniqueness of IP and DNS addresses) of the DNS: and
- Through IANA, which is operated by ICANN and which has its own contract with the Department of Commerce, coordinate the allocation of IP addresses and manage the DNS "root"—the master file of top-level domain names (TLDs). The root file is continuously copied by 13 root servers around the world, which are the computers that actually resolve TLD queries. This latter function is performed by VeriSign, under a separate contract with the Department of Commerce.

Organizational Structure/Procedures

ICANN is headquartered in Marina del Rey in Southern California. It has a CEO,[14] a staff, and a 21-person board of directors. It coordinates its actions with a number of other organizations and advisory groups, including the Internet Engineering Task Force (IETF), and similar advisory bodies (many of which came into being as a consequence of ICANN's bylaws).

When undertaking new actions—say, creating new gTLDs—ICANN announces its general intentions and invites public comments. In coordination and consultation with other organizations and advisory boards, ICANN gradually develops more specific proposals and again invites public

[12] Unlike the gTLDs, over which ICANN has direct authority and control, the ccTLDs and their country code managers have a considerably looser relationship with ICANN.
[13] ICANN's current system is called its "uniform dispute resolution policy" (UDRP).
[14] Paul Twomey, as of early 2009; in March 2009 Twomey announced his intention to leave ICANN after his

comments. Eventually, its board of directors votes on the specific proposal; if the board approves, the proposal is put into action.

The Board

The ICANN board of directors has 21 members.[15] About two-thirds of the board are from countries other than the U.S. Of the full board, 15 are voting members; their (staggered) terms are for three years. Eight of the voting members are selected by a nominating committee that is drawn from the advisory groups with which ICANN coordinates and from organizations that are associated with various Internet constituency groups. In addition, two members each are selected by the Address Supporting Organization, the Country Code Names Supporting Organization, and the Generic Names Supporting Organization. (These three organizations are specified in and created by the ICANN bylaws.) The fifteenth voting member is ICANN's CEO.

The remaining six non-voting members are liaisons from and selected by the Internet Engineering Task Force and five advisory committees that are established by the ICANN bylaws. Their terms are for one year.

Although ICANN's board structure is designed to have board members that are drawn from various constituencies, such memberships do not "represent" those constituencies, since the constituencies themselves have not voted for these board members and since the obligations of board members (as is specified in ICANN's bylaws) are to act in the interests of ICANN and not of the organizations that selected them.

Finances

ICANN has grown rapidly in the years since its inception. From 2000 to 2009, ICANN's revenues increased from about $5 million to over $60 million. Over the same period, operating expenses increased from just under $3 million to about $52 million. ICANN projects that it will have assets of more than $45 million at the end of FY2009.[16]

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contract expires on June 30, 2009 and a successor is appointed.

[15] ICANN's initial board in 1998 had only nine members.

[16] 2001-2007 data from annual audited financial reports; 2008-2009 data from ICANN FY 09 Operating Plan and Budget.

ICANN receives over 90 percent of its revenues from registrars and registries, none of which can operate without ICANN's permission.[17] The gTLD registrars will contribute about $31 million to the FY09 revenue figure. Registrars pay application fees of $2,500, annual accreditation fees of $4,000 each, variable fees of $3.8 million divided among the registrars, and transaction fees of 20 cents per registration. gTLD registries will contribute about $25 million to the FY09 revenues. Registries pay application fees as well as fees determined by their agreement with ICANN, and each one is different. For example, the .com registry pays a fixed fee of $12 million; the .net registry pays a $0.75 fee per transaction for a total of about $9.9 million; and the .org registry pays a $0.15 fee per transaction for a total of about $1.1 million.

The budget for ICANN's fiscal year 2009 is presented in Table 1. As can be seen, its expenses will be about 90 percent of its revenues. Operating expenses—personnel, travel and meetings, professional services, and administration—account for over 90 percent of ICANN's expenses.

[17] ICANN FY09 Operating Plan and Budget.

Table 1
ICANN Budget for FY2009 (ending June 30)
(in millions of US$)

Revenue		
Registrars		30.9
Registries		25.1
Regional Internet Registries		0.8
ccTLDs		2.3
Other		1.5
	Total	$60.7
Expenses		
Personnel		19.9
Travel & meetings		12.5
Professional services		11.9
Administration		7.6
Bad debt expense		1.2
Depreciation		0.9
	Total	$53.9
Surplus		**$6.8**

Source: ICANN

Accountability

ICANN makes extensive efforts to be responsive to "the Internet community." It does so through requests for comments on proposed actions, public meetings in various parts of the world, consultations and coordination with other Internet-related organizations, and the board membership structure that draws members from various constituencies. Nevertheless ICANN is not formally accountable to any group or constituency, other than the U.S. Department of Commerce through the JPA, and through the contract that the DOC has with IANA.

The DOC has oversight over ICANN through the JPA and through the contract with IANA to manage the Internet root. Presumably, if the DOC were unhappy with ICANN's actions, the DOC could claim that ICANN was violating one of these agreements. If the DOC and ICANN

were unable to reconcile their differences, the DOC could in theory attempt to replace ICANN with a different organization. Whether that would be a politically feasible (nationally or internationally) action for the DOC to undertake is a separate question.

The JPA expires in August 2009. Its purpose is "the joint development of the mechanisms, methods, and procedures necessary to effect the transition of Internet domain name and addressing system (DNS) to the private sector." The National Telecommunications and Information Administration (NTIA) in the Department of Commerce undertook a midterm review of the JPA in early 2008. During that review, ICANN argued that it was meeting its responsibilities under the JPA and that therefore the JPA was no longer necessary.[18] ICANN recommended that the JPA should be concluded and that ICANN should complete its transition to the private sector. Another interpretation of that transition, of course, would be that ICANN then would be truly accountable to no one.[19]

If the JPA were to expire, a major question would then be what would happen to the IANA contract with the DOC. If the IANA contract continued (and IANA continued to be operated by ICANN), that would provide some accountability.

Improving Institutional Confidence Consultation

In the last year, ICANN has undertaken a major project—the Improving Institutional Confidence Consultation—designed to complete ICANN's transition when the JPA expires in September 2009. A major focus of this project was to strengthen ICANN's accountability to its multi-stakeholder community.[20] Its major recommendations are:[21]

1. Establish an additional mechanism whereby the community can require the board to reexamine a decision, based on a well-defined process;

[18] Comments of Peter Dengate Thrush, Chairman of the Board of Directors, ICANN, January 9, 2008.
[19] The National Research Council (2005, pp. 217-219) is similarly concerned about the severing of ICANN's link with the DOC before a suitable governance structure for ICANN is in place.
[20] http://www.icann.org/en/jpa/iic/. Other requirements that ICANN addressed as part of its transition plan include: safeguarding ICANN against capture by any particular stakeholder group; internationalizing ICANN; ensuring financial and operational security; and maintaining secure and stable operations.
[21] See Transition Action Plan (revised September 2008), http://www.icann.org/en/jpa/iic/action-plan-revised.htm

2. Establish an extraordinary mechanism by which the community can remove and replace the Board in special circumstances;

3. Maintain the advisory role of the Government Advisory Committee;

4. Continue regular periodic reviews of ICANN's structure, and of the Board Reconsideration, Independent Review, and Ombudsman functions; and

5. Enhance and expand contractual compliance and enforcement.

These recommendations illustrate how difficult it is to provide meaningful accountability within the current institutional structure. For example, establishing a procedure for the board to reexamine its decisions simply makes the board accountable to itself. The second recommendation—establishing a procedure to remove the entire board—has come to be called the "nuclear option" because it is so extreme that no one believes it would ever be used. The other options provide nothing new.

Problems with the Current Structure

ICANN sits at the center of and has control over extremely important aspects of the Internet. This is an extraordinary position for a modest-sized non-profit organization that has almost no accountability. ICANN's board is the ultimate decision-making authority for the organization. But that board has no shareholders to which it is accountable and no government agency to which it must answer (other than the loose oversight of the U.S. Department of Commerce). The board itself has considerable influence over the processes and entities that determine board membership. And, of course, ICANN itself is not a governmental organization and thus does not have the ultimate legislative accountability that would accompany a governmental structure.

This absence of accountability is worrisome because ICANN's actions can have important consequences for the structure of the Internet and the important economic, communication, and social activity that now occurs on and through the Internet. For example, the number and nature of the gTLDs may have important consequences for competition among firms that conduct commerce through the Internet. ICANN's fee structure and pricing of second-level domain name registrations could influence who decides to register for a domain name and who does not. ICANN's dispute

resolution process—the Uniform Dispute Resolution Policy (UDRP)—has important consequences for the strength of protection for the intellectual property (such as trademarks) associated with domain names.

Although in its decade of existence ICANN has taken seriously its responsibility to maintain the stability of the root, it is also hard to know whether ICANN's limited expansion of the gTLDs has been less than—or more than—the socially worthwhile levels. And, without accountability, there's no assurance that ICANN might not take substantially misguided actions in the future. After all, ICANN is a monopoly.

However, it is also difficult to conjure an alternative structure for ICANN that would not also have substantial flaws:

- A private for-profit corporation might try to create artificial scarcities and extract high prices as a consequence (again, ICANN is a monopoly);
- Subjecting ICANN (in either its current form or in a private for-profit form) to governmental regulation raises the questions of which government(s) (the United States? another country? a consortium of countries?) should regulate it and what the principles of that regulation should be, as well as raising a set of well-known problems concerning the distortions that regulation can induce;
- Reconstituting ICANN as a governmental agency again raises the question of which government and the related questions of governmental inefficiencies and political influence; and
- Reconstituting ICANN as an international agency—perhaps as part of the United Nations, such as the International Telecommunications Union (ITU) or the Universal Postal Union (UPU)— raises similar questions of inefficiencies, sluggishness, and political influence.

The remainder of this paper will address these accountability and governance questions, develop principles that should guide any restructuring of ICANN's governance, and offer our recommendations for that restructuring.

CRITERIA FOR ICANN GOING FORWARD

ICANN's current institutional structure, combined with its technical role, presents difficult challenges for institutional reform. To the extent possible, ICANN's institutional structure should be based on a set of well-defined criteria, and designed with incentives and constraints that will cause ICANN to satisfy those criteria. The criteria we propose for ICANN are as follows:

1. ICANN's scope should be clearly delineated. It should hew closely to the technical functions involved in administering the Domain Name System—i.e., coordinating the allocation of IP addresses, managing the DNS "root," and ensuring the stability of the DNS—and do little more.

2. ICANN should minimize its role as a regulator. In particular, it should adopt a system of relatively free entry into the gTLD registry business—provided that the intellectual property protection improvements covered in criterion 3 are implemented. We outline below what such a system might look like.

3. ICANN needs to adopt a less costly mechanism for protecting the intellectual property associated with domain names. Failure to do this makes it difficult to satisfy criterion 2, above.

4. ICANN's growth should be limited in order to restrict mission creep and unnecessary bureaucracy. It is unclear how to determine reasonable limitations, but ICANN currently operates without normal budgetary constraints.

5. ICANN should be accountable to external parties. Internal procedures are not sufficient.

6. ICANN should be subject to United States antitrust laws and other jurisdictions' antitrust laws if applicable.[22]

Technical Role

ICANN should continue to perform the function of coordinating the Domain Name System. This function is actually shared between ICANN, IANA (the Internet Assigned Names Authority), which is operated by ICANN, and VeriSign, which is a profit-making corporation.

Regulatory/Policy Role

ICANN's technical function of administering the Domain Name System requires it to, in effect, "license" registries and registrars that coordinate and sell rights to use domain names. This licensing function is similar to functions performed by regulatory agencies—for example, the U.S. Federal Communications Commission (FCC) when it licenses broadcasters or other uses and users of the radio spectrum.[23] The licensing function enables ICANN to specify the terms and conditions under which the registries and registrars operate, including the prices at which they sell the rights to use domain names.

ICANN's regulatory potential stems from its role of designating registries for the TLDs and negotiating contracts for their terms of service. Under the current system each TLD has a single registry. The rationale for the single registry is that, due to economies of scale and network effects, registries may be natural monopolies (Kobayashi 2006). More than one registry per TLD could result in more than one registration per domain name, which would mean that domain names would not resolve to a unique IP address—the problem of "instability."

The registry function's natural monopoly characteristics provide a possible rationale for monopoly-type regulation. Indeed, ICANN's actions are, in many respects, indistinguishable from those of a regulatory agency. It has awarded registry contracts for fixed time periods through "competitive" processes much like the FCC gives out broadcast licenses. These contracts specify terms and conditions, including the prices that the registries can charge. Unlike most rate regulation cases, however, ICANN does not go through well-defined procedures or data analysis. ICANN has also regulated complementary services that registries might offer. All of these are characteristics of the regulated monopoly approach.

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[22] Froomkin and Lemley (2001) suggest that ICANN is subject to U.S. antitrust law.
[23] Mueller's (2002, pp. 201-205) description of ICANN's authorization of seven new gTLDs in November 2000 highlights the regulatory nature of the process.

ICANN should not engage in economic regulation for two reasons. First, while each registry may (arguably) be a natural monopoly, there is competition—both actual and potential—between TLDs. For example, .com competes with .net and .biz., as well as with ccTLDs, to be the domain where enterprises choose to establish their Internet presence.[24] Although we believe that ICANN has been overly restrictive in authorizing new gTLDs, there has nonetheless been an increase in competition between registries (Kobayashi 2006). Recently, ICANN adopted a policy to facilitate applications for new gTLDs.

In addition, ICANN is not equipped to be a regulator. It has no specified criteria against which its regulatory decisions can be judged, no administrative procedures, no professional staff with the qualifications to make regulatory decisions, and no procedures for appeals of ICANN decisions to a judicial body. In countries that operate under the rule of law, regulatory agencies operate under statutes that specify the criteria for regulatory decision-making. Regulatory decisions are aided by professional staffs, including economists, who, for example, attempt to determine whether allowable rates accurately reflect costs. There are defined procedures, including the right to appeal decisions outside the agency to the courts. ICANN has none of these.

The issue of ICANN's status as a regulator has been put into sharper relief following its recent proposal to expand the number of gTLDs, which has been criticized by many in the business community as well as by the U.S. Government.

While it is not our purpose to comment on the details of that proposal, it highlights a choice between two distinct alternatives in regulatory approaches: On the one hand, ICANN can proceed under the assumption that the market for gTLDs is not (and perhaps cannot be) at least workably competitive. This would require ICANN to take on greater regulatory responsibilities than it now has and would mark a significant increase in ICANN's authority and scope. Alternatively, ICANN can adopt a liberal policy of relatively free entry into the domain space,

[24] We recognize that .com is the dominant gTLD and that other registries have had difficulties in gaining market share vis-à-vis the .com registry. Nevertheless, that dominant position need not be permanent—leading firms have been known to stumble—and the presence of more gTLDs would increase the likelihood of a smaller rival's being able to take advantage of any strategic mistakes that VeriSign (the registry for .com) might make. Moreover, the threat of easier entry provides competitive pressure on VeriSign.

with the objective of bringing the benefits of a competitive gTLD market to consumers. This would obviate the need for ICANN to act as a regulator.

The U.S. Government appears to be recommending the first, more regulatory, course. In comments filed with ICANN on its proposed procedures to introduce new gTLDS, the Department of Commerce, informed by a Department of Justice Antitrust Division analysis, expressed the view that:[25]

- Both existing and new gTLDs have market power.
- The introduction of new gTLDs is unlikely to constrain the market power of existing gTLDs.
- ICANN needs to weigh harms against benefits before introducing new gTLDs or renewing gTLD agreements.
- ICANN should establish a competitive application process, whereby prospective gTLD operators would compete by proposing registry terms, including price, for new gTLDs and for renewals.
- To constrain the exercise of market power, new registry agreements should include provisions such as price caps and restrictions against price discrimination, bundling, and tying.

Ordinarily, entry into a market would be expected to alleviate market power. At the very least, it would not create new market power. New entrants usually compete for customers by offering lower prices and/or improved (innovative) products and services. In the case of new gTLDs, the greater competition among gTLDs would likely mean lower registration fees for registrants and more responsiveness to their concerns, as well as the opening of new domains where generic second-level domain names (e.g., www.cars.abc) might be established. Indeed, one of the hallmarks of new competition is often the ability of entrants to offer new products and services that incumbents (and their customers) hadn't envisaged.

[25] http://www.ntia.doc.gov/comments/2008/ICANN_081218.pdf

However, the business community and the U.S. Government are concerned that the need for registrants to purchase domain names on new gTLDs for defensive purposes would confer market power on new gTLD registry owners. For example, if .abc becomes a new gTLD and General Motors wants to avoid the possibility that someone else will register the domain name generalmotors.abc, the .abc registry owner may be able to extract a considerable price from General Motors. In essence, the new gTLDs would have the power to create potential "nuisances" that would induce incumbent registrants to pay fees so as to avoid the potentiality from becoming a reality.

This is a legitimate concern.[26] It should, however, be addressed directly, rather than indirectly by restricting competition in the TLD market and creating an artificial scarcity. Such an indirect policy would be the equivalent of restricting the supply of land available for development as a way to address a problem of ill-defined property boundaries and claims of trespassing.

ICANN's "uniform dispute resolution policy" (UDRP) is supposed to address these problems; but if there is general agreement that the UDRP is ineffective or too slow and too costly, it can be strengthened in a variety of ways that should have as their goal faster and less costly resolutions (and that, if possible, should reduce ICANN's "judicial" role overall).[27] For example:

- ICANN could establish an "IP Registry" of sanctioned names that could then be restricted to their "owners."[28] Brand holders would bear the burden of proof, according to ICANN-defined procedures, of establishing their ownership of a brand name.
- ICANN could establish a "loser pays" policy for the UDRP, where the losing party would pay the litigation costs of the prevailing rights holder. This would provide an incentive

[26] One illustration of this is the substantial judgment in favor of Verizon in its suit over domain names. See http://www.nytimes.com/2008/12/25/technology/companies/25verizon.html?_r=1

[27] ICANN is trying to address this issue (ICANN 2009). Another possibility is that markets themselves will solve the problem: Since a large fraction of Internet users use search engines to find websites with which they are unfamiliar, the owners of search engines (e.g., Google, Yahoo!, etc.) are likely to feel competitive pressures from users to guide users to a company's correct website and not a bogus site.

[28] See, for example, comments of corporate domain name registrar MarkMonitor on the ICANN's proposed gTLD program: http://forum.icann.org/lists/gtld-guide/msg00130.html

for applicants to make sure that they weren't infringing on a trademark or copyrighted name, or at least quickly to relinquish their claim on a name when the legitimate owner made a complaint.

- ICANN could place the responsibility on the registrars to enforce these property rights and the liability to pay rights holders' costs associated with infringement. Registrars may be in the best position to perform this policing function, especially if there are established lists that they can readily access.

Absent the problem of defensive registrations and cybersquatting, the introduction of new gTLDs would appear to be unambiguously a good thing. It would expand registrant choice and consumer choice and provide competition to existing gTLDs in an environment in which the introduction of new gTLDs is based on real economic demand, not on the ability to extract payments from companies who are compelled to register for defensive purposes.

On the assumption that the procedures for protecting brand names can be substantially improved, ICANN should adopt a relatively automatic way of introducing new gTLDs:[29]

- ICANN should establish minimum technical and financial qualifications for registries.
- Any entity meeting those qualifications should be able to apply to and be certified by ICANN to become the registry for any gTLD that is not already taken.[30]
- The fees that ICANN charges a registry should be close to ICANN's marginal (or incremental) costs of dealing with that registry, plus a modest contribution toward covering ICANN's overhead costs. Fees should not be used to build large reserves or engage in cross-subsidies.

[29] A somewhat similar proposal is discussed in National Research Council (2005, pp. 247-248).

[30] It is quite possible that many companies and other organizations—if they were otherwise qualified—might choose to operate registries that had their own "brand name TLDs" (e.g., ".ibm", ".generalmotors", ".nyu", ".redcross", etc.; see National Research Council (2005, p. 236) instead of gTLDs, although there may be operational issues (such as security) that might make companies and organizations prefer to buy their domain name services from a specialized registry. If, however, such self-operation of "bnTLDs" became widespread, ICANN would likely need to subcontract its dealings with these self-operated registries to a "super-registry" operator.

Because this process will promote competition, contracts with registries should not include price caps or other provisions designed to constrain market power.

Finances

ICANN receives its income from the registries and registrars through a series of contracts and other arrangements. The licenses—i.e., the rights to be a registry or a registrar—have substantial economic value, and ICANN is currently able to capture a portion of that value.

Revenues are growing because of the overall growth of the domain name market. Because ICANN is in the position of granting registries and registrars licenses to operate, it also has the ability to dictate the fees that they pay, so long as it doesn't drive them out of the market.

ICANN's growth should be limited. The cost-based fee structure suggested above would be consistent with modest growth. However, it is difficult to determine what ICANN needs and what is excessive. This is related to the accountability question. If these issues are solved, they can be solved simultaneously.

Accountability

In principle, the concept of suitable accountability for ICANN as an organization is not controversial; but it is subject to differing interpretations. ICANN has procedures to consult with the various constituencies of "the Internet community." However, these constituencies have limited leverage. In our view, accountability means being accountable to external parties in a specified way that promotes the desired behavior.

ICANN's non-profit corporation status combined with the way that it is funded make accountability a serious problem. Profit-making corporations have a well-defined goal of maximizing value for their shareholders. They have boards of directors who are supposed to be accountable to the shareholders. Corporate management is accountable to the board as well as to the customers who need to be satisfied in order for the corporation to be profitable.

Government agencies also are accountable to external parties. In the U.S., government agencies are accountable to the courts, to Congress, and ultimately to the voters for the policy

choices that they make. If agencies fail to operate in a manner that is consistent with their statutes, their decisions can be appealed to an outside party—the judiciary.

Many non-profit organizations are also accountable to external parties—their contributors—who can cease funding the organization if they find that it is not pursuing its goals in the way that they want.[31] ICANN's funders—the registries and registrars—can't pull their funding without going out of business.[32]

In contrast, ICANN faces none of these constraints, and its goals are harder to define and change over time. ICANN likely has multiple internal (or implicit) goals in addition to the technical administration of the DNS. Some of those goals may be useful, but they may well also include objectives that are not socially beneficial, such as: increasing ICANN's influence on Internet policy; increasing the size of the organization; and increasing employees' compensation, perquisites, and stature.

Because of ICANN's structure, it operates with almost no oversight. Management is accountable neither to shareholders, customers, nor funders. Management is accountable to a board of directors, but the board determines the rules under which the board itself operates, including the rules governing election to the board.

While ICANN has established a number of accountability procedures, they largely reflect internal policies. ICANN perceives itself to be accountable to the "global community" or the "public at large rather than any member or group of members" (ICANN 2008a, p. 5). However, being accountable to the public at large really means being accountable to no one. For example, although ICANN's bylaws provide that certain constituencies have board seats, those board members have an obligation to ICANN, not to their constituencies. Finally, all of ICANN's procedures, including those for electing board members, are the result of bylaws or other policies adopted by the board or the management, all of which are subject to change by the board or

[31] Some non-profit organizations, such as hospitals and schools, also have customers to whom they are accountable.
[32] Below, we outline a proposal that would make ICANN accountable to its funders.

management. The bylaws can be amended by two-thirds vote of the board, and other procedures can be changed more easily.[33]

The only specific factors that make ICANN accountable to external parties are its ties to the DOC—the JPA between ICANN and the DOC, and the contractual relationship between IANA and the DOC.

LESSONS FROM OTHER MODELS

In this section we summarize the operations and structures of a number of other organizations that perform a range of private-sector and quasi-governmental coordination and standard-setting functions, to explore what might be applicable to ICANN.[34] In particular, we are interested in how these institutional structures address accountability, which is the major issue for ICANN.

We have reviewed the operations and structures of the following nine organizations:

1. The American National Standards Institute (ANSI) coordinates the standard-setting process for a wide range of standards. It is a non-profit organization governed by a 50-member board that is elected by the ANSI dues-paying member companies. ANSI earns additional revenue by selling its standards. ANSI standards are voluntary, and it operates independent of government oversight.

2. The Depository Trust and Clearing Corporation (DTCC) is the centralized clearinghouse for most securities traded in the United States. DTCC is owned by its principal users—banks, brokerages, and exchanges—and receives transactions fees from its customers. Although it is a for-profit company, it returns any surplus over costs to its customers. Its board of directors consists primarily of representatives of the major firms that use DTCC

[33] To the extent that ICANN can be successfully sued in U.S. federal courts or in California courts, the courts thereby provide some degree of accountability. But this form of indirect legal accountability is not a good substitute for the direct accountability that would come with a better governance structure. Moreover, ICANN's "regulatory" decisions are generally not appealable to the courts in the same way that a U.S. regulatory agency's decisions typically are.

to clear securities. Several regulatory agencies, including the Securities and Exchange Commission (SEC), the Board of Governors of the Federal Reserve System, and New York banking regulators, have oversight responsibilities.

3. GS1 US (formerly the Uniform Code Council) coordinates product identification and transmission systems, such as bar codes and RFID tags. It is a non-profit organization governed by its users, including manufacturers and retailers. It is funded by users in proportion to sales revenue and is not subject to regulatory oversight (although it is subject to the U.S. antitrust laws).[35]

4. The International Telecommunications Union (ITU) is an organization that performs a variety of international telecommunications coordination functions. It is a specialized agency of the United Nations, with member states and member companies from the telecommunications industry (broadly defined).

5. The National Automated Clearinghouse Association (NACHA) sets standards for nationwide payments exchange networks. NACHA is a not-for-profit association composed of representatives of the banks and payment processors that use the automated clearinghouse system. NACHA members are regulated by the Federal Trade Commission, the Federal Reserve Board, the U.S. Treasury Department, the Office of the Comptroller of the Currency, the Office of Foreign Assets Control, and various state and local banking authorities.

6. Nav Canada owns and operates Canada's nationwide air traffic control system. Nav Canada is a non-profit organization and relies on income from user fees. It is governed by a board of directors with representatives from the major users—the commercial airlines and general aviation—as well as the Canadian government and Nav Canada employees. Transport Canada, the Canadian airline regulator, has regulatory authority over Nav Canada.

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[34] More detailed descriptions of the operations of these organizations can be found in the appendix.
[35] See Brown, 2006, pp. 51-55, 66-67.

7. The North American Numbering Plan Administrator (NANPA) oversees the telephone numbering system for 19 North American countries, including Canada and several Caribbean nations, but not including Mexico and Central America. Since 1997, NeuStar, a publicly held corporation, has been the NANPA under a contract from the Federal Communications Commission (FCC).[36] This contract is awarded by competitive bidding every five years.

8. The Options Clearing Corporation (OCC) performs a clearing function similar to the DTCC for equity derivatives traded on major options exchanges. OCC is owned by five major options-trading exchanges. Its board consists of representatives of the exchanges and brokerage firms. The SEC and the Commodity Futures Trading Commission (CFTC) have oversight responsibility.

9. The Universal Postal Union (UPU) is an international organization established by treaty to harmonize postal standards. It is an agency of the United Nations and is governed by representatives from its member governments.

There are several major lessons to be learned from these models, which span a fairly wide range of activities. None of them operates with ICANN's independence. In virtually all cases, the organizations—both non-profit and for-profit—are governed by their users. In addition, in virtually all cases, there is some form of government oversight.

ANSI and GS1 US are both voluntary standard setting bodies. Like ICANN, they are non-profits and are funded in various ways by their users. Unlike ICANN, however, they are also governed by their users. Their users are both their customers—ANSI and GS1 US sell their standards—and their governors. This structure assures substantial accountability.

NACHA and Nav Canada are also non-profits governed by their users (Nav Canada also has representation from labor and the government), but perhaps in a different category than ANSI and GS1 US because of their market power. An airline operating in Canada, for example, has no choice but to deal with Nav Canada. But these organizations also are subject to regulatory oversight, which provides another layer of accountability.

[36] NeuStar also provides registry services for several TLDs, including .biz and .us.

DTCC and OCC are for-profit organizations, although their goal is not to maximize profits. They are owned by their users, a structure that yields incentives similar to a non-profit governed by its users. In addition, both organizations are overseen be a number of financial regulatory agencies.

In some respects, the closest analog to ICANN in terms of its function is NeuStar, which operates the North American Numbering Plan. NeuStar is a for-profit company, which operates under a contract with the FCC. It is required to compete for the contract every five years, and thus is accountable to the FCC.

The ITU and the UPU are international organizations, accountable to their member governments. They exist principally to coordinate interconnection between national telecommunications and postal systems (respectively), although (particularly in the case of the ITU) their activities have expanded over the years.

Each of these organizations (except for the ITU and UPU) is either governed by its users, subject to external regulatory oversight, or both.[37] Thus, each of them has considerably more accountability to external parties built into its structure than does ICANN. We think that the incentives provided by the user-governance framework are quite positive, particularly for an organization that does not face competition.

There is no organization that operates with the independence that ICANN enjoys even under the current arrangement of nominal oversight by the U.S. Department of Commerce, to say nothing of ICANN's proposal for complete "privatization" and the termination of the DOC's oversight.

OPTIONS FOR ICANN GOVERNANCE STRUCTURE AND ACCOUNTABILITY

After reviewing these models, we believe that there are four options for ICANN's governance structure and accountability:

[37] The ITU and UPU are accountable to member governments, which in a sense are their users.

1. The status quo. Under this option, ICANN would retain its current structure, including the MOU and IANA's contract with the Department of Commerce. This system, while not ideal, has worked tolerably well over the years. It retains some external accountability, although the accountability to the U.S. Government is weak and the U.S. Government cannot always be counted on to provide the right guidance. Retaining the tie to the U.S. Government would not be popular in many other countries.

2. Complete transition to the private sector. Under ICANN's preferred alternative, the JPA and ICANN's tie with the Department of Commerce would be allowed to expire, but no other structural change in governance would occur. The contract with IANA would continue, but its future status would be uncertain. This option would diminish (and perhaps eventually eliminate) the very limited external accountability to which ICANN is now subject. Breaking the tie with the U.S. Government would be popular internationally.

3. Place ICANN under the oversight of an international organization, such as the ITU. Under this arrangement, ICANN would presumably have a contract or some type of memorandum of understanding with the ITU. This contract could be re-competed periodically, as in the case of NeuStar's contract to operate the NANP.

This third option might be popular with constituencies who believe that the U.S. now has disproportionate influence.[38] However, its disadvantages outweigh that advantage. The Internet is a rapidly changing environment, and it needs a governance structure that can respond accordingly. International organizations, which usually require agreement among a large number of governments, are by their nature slow moving. Such a governance structure might seriously impede the development of the Internet.

In addition, the postal and telecommunications systems that are coordinated by the UPU and ITU, respectively, are quite different in nature from the Internet. There are well-defined national postal and telecommunications systems, and there was a need to coordinate so that mail

[38] See, for example, the suggestion on May 4, 2009, by Viviane Reding, the EU Commissioner for Information Society and Media, that an intergovernmental body should oversee ICANN: http://ec.europa.eu/commission_barroso/reding/video/text/message_20090504.pdf

and telephone calls could go from one country to another. By contrast, as our brief historical summary above indicated, there weren't separately developed national internets that needed to be connected. Instead, the Internet began in the U.S. and then spread internationally. Thus, the coordination and governance functions are quite different.[39]

4. Modify ICANN's governance structure. Virtually all of the organizations that we have surveyed (as summarized above) are governed by their direct users, and we believe that this would be a good model for ICANN as well. Therefore, we suggest modifying ICANN's governance structure so that it is governed by its direct users—the registries and the registrars—rather than by the vaguely specified "Internet community" at large.[40] Seats on the board of directors could be rotated among the major operators in a manner that would reflect the diversity of viewpoints among registries and registrars. ICANN would maintain its non-profit status to protect against the operators' trying to exercise market power through ICANN.[41] In addition, ICANN would be subject to the U.S. antitrust laws.

This approach, though a radical departure from the status quo, has some potentially significant advantages. It goes a long way toward solving the accountability problem. The registries and registrars have a strong incentive to assure that ICANN fulfills its responsibilities efficiently and with budgetary discipline. Its incentives in this respect would seem to be aligned with the ultimate end users of the Internet—businesses and individuals.[42] Since ICANN would be a non-profit organization, it would be unlikely to generate monopoly profits for the registries or the registrars through excessive fees; and these entities, as the governors of ICANN, should object to excessive ICANN fees that are absorbed through perquisites and emoluments by

[39] The National Research Council (2005, pp. 192-195) similarly takes a dim view of having the ITU or an international organization more generally take control of the DNS system.
[40] The National Research Council (2005, pp. 208-210) discusses a somewhat similar proposal (its "Alternative C") as a possible restructuring for ICANN's governance.
[41] The exercise of market power by the registries as owners of a for-profit ICANN could occur through ICANN's levying a (profit-maximizing) fee on registrations and then distributing the resulting profits to the owners under a formula that did not mimic their registrations. See, for example, Lewis and Reynolds (1979).
[42] We recognize that a whole range of entities, including individuals and businesses, are users of ICANN. However, their use of ICANN is intermediated through the registries and registrars just as any individual's use of organizations such as ANSI and GS1 US is intermediated through manufacturers and retailers.

ICANN's employees.[43] Further, with an ICANN charter that would embody a strong presumption of encouraging greater competition among a large number of registries,[44] and with a large and growing number of registries, incumbent registries would be unlikely to find worthwhile any efforts to use ICANN as a vehicle for restricting the entry of further registries.[45]

Because it has its own external accountability built in, this structure could also allow for ending the ties with the U.S. Government, which are imperfect means for providing accountability and which are unpopular internationally. However, we recommend that the new structure be permitted to operate for a while before severing those ties.

Since we envision an eventual ending of the restructured ICANN's ties with the U.S. Government, we also do not envision formal ties between other governments and ICANN (and thus would not allot seats on ICANN's board of directors to representatives of governments). It is worth remembering, in this context, that most of the ccTLDs maintain only informal coordinating connections with ICANN (unlike ICANN's formal contractual relationships with the gTLD registries and registrars) and do not make any regular payments to ICANN (again, in contrast to the gTLD registries and registrars). Perhaps, however, an advisory committee (to ICANN) of interested governments could be established.

CONCLUSION AND RECOMMENDATIONS

No organization compares to ICANN either in terms of global reach or institutional structure. ICANN has operated under a series of agreements with the U.S. Government and now wants to complete its transition to the private sector. Under its current structure, however, it has

[43] Earlier in this report we recommended that ICANN should adopt a less regulatory stance, with an emphasis on relatively open entry into gTLDs and fees that are close to marginal costs. That stance would be consistent with the governance structure that we recommend.

[44] In this context, we again emphasize the importance of establishing a quick and low-cost way for established trademark holders to protect their intellectual property and prevent cybersquatting and other nuisance registrations on new registries, so that the benefits of greater competition are not undercut by nuisance costs.

[45] In this respect, the experience of GS1 US is instructive. The ability to attach barcodes (for a new manufacturer of consumer goods) and to scan barcodes (for a new retail chain) is surely a necessity for either category of entrant; but we are aware of no efforts by GS1 US governors (manufacturers or retailers) to restrict barcode use by rivals. Instead, the ethos of the organization has been to expand the use and usefulness of the barcode as widely as possible. See, for example, Brown (1997).

limited accountability to its users or, for that matter, to anyone else. If it were to complete its transition, it would have even less accountability. This leads us to the following interrelated recommendations:

- The JPA with the Department of Commerce should be extended in some form, until our recommended changes in governance have become established. If such changes in governance are not adopted, the JPA (and its extension) becomes even more important in providing for some external accountability.

- ICANN's governance structure should be modified in order to increase its accountability. Specifically, ICANN should remain a nonprofit organization, but it should be governed by and accountable to its direct users: the registries and the registrars. The seats on ICANN's board could be rotated among the major operators in a manner that would reflect the diversity of viewpoints among the registries and registrars. All of the organizations that we have studied that have some comparability to ICANN are governed by their direct users—that is, companies who purchase services—and not just a broad "community" of people who might have some interest in the organization. This focused governance by direct users would be a good governance structure for ICANN as well.

- ICANN should have a clear mission to encourage competition and should therefore take a far less regulatory approach in its policies with respect to the designation and creation of new generic top-level domains (gTLDs). ICANN should establish minimum technical and financial standards for registries and then let any qualified entity establish any gTLD that is not already taken.

- This approach needs to be combined with improved protections for incumbent domain name holders, so as to avoid existing website registrants' being held up for "ransom" by the registries of newly established gTLDs. There are several possibilities that should be explored, including adopting an IP registry and reforming the uniform dispute resolution policy (UDRP).

These four recommendations are complementary. In combination, they would significantly further the goals of Internet efficiency and innovation.

APPENDIX: DESCRIPTIONS OF OTHER MODELS

American National Standards Institute (ANSI)

The nonprofit American National Standards Institute coordinates the standards-setting process in the United States, by overseeing the development of uniform specifications and technical standards used by businesses, government, and researchers. ANSI curates a collection of documents outlining specific standards for things as varied as the size of manufactured parts, the terms for different components of programming languages and business processes, and methods of measurement for scientists and engineers. These standards help solve coordination problems among firms and ensure that new technologies are interoperable. ANSI sells its standards to the public, which uses them for designing and developing new products.

In addition to maintaining existing standards, ANSI helps its members write and approve new ones, primarily by accrediting and coordinating a network of small industry-based groups that submit standards to ANSI for approval. ANSI does not certify or assess products, but does accredit third-party certification agencies. ANSI also represents the United States as a member of international standards organizations, such as the International Organization for Standardization (ISO) and the International Eletrotechnical Commission.

Although ANSI's standards are theoretically voluntary and agreed upon by consensus from those who use them, lawmakers and government agencies often refer to standards when writing regulations. For example, Lazzara (2004) notes that federal workplace safety regulations require machinery to comply with ANSI's B7.1-1970 standard on safety guards. This can make regulations more flexible, since ANSI regularly updates its standards, but it also gives a non-elected private body the power to make rules backed by the de facto force of law. Similarly, private entities often reference ANSI standards in legal contracts.

Structure

ANSI's domain is huge, and its structure is complex. According to Bhatia (2005), the standards-drafting process is meant to be a "bottom-up" effort in which various private consortia create their own standards and present them to ANSI for approval, but ANSI's basic structure is a

complicated hierarchy. A 50-member board of directors nominated by the ANSI membership has ultimate authority and oversees four "member forums," five "standards panels," and three committees. These bodies oversee 11 subcommittees, which in turn oversee six sub-subcommittees, which oversee 15 member committees, each responsible for a different domain of ANSI's responsibility—the standards process, accreditation, intellectual property, international standardization, and interaction with other standards organizations (ANSI 2009). With the exception of a team of executives and about 90 employees in charge of running the ANSI administration, ANSI members volunteer or are nominated to staff these committees.

In practice, most of ANSI's many committees operate independently, with each one responsible for a different, self-contained area of responsibility—things like accreditation, intellectual property rights, and developing international standards. Higher-level committees meet much less frequently than do lower-level ones, and many operate without physically convening, by mailing ballots to voting members.

To create a new standard, an outside party like an industry consortium, professional society, or public interest group first submits a proposal for a standard to ANSI. Alternatively, proposals may come from one of ANSI's five "standards panels," established to focus on new markets and technologies that are identified as priorities. As of early 2009, there are panels focusing on homeland security, nanotechnology, health IT, identity theft, and biofuels. An ANSI committee reviews the proposal and, if approved, sets up a "working group" to write a full standard. ANSI usually appoints the author of the proposal to head the working group, which includes ANSI members who are experts in the area addressed by the standard—for example, a past audio standard working group was staffed with an audiologist and a representative from the audio industry (Burkard 2004). Once standards are drafted, they are presented via ANSI's various committees to both the public and ANSI members affected by the standard, for comments and revision. Ultimately, all ANSI members may vote on a standard, and if there are few "no" votes, consensus is assumed and the standard approved.

ANSI has several membership categories: companies, government agencies, scientific organizations, educators, international organizations, and individuals. Organizations may join as basic members, allowing them one representative per membership to sit on one of ANSI's many

committees and vote on relevant standards. Alternatively, they may pay extra and join as full members, allowing them unlimited representation within ANSI.

ANSI is incorporated as a 501(c)(3) nonprofit organization. It sells standards not for profit, but in order to cover their development costs. New members pay a membership fee, and all members pay annual dues.

Accountability

ANSI standards are voluntary, so the organization is ultimately accountable to its membership and the forces of the marketplaces in which its standards are applied. ANSI does have an internal appeal process for members that object to specific standards or provisions, and asks for public comments as part of the standards-drafting process. Committees are also encouraged to seek a broadly defined consensus rather than majority rule, making the process of setting standards longer but more inclusive. To a degree, ANSI is internationally accountable to multinational standards-creation organizations, such as ISO; but although they seek to "harmonize" standards, their decisions remain voluntary like ANSI's own.

Government sometimes chooses to adopt ANSI standards as regulatory requirements rather than delegating regulatory power. Both the Occupational Safety and Health Administration and the Consumer Products Safety Commission have referenced ANSI standards in regulations, but they do not appear to have influenced ANSI to approve particular standards beyond the scope of government representation in the normal standards-drafting process.

Depository Trust & Clearing Corporation (DTCC)

The DTCC is a holding company created in 1999 by the U.S. Securities and Exchange Commission (SEC) to combine the functions of the Depository Trust Company (DTC), which stored securities and recorded trades, and the National Securities Clearing Corporation (NSCC), which cleared and settled equity exchanges.[46] Today, DTCC is a centralized clearinghouse for nearly all securities traded in the United States, including stocks traded on the New York Stock

Exchange (NYSE), the American Stock Exchange (AMEX), and the NASDAQ exchange, corporate bonds, government securities, mortgage-backed assets, and a variety of other financial instruments.

The clearing services that DTCC's six subsidiaries provide are a crucial component of the capital markets. They encourage exchange by acting as an intermediary that ensures that shares get to buyers and cash to sellers, that lowers risk by guaranteeing trades against default, and that lowers transaction costs by "netting out" trading obligations and increasing trading capacity.

The market for equity clearing was once much more fragmented. In the early 1970's, most regional exchanges relied on separate, independent clearing and settlement services. Over the next few decades, however, two factors drove the industry to consolidate: rapid increases in trading volume drove redundant and inefficient firms out of business (many of them destroyed by mounting piles of records and paperwork), while regulators from the SEC "sought to encourage the creation of a unified national market mechanism" for clearing securities (NACHA 2006). Today, that mechanism is in place—DTCC provides clearing and settlement "for virtually all trades" made in equity markets in the United States.

Structure

DTCC's principal users—brokerages, banks, and exchanges—co-own the company, which is organized much like any other corporation. Although it is a for-profit enterprise, DTCC attempts to operate at cost, and returns profits from transaction fees to customers and member firms. In a questionnaire conducted by the Bank for International Settlements (2002) the DTCC reports that participants "are allocated entitlements to purchase the common stock of DTCC based upon their usage of all five registered clearing agencies," although they are not required to own shares to use DTCC services.

A 21-member board of directors oversees DTCC. Seventeen members represent the major firms that use DTCC to clear securities transactions. The NYSE and the Financial Industry Regulatory Authority (FINRA), an independent non-governmental regulator for U.S. securities firms, are designated "preferred shareholders" and appoint one member each. DTCC's chief

[46] DTC and NSCC have remained as subsidiaries of DTCC.

executive officer and president fill the remaining two seats. With the exception of the two preferred appointees, all members are elected annually, nominated by shareholders "based on their ability to represent DTCC's diverse base of participants" (DTCC 2009). These directors also oversee each of DTCC's six subsidiaries, which offer similar clearing services in various markets, including the exchange of government securities and mortgage-backed assets. Each subsidiary has its own board-appointed management team, which handles day-to-day operations of the firm.

Accountability

DTCC is internally accountable to the member firms that hold its shares, and externally accountable to several regulatory agencies. As a limited purpose trust company under New York State banking law, a registered clearing agency with the SEC, and a member of the Federal Reserve System, DTCC is externally accountable to regulation by the New York State Banking Department, the Board of Governors of the Federal Reserve, and the SEC. NSCC is only a registered clearing agency, and thus only regulated by the SEC. Other subsidiaries are also subject to SEC regulation.

The New York State Banking Department audits DTCC annually, and the Federal Reserve has the authority to set margin requirements for users of some services, but the SEC is by far the most important regulator of DTCC and its subsidiaries. Under SEC rules, DTCC is considered a "self-regulating organization" (SRO) and given a large degree of autonomy in creating its own internal rules and procedures—at least in principle.

The relationship between the SEC and its self-regulating organizations is a particular form of federalism. Under the Securities Exchange Act of 1934, the SEC "has regulatory authority over the clearing and settlement of all equities and equity options" (US Congress OTA 1990) and the power to "abrogate, add to and delete from" internal rules (Oesterle 2000)—essentially all-encompassing power to set its own rules for securities clearinghouses. However, SEC regulators delegate most of this power to the clearinghouses themselves. In practice, DTCC makes its own internal rules regarding risk, collateral, membership, and margin. The SEC's job is to regulate from a distance, as McCaffrey (1998) puts it, "by establishing principles to which

the SRO's must adhere, by evaluating the SRO's surveillance and supervisory systems, and by nudging them in particular directions desired by the SEC." The threat of intervention is intended as an incentive for SROs to develop rigorous internal rules and standards on their own. But if internal regulatory schemes fail to meet muster with federal regulators, "the SEC can impose their own system," a scenario described by one SRO official as "the ultimate threat."

Thus, DTCC "is an example of a quasi-self-regulating system, in that nothing in the law prevents a second organization from being formed to compete with the DTCC to provide either depository or clearance services," but the firm is still "recognized and approved for its activities by the SEC," a regulatory design that advocates contend "produces an equilibrium of efficiency and security" (Borden 2002). On the other hand, this brand of self-regulation is far from a non-interventionist policy. Over the last several decades "the SRO system has steadily evolved away from the pure form rooted in the 1934 Act toward a system of more overt SEC intervention" (Oesterle 2000) and although the SEC does not necessarily need to intervene to put its preferred rules in place, it often pressures SROs to "voluntarily" adopt its guidelines. For example, in 2007, the SEC intervened to create new regulations on "naked short" selling, despite opposition from DTCC reported by the *Wall Street Journal* (July 5, 2007).

Internally, DTCC is accountable to the member firms that hold its shares and fill seats on its board of directors. Member firms must comply with its rules and procedures: a detailed code covering the obligations and process of securities clearing and exchange. The board of directors must approve rule changes and submit them to the SEC for publication in the *Federal Record.*

International Telecommunication Union (ITU)

The International Telecommunication Union is the second-oldest international organization that is still in existence. It was founded as the International Telegraph Union in 1865, but has since been renamed and now operates as a specialized agency of the United Nations. The Geneva-based group seeks to "enable the growth and sustained development of telecommunications and information networks," and to facilitate universal access to the "emerging information society" (ITU 2009a). In practice, this mission translates into three key

functions: 1) promoting telecommunications standardization across borders, 2) managing the world's radio-frequency spectrum and satellite orbits, and 3) supporting the growth of telecommunications in developing nations. ITU has played a pivotal role in the evolution of modern communication by leading the global community in its efforts toward seamless and interference-free integration of connections.

Structure

As might be expected of such a large and enduring agency, ITU has an extensive and complicated bureaucracy and procedures. At its base the organization is a collection of member states, which are nations whose officials have acceded to the ITU constitution and convention, and "sector" members and associates: private companies or other organizations that contribute to its groups and meetings. The Union is composed of 191 member states and over 700 other participants

At its highest level the agency is led by the Plenipotentiary Conference. This is the meeting of states that determines ITU's direction by making strategic and financial plans, setting general policies, and choosing senior management to head the organization for four-year terms (until the next conference). The proceedings include electing the Council—a supervisory group of no more than 25 percent of the total members states, which is elected by the field of states "with due regard to the need for equitable distribution of … seats among the five world regions"—as well as the secretary- and deputy secretary-general (ITU 2009b).

Beneath its top-level bodies ITU is divided into three core "sectors" that mirror the Union's aforementioned directives: the Telecommunication Standardization Sector (ITU-T), the Radiocommunication Sector (ITU-R), and the Telecommunication Development Sector (ITU-D). Each is led by a director (who is elected at the Plenipotentiary Conference) and operates its own assembly, advisory board, and study groups in order to propose and agree upon policy within its area of expertise. It is at this lower level that sector members and associates have direct say; ITU's "Recommendations" (always capitalized) are primarily developed by specialists from such organizations working in its study groups. These Recommendations range from decisions on new standards for telecommunications networks, to regulations and regional agreements for

efficient and effective radio transmissions, to advice for nations with less-developed telecom infrastructures. Once the experts of a study group consider a Recommendation draft to be mature, it must be given "consent" by the study group in general, and then pass a period in which it is open to review by the remainder of ITU participants. Even if it passes the approval period unchallenged, such a pronouncement is not mandatory until signed into law by member states. Nevertheless the ITU-T (for example) reports a high level of compliance with its Recommendations due to their "international applicability" along with the "high quality guaranteed by the ITU-T's secretariat and members from the world's foremost ICT companies and global administrations" (ITU 2009c).

Accountability

ITU is accountable most directly to its member states as these are the entities that set its policy discussions and select its leaders. Though affiliated with the United Nations, ITU stands under its own constitution and even accepts states without UN membership if two-thirds of the members approve of the entry. On the other hand, this affiliation does submit ITU to the UN's "common system" of financial, human resources, and information system regulations, and allows the UN and other specialized agencies to attend Union functions as observers (MacLean 2007). The organization is funded by its various participants, who are given some degree of freedom to choose the amount of their contribution, though requirements are ultimately commensurate with the privileges of membership level; member states are expected to pledge most, and associates the least (MacLean 2007). ITU attempts to remain neutral by yielding its highest offices to the majority-decisions of states with equal votes, and by allotting Council positions in relation to the Union's various regional constituents. Additionally, in that the specific business of each of the three sectors is open to debate by companies and other interested parties provided they are willing to pay membership fees or obtain a waiver, ITU is accountable to the most active and vocal agents in its relevant fields.

National Automated Clearinghouse Association (NACHA)

The National Automated Clearinghouse Association is the rulemaking body governing automated clearinghouse (ACH) payment networks in the United States. Several regional ACH

associations combined to form NACHA in 1974, when they agreed to set standards for nationwide payment exchanges between their own networks. Originally designed to cut down on the amount of paperwork necessary to track and account for checking transactions, the ACH system has since developed into an automated nationwide electronic payment system (NACHA 2006).

Today, the ACH system is an integral piece of financial infrastructure. Debit card transactions, ATM withdrawals, online billing, automated tax payment, Social Security and child support benefits, bank-to-bank transfers, and direct deposit systems all rely on the ACH network, and new payment innovations using the ACH system are rapidly emerging on the Web. Payments that do not involve cash, a paper check, or a credit card are transmitted through the ACH system. The association reported in 2008 that in the previous year its network processed about 18 billion payments, with payment volume continuing to increase at a steady 10-12 percent annually (NACHA 2008).

Two ACH operator networks offer interbank clearing in the United States: The Federal Reserve operates the first, which processes about 60 percent of all ACH transactions (Mott 2006). The Electronic Payments Network, the only private ACH operator in the U.S., processes the rest. Banks, credit unions, and other depository institutions connect their own ACH-enabled systems to one of the two interoperable networks.

Structure

Unlike DTCC and the Options Clearing Corporation (OCC),[47] which are for-profit corporations, NACHA is a not-for-profit association composed of representatives from the banks and payment processors that use the ACH system. The organization is governed by a 16-member board of directors that delegates management authority to executives (NACHA 2009b).

Rulemaking is not the exclusive domain of the directors. Instead, the board oversees a Rules & Operations committee, which vets rules that are proposed by individual NACHA members. This committee is composed of 13 board-approved members, plus non-voting representatives from the Federal Reserve, the U.S. Treasury, and the two ACH networks. Any

NACHA member, along with any federal regulator or either of the ACH network operators, may submit a written rule proposal to the Rules & Operations committee, which will accept the proposed rule and pass it on to another committee or a vote of the NACHA membership, ask for clarification, or reject it (NACHA 2009c).

If accepted, the committee evaluates the rule's potential impact on the ACH network and places it into one of four categories. The Rules & Operations committee refers "Category A" changes—those with a significant economic impact on the ACH network, like new products, changes in network standards, and major rule changes—to a 15-member Product Group committee composed of NACHA members, and a 20-member Industry Support Group composed of third-party users of the ACH network. Meanwhile, the Rules & Operations committee accepts public comments from industry representatives. Both bodies evaluate comments and approve the proposed rule before passing it on to NACHA members for a vote.

The committee assigns "Category B" changes, which have a "moderate" impact on the ACH network, to a Category B Rules Work Group, a subsidiary committee that may include up to 20 representatives drawn from NACHA's membership, plus one representative from each of the two ACH operators. The Rules & Operations committee classifies most new rules and regulations as Category B. They also accept industry comments and evaluate the proposal before passing it on for a vote. The committee assigns "Category C" changes to identical work groups, but does not solicit industry comments. These changes cover minor rule alterations, including clarifying the intent of a rule or fixing incompatible software between networks. "Category D" changes are simply approved or rejected by the Rules & Operations committee, and cover the most minor rule changes, like correcting typos and grammar errors.

Ultimately, NACHA members vote on all proposed rules. Voting membership requires approval from the board of directors and payment of a $5000 annual fee. Banks do not need to be NACHA members in order to access the ACH system, but they must be NACHA members in order to propose and vote on rules. Moreover, regardless of membership, all users of the ACH system agree to comply with NACHA's operating rules, which outline potential fines and arbitration requirements for violators.

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[47] See the description of OCC below.

In addition to rulemaking, NACHA runs educational programs on ACH rules, markets electronic payments to banks and other financial firms, and serves as the public face of the ACH network.

Accountability

NACHA and the ACH network are subject to more federal regulatory oversight than are the clearinghouses in the securities markets. NACHA members are externally regulated by the Federal Trade Commission, the Federal Reserve, the U.S. Treasury, the Office of the Comptroller of the Currency, the Office of Foreign Assets Control, and various state and local banking regulations. However, most regulators work within NACHA's governance system. Since Federal regulators are represented on NACHA's rulemaking committees and have the authority to propose rules, they generally choose to regulate through NACHA's internal process.

Internal accountability comes from a system of self-regulation backed by fines. The NACHA "National System of Fines" relies on the NACHA members, along with the public, to police ACH users for violations of the NACHA operating rules. Any party to a transaction that may be in violation of NACHA's rules may report it by submitting a report and a statement of facts to NACHA, both of which are available online. These reports are referred to a Rules Enforcement Panel that has the authority to issue a warning letter or impose a fine on any ACH user that has violated the rules (fines are, of course, immediately paid via ACH transfer). This panel is not independent from NACHA—like its other committees, it is composed of "representatives from ACH Operators, financial institutions, regional ACH associations, NACHA and NACHA Affiliate Members." It is unclear whether there are rules in place to prevent potential conflicts of interest on the Rules Enforcement Panel, which has ultimate authority over all fines and discipline decisions. Additionally, the NACHA rules require periodic self-audits by each member. More detailed rules are available to NACHA members, but they are proprietary and must be purchased as part of a NACHA membership.

Nav Canada

Nav Canada is the private corporation that owns and operates Canada's nationwide air traffic control system. In the 1990s Canada's government-owned air traffic control system faced a number of problems, including "rigid personnel and procurement systems, micromanagement, budgetary constraints, and conflict of interest" (Poole 1997). After several years of negotiations and policy proposals, both government and the aviation industry agreed to reorganize Canadian air traffic control as a private nonprofit enterprise; in 1996, Nav Canada purchased Canada's air traffic control system from the Canadian government for $1.1 billion (Turner 1996). Today, Nav Canada continues to operate as a not-for-profit, non-share capital corporation financed entirely by publicly traded debt and user fees.

Structure

A board of 15 directors oversees Nav Canada. The board is designed to represent the four stakeholders in the firm's services: the Canadian government, commercial airlines, general aviation firms, and Nav Canada employees. Commercial air carriers, represented by the Air Transport Association of Canada, appoint four directors. The Canadian government appoints three directors, labor unions representing the employees of Nav Canada appoint two, and the Canadian Business Aviation Association appoints one. This subset of ten appoints four independent directors, and the full board appoints a CEO to sit on the board and to lead the Executive Management Committee, which runs the firm's day-to-day operations. Although these four major stakeholders govern the company, they do not own any equity in it—all operations are financed by issuing public bonds.

Since Nav Canada is designed to have no shareholders, but instead to rely on tradable debt and income from user fees, in theory the firm "will not seek to make a profit...only to cover its costs, and—in the interests of its stakeholders—to keep those costs to a minimum" (Poole 1997). This not-for-profit structure is meant to prevent the firm from being regulated as a monopoly, since it precludes Nav Canada from monopoly pricing.

Accountability

Transport Canada, the Canadian government agency that regulates commercial airlines, also has regulatory authority over Nav Canada. Before being privatized Nav Canada was part of

Transport Canada, and both agencies continue to work closely (Hoover's 2009). Internally, Nav Canada's governance structure ensures that it is accountable to its four major stakeholders. Their competing shares of influence on the board of directors are intended to check and balance each other, although the individual proportions of influence are asymmetric (McDougall 2003). In addition to the structure of the board, an internal corporate governance committee is responsible for performing audits and drafting internal regulations.

North American Numbering Plan Administrator

In 1947 AT&T, then the major provider of long-distance telephone communications in the United States, designed the North American Numbering Plan (NANP) to simplify long-distance calling between U.S. states and across the border to Canada. The NANP system established the format for telephone numbering used today, including a comprehensive area code system that replaced the older system of exchange numbers. Today, the phone systems of 19 North American countries follow the guidelines of the NANP, including Canada and a number of Caribbean island nations. Mexico and Central America are not part of the NANP.

Structure

From 1947 until the 1980s, AT&T administered NANP. After AT&T was broken up in the 1980s, Bellcore (an R&D firm established by the Regional Bell Operating Companies to replace the Bell Labs) was in charge of the NANP. However, concerns about the neutrality of a universal numbering plan owned by a consortium of telecom companies directly benefiting from favorable number assignments led to a provision in the 1996 Telecommunications Act instructing the FCC to appoint a third party as the NANP administrator. The FCC awarded this contract to defense contractor Lockheed, which spun off its NANP division into an independent company called "NeuStar" in 1997 to avoid a conflict of interest of its own. NeuStar has been the NANP administrator since 1997.

As NANP administrator (NANPA), NeuStar "holds overall responsibility for neutrally overseeing the assignment and use of NANP numbering resources" among the participants in the

NANP. Within the United States, NANPA is also responsible for planning for area code expansions, collecting usage data, and forecasting the future use and growth of particular area codes. Outside the U.S., governments usually assign these responsibilities to a regulatory agency, a dominant phone operator, or a private corporation. Beyond its capacity as NANPA, NeuStar provides a number of other supplementary network and telecommunications services.

NeuStar is a publicly held corporation, governed by a nine-member board of directors elected by its shareholders and managed by executives appointed by the board.

Accountability

NANPA is primarily accountable to the FCC. According to NANPA, "In making assignment decisions, NANPA follows regulatory directives and industry-developed guidelines" (Neustar 2009). These directives and guidelines are either direct instructions from the FCC, or FCC-approved "comprehensive technical requirements" proposed by the telecom industry. These regulations are meant to ensure that NeuStar is neutral in its capacity as NANPA. The firm is also subject to yearly neutrality audits by the FCC. One other measure of accountability is the fact that NANP administrators must reapply to the FCC and undergo a competitive bidding process every five years—at least, in principle. In the second quarter of 2008, the FCC extended NeuStar's current contract by six months.

Options Clearing Corporation (OCC)

The Options Clearing Corporation (OCC), established in 1973, serves the same purpose as DTCC in the market for financial derivatives—guaranteeing, clearing, and settling options trades. OCC clears and settles the exchange of equity derivatives on major options-trading exchanges like the American Stock Exchange (AMEX) and the Chicago Board Options Exchange (CBOE). By controlling membership standards and setting margin requirements, OCC

has some degree of rulemaking authority over the participants in options exchanges. It also actively seeks to educate brokers and lawmakers about the fundamentals of options trading, and in this capacity it is more similar to a trade organization than a for-profit corporation.

Structure

Five options-trading exchanges own equal shares in OCC: AMEX, CBOE, the International Securities Exchange, the Pacific Exchange, and the Philadelphia Stock Exchange. Like DTCC, it returns its profits to member firms. Unlike DTCC, however, it is not the only centralized clearinghouse for options. Both the Chicago Mercantile Exchange and the Chicago Board of Trade have their own in-house options clearing agencies, and although both primarily clear options on futures contracts, there is overlap between clearinghouses in some foreign exchange and futures options.

A fifteen-member board of directors governs OCC. One seat is filled by the CEO and chairman of the board, one by a Public director, and the remaining thirteen by representatives of member exchanges and brokerage firms, elected by shareholder exchanges for staggered three-year terms. The board entrusts day-to-day management to a team of appointed executives.

Accountability

OCC is internally accountable to its member firms and externally accountable to both the SEC and the Commodity Futures Trading Commission (CFTC), which share jurisdiction over different aspects of its financial activity. The primary external regulator is the SEC.

Like DTCC, OCC is a registered clearing organization with the SEC. Likewise, OCC is considered a self-regulatory organization, allowed to follow its own internal procedures but potentially subject to SEC (or in some cases CFTC) intervention. OCC's most basic internal rules are stringent margin requirements, along with required registration and review plus capital requirements for potential members. Like DTCC, the board of directors of OCC must approve rule changes and submit them to the SEC.

Universal Postal Union

The Universal Postal Union is similar to the ITU in age, institutional affiliation and mission. The 1874 Treaty of Berne established a "General Postal Union" to draft standards for exchanging mail between nineteen European nations plus Egypt, Turkey, and the United States. As more nations adopted these postal standards, the General Union became a universal one, dedicated to harmonizing postal standards through diplomatic agreements between its members. In 1948, the UPU became an official agency of the United Nations.

Structure

All member states of the United Nations may accede to the UPU, and all but four (all of them Pacific micronations) participate in the Union. Delegates from each member country make up the UPU's highest authority, the Universal Postal Congress, which meets every four years to draft rules and policies regarding international mail. Delegates to the UPC are generally diplomats and bureaucrats sent by member governments—for example, the State Department (2003) reports that the United States usually sends foreign service officers as well as postal officers from the U.S. Postal Service in its delegation. According to the UPU, "the recent tendency" of the Congress has been to grant greater regulatory power to two lower bodies, the Postal Operations Council and the Council of Administration, in order to "focus more on strategic and broad policy issues" (UPU 2009a). In addition to rulemaking, the Congress elects a Director General and Deputy Director General along with members of the two lower councils.

The Postal Operations Council consists of forty elected member countries and "deals with the operational, economic and commercial aspects of the international postal service" (UPU 2009b). It designs rules, standards, and regulations. The Council of Administration is composed of forty-one elected member countries and has the power to approve rule proposals from the Postal Operations Council during years without a Universal Postal Congress.

In 2004, the UPU established a third lower body, the Consultative Committee, which "consists of non-governmental organizations representing customers, delivery service providers, workers' organizations, suppliers of goods and services to the postal sector and other organizations that have an interest in international postal services, including direct marketers,

private operators, international mailers, philatelic associations and publishers."[48] It has no rulemaking authority, but advises the Congress and its other bodies.

Accountability

The UPU is bound by the Constitution of the Universal Postal Union, a diplomatic Act ratified by each member country. Any amendments to the constitution must be proposed during an official Congress, and ratified by each member. As an international organization, it is not directly accountable to a regulator or national government authority, although its members have all agreed to comply with its rules and regulations.

[48] UPU.

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Mr. BOUCHER. Thank you very much, Dr. Lenard. Thanks to all of the witnesses for your informative comments this morning.

Dr. Twomey, we are pleased to have you with us today, and thank you for taking the time to travel to Washington for purposes of this hearing. I know that many of the members in their questions are going to focus on the expiration of the Joint Project Agreement, which occurs this September. So, I am going to take my question time this morning to focus on some other matters.

And the first thing I would like to ask you to do is comment on the concerns that were raised by Ms. Deutsch, when she talked about the tremendous volume of cybersquatting that occurring, and mentioned that some of the companies engaged in cybersquatting are actually accredited registrars, who have been accredited by you.

And I would like to get your response to the concerns that she has received, and an indication of what you are doing to police that practice, and particularly, how you could propose to engage in effective oversight and policing, not only with regard to the existing top-level domains, but with the expanded responsibilities that would come for oversight and policing if you proliferate the number of TLDs, because that inevitably is going to mean that companies have to acquire more second level domains, and that incurs costs on their part, and the opportunity for cybersquatting simply increases.

And so, according to Ms. Deutsch, today, cybersquatting is not effectively being policed, and that leads to an even heightened level of concern about how you would oversee and police if the number of TLDs increases.

So, with that general question, we would welcome your answer.

Mr. TWOMEY. Thank you, Mr. Chairman. We share the same general concerns Ms. Deutsch outlined. There is validity, we don't dispute the validity of some of these concerns, but we also think there are mechanisms in place and mechanisms being discussed to help address these issues.

Let me come, quite specifically to enforcement mechanisms now. ICANN established and put in place now, I think eight years ago, nine years ago, a process called the Uniform Dispute Resolution Process, which is essentially a fairly cheap online arbitration mechanism to allow contesting parties to determine who should actually own a particular domain name.

One of the problems with cybersquatting is one person's cybersquatter might be somebody else's true trademark, in the sense that there are 180 something regimes, jurisdictions in the world. There are some 48 trademark headings. I might be getting the exact numbers wrong, but the key point is that people can have multiple trademarks for different sorts of companies in different parts of the world, who have got a claim for a particular name. So, it is not ICANN's role to be an intellectual property arbitrator. But we have actually put in place a mechanism for that sort of arbitration, the World Intellectual Property Organization and other entities offer that arbitration, and I think so far, there has been some 36,000 decisions made under that regime we have incorporated to help those issues presently at the second level.

There is a similar issue applies, then, at top-level domains, and we have proposed that there would be a similar arbitration that

people could object to when a first application was made, so that you could say no, I have got a claim on that name, or that is related to me. And so, there is an existing mechanism that is put forward for arbitration.

Thirdly, we are very much interested in these proposals put forward recently by the intellectual property community at the request of the ICANN Board, for looking at variations of sunrise periods, single registration periods for companies who want to be clear their famous names, et cetera. So, we are actually looking to address this quite detailed. We would like to hear the response more in the community for the proposals they have put forward.

When it comes to the issue of enforcement of registrars, which you have raised, we have significant resources dedicated to enforcement. We have been, I think, if you look at the last months, I think nearly every month, we have de-accredited registrars for various breaches of their agreements, and this issue of whether a registrar is actually performing blatant cybersecurity or blatant cybersquatting activities is a matter of, we would investigate quite closely.

But I would make the point on some cybersquatting issues, that it is not our business to an arbitrator or an intellectual property contention. We actually have that, if you like, a set of independent arbitrators, for them to give us that advice.

Mr. BOUCHER. Ms. Deutsch, would you like to respond to those comments, and I mean, you have heard how Dr. Twomey would address the issue of cybersquatting, and he has defined current practice.

To what extent is current practice not adequate?

Ms. DEUTSCH. First of all, we are not saying that it is ICANN's role to arbitrate the proceedings. On the other hand, it is its role to enforce against its registrars, and to my knowledge, they haven't brought any action against a registrar. These are registrars who have been found by federal courts, or by this same World Intellectual Property Organization, sometimes on hundreds of occasions, have been found to act in bad faith. So, they have taken no action against them.

Mr. BOUCHER. Well, let me stop you at that point. Dr. Twomey, what is your reply to that? Have you ever proceeded against any of these certified registrars, because of their activities?

Mr. TWOMEY. From my recollection, Chairman, we have proceeded against registrars for those activities. Often, we find, with a particular registrar, that if they are in breach along those lines, they are in breach in other ways. And sometimes, to move quickly on the de-accreditation process, we have publicly moved on another breach.

If I can give you just a small example, and an easy example you would understand, often we find registrars who might be at the edge of such behavior, for instance, don't pay their fees. And sometimes, it is easier simply to move on the failure to pay a fee. We can clearly prove it very quickly, and move on de-accreditation.

But I can report to you, in the compliance activity, this particular issue is often examined, and that in a lot of the conversations, communications with the registrars, particular issues that is raised.

Mr. BOUCHER. Well, I find the issue of enforcement against cybersquatting to be particularly troubling, and I think it might be helpful to the subcommittee, because other members have raised this concern as well.

If you would supply to us a letter that describes exactly what you are doing in this area and, perhaps, without naming particular registrars that you may have proceeded against, give us at least some quantitative sense of the extent to which you have addressed this concern. So, actual number of proceedings, perhaps numbers of registrars that have been decertified where cybersquatting, in fact, has been alleged. I think that would be helpful.

My time has expired. We may, depending on how long this first round takes, have a second round of questions. I do have some additional ones.

But at this time, I want to recognize the gentleman from Florida, Mr. Stearns, for five minutes.

Mr. STEARNS. Thank you, Mr. Chairman.

Mr. Lenard, you had mentioned, in your opening statement, some fees. I see here that registrars pay an application fee of $2,500, annual accreditation fees of $4,000. You mentioned some $75,000 fee, I thought. Did you mention that in your statement, opening statement? Just put the mike on, if you would.

Mr. LENARD. It is not in the opening statement. It could be in our report, but I would have to get back to you on that.

Mr. STEARNS. Yes, Ms. Deutsch.

Ms. DEUTSCH. I mentioned it, I think.

Mr. STEARNS. Yes, what was that for?

Ms. DEUTSCH. I think it is an annual renewal fee for the new TLD applicants, so once they get awarded one of these names, then every year thereafter, I understand they pay a $75,000.

Mr. STEARNS. That sounds pretty steep to me. Doesn't it sound to you, Ms. Deutsch?

Now, Mr. Twomey, ICANN had a $7 million surplus in 2009, and you added these new TLDs, you could generate another $90 million. Yet, you are a not for profit organization. Why don't you take less profit and these fees, bring these fees down for the registrars and for consumers, and operate as a not for profit? You are operating a for profit corporation, and your profits are going to balloon based upon these TLDs. So, why aren't you folding, I mean, you are not building automobiles here. You are trying to make it cheaper for people. Why aren't these fees coming down?

Mr. TWOMEY. Thank you, Mr. Stearns. Perhaps I can clarify some of the issues raised here.

ICANN is, as you said, a not for profit, and our focus is to——

Mr. STEARNS. No, you don't want to tell me that. Just tell me——

Mr. TWOMEY. Sorry.

Mr. STEARNS. Why can't you bring your fees down, if you have got a $7 million profit?

Mr. TWOMEY. That is fine. Let me just talk to the point.

We are in the process of, our budgeting process is an open process. We do it through the community. It is a bottom-up——

Mr. STEARNS. What are you going to do with the $7 million profit?

Mr. TWOMEY. And the $7 million process is a contribution to a reserve fund.

Mr. STEARNS. And why do you need a reserve fund if you are a not for profit?

Mr. TWOMEY. We have taken advice from, if you look at most nonprofits, that they have, all have some reserve fund.

Mr. STEARNS. How big is your reserve fund going to be? How big is it today?

Mr. TWOMEY. It is about $34 million.

Mr. STEARNS. So, you have got $34 million, and you are adding another $7 to it, that would bring it up to $41.

Mr. TWOMEY. And our aim is to bring it to one year's operating expenses, and then stop the process of building the reserve fund. So, we are not, and I can make the further point that our, we have actually reduced our fees by 25 percent in the last three years, in applications, and the $75,000——

Mr. STEARNS. Ms. Deutsch, do you think their fees should be brought down?

Ms. DEUTSCH. I do. I think they have——

Mr. STEARNS. Mr. Lenard, what do you think?

Mr. LENARD. Yes. I mean, I think——

Mr. STEARNS. Do you think they want to have, they are now at $41 million surplus.

Mr. LENARD. I think, you know, an organization with an assured source of income. It is not obvious to me why they need a full year's——

Mr. STEARNS. Now, Mr. Twomey, when I look at your annual report, it looks like your salary is, you don't even take a salary out of this. You arrange for Argo Pacific to be a consultant, so that ICANN pays Argo Pacific your salary, then you collect for them. Why do you do that? Why don't you collect money like the CFO and everyone else in ICANN gets directly from ICANN, but you seem to get it from a consultant. Why is that?

Mr. TWOMEY. Congressman, I am an Australian citizen, and we have arrangements with various parts of our employees who have different mechanisms. When I was first asked to be President and CEO, via decision of the Board, this was all decided by the Board, not by me, was to contract with a company——

Mr. STEARNS. That was their recommendation, then?

Mr. TWOMEY. That is right.

Mr. STEARNS. And do you live in Marina del Rey?

Mr. TWOMEY. I live, my home is in Sydney, Australia.

Mr. STEARNS. So, do you ever show up in ICANN's headquarters?

Mr. TWOMEY. Yes. We have offices——

Mr. STEARNS. I mean, do you work there 40 hours a week?

Mr. TWOMEY. I work more than 40 hours a week in various ICANN offices.

Mr. STEARNS. In Australia. But I mean, are you actually——

Mr. TWOMEY. No, I would in Australia less than one week out of every four.

Mr. STEARNS. When you do the exchange rate, what is the total salary, including the health, retirement, saving, and welfare benefits that you get when you do the exchange with Australia. What is, in an Australian dollar——

Mr. TWOMEY. In Australian dollars, it is about $800,000 total.

Mr. STEARNS. $800,000 is what you get. Well, my concern is, and I don't have a lot of time here, but it seems to me that if you are operating a not for profit, and you are paying a CEO, like you, and a subcontractor out of a corporation, that your job is to bring the cost down for the consumers and the registrars, and I just, in light of the fact that Mr. Boucher talked about the four things that Ms. Deutsch talked about, I don't see you attacking these. You should take that $7 million, and make sure these cybersquatters are gone. And she gives a list there, it looked like about 10,000 cybersquatters. I mean, why don't you take some of this surplus that you are getting and do the job?

I think your job should be not just developing a surplus, but actually implementing, making it cheaper for consumers, and actually doing your mission, which is some of these four things that Verizon has talked about.

Dr. Lenard, anything you would suggest more? I mean, this idea that he is developing this huge surplus in this not for profit organization. I mean, that just doesn't seem appropriate, considering Ms. Deutsch talked about $75,000 for a fee.

Mr. LENARD. Yes. I mean, I think it is related to the general issue of accountability, and the fact that ICANN is largely accountable to itself.

Mr. STEARNS. So, it could make the surplus four times that if it wanted. Yes, thank you, Mr. Chairman.

Mr. BOUCHER. Thank you very much, Mr. Stearns. The gentleman from Michigan, Mr. Dingell, is recognized for five minutes.

Mr. DINGELL. Mr. Chairman, thank you. This question to the panel, yes or no answer.

Ladies and gentlemen, the results of the midterm review of the Joint Project Agreement between NTIA and ICANN, completed in February '08, indicated that further work was required to increase institutional confidence in ICANN. These areas included long-term stability, accountability, responsiveness, continued private sector leadership, stakeholder participation, increased contract compliance, and enhanced competition.

Has ICANN, to date, adequately addressed these concerns? Starting with Ms. Alexander, yes or no.

Ms. ALEXANDER. Thank you very much, Congressman. Given that we have an open proceeding on this——

Mr. DINGELL. Just yes or no.

Ms. ALEXANDER [continuing]. Particular issue, I am not in a position to answer yes or no with the open proceeding.

Mr. DINGELL. Next panelist, yes or no.

Mr. TWOMEY. I would say yes, in respect.

Mr. DINGELL. Next panelist.

Mr. SILVA. I would say no.

Mr. DINGELL. Next panelist.

Ms. JONES. No, sir, Mr. Chairman.

Mr. DINGELL. Thank you. Next panelist.

Ms. DEUTSCH. No, sir.

Mr. LENARD. No, sir.

Mr. DINGELL. Ms. Alexander and the other panelists, again, if the JPA terminates and is not extended, does NTIA, do you have

concerns about the ability of ICANN to ensure stability and security on the Internet. Yes or no.

Ms. ALEXANDER. Yes, thank you very much, Congressman. Again, given the fact that we have an open proceeding——

Mr. DINGELL. I am sorry, but my time is limited, and I have got a pile of questions here.

Ms. ALEXANDER. Thank you.

Mr. DINGELL. Sir. Question.

Mr. TWOMEY. No, I think it has little impact.

Mr. DINGELL. Next panelist.

Mr. SILVA. I would say that I have concerns about the security and stability.

Mr. DINGELL. Next panelist.

Ms. JONES. Yes.

Mr. DINGELL. Next panelist.

Ms. DEUTSCH. Yes.

Mr. DINGELL. Next panelist.

Mr. LENARD. Yes.

Mr. DINGELL. Now, recently, in view of reports that the U.S. Government has been subject to cyberattacks from abroad, do you believe that upon expiration of the JPA, the U.S. Government will have adequate input into ICANN's efforts to ensure the stability and the security of the Internet? Again, yes or no, if you please.

Ms. ALEXANDER. Thank you very much. Security and stability will guide the Department of Commerce in all of these areas.

Mr. DINGELL. Next panelist.

Mr. TWOMEY. Yes, comprehensively, because it is not covered within the JPA details to start with.

Mr. DINGELL. Thank you. Next panelist.

Mr. SILVA. I don't know the answer to that definitively, but I would share those concerns.

Mr. DINGELL. Next panelist.

Ms. JONES. Yes, we would continue to have concerns there.

Mr. DINGELL. Thank you. Next panelist.

Ms. DEUTSCH. We would, as well.

Mr. LENARD. I agree. We would have concerns.

Mr. DINGELL. Now, NTIA, oh. This to Mr. Silva. As permitted under its contract with ICANN, VeriSign raises prices that it charged for the .com registry in 2007 and 2008.

For what reason did VeriSign do so?

Mr. SILVA. Sir, specifically, these fee increases were used to invest in the infrastructure, and to build that out. As a matter of fact, we have publicly stated we created a project called Project Titan, for which we are investing over $100 million and fortifying that infrastructure globally, not just adding dots on a map, if you will, but also, increasing the capacity to each of those locations.

When you look at some recent events, such as what happened to Estonia, what has happened recently in China, specifically, those were, part of those were DNS attacks, which were designed specifically to take the entire country's economic system down. We want to make sure that that doesn't happen to .com.

Mr. DINGELL. Thank you. Similarly, does VeriSign plan to raise its prices again in 2009? Yes or no.

Mr. SILVA. That is, I am not in a position in the company to answer that question yes or no.

Mr. DINGELL. You can't.

Mr. SILVA. That is not my role in the company.

Mr. DINGELL. All right. Ms. Alexander, allegations have been made that the six year contracts agreed upon in 2006, between ICANN and VeriSign, for the registry of the domain .com, suffers from lack of transparency.

Upon review, does the Department of Commerce share this view? Yes or no.

Ms. ALEXANDER. Thank you very much, Mr. Congressman. The Department did, in fact, approve this agreement in 2006, after consultation with the Department of Justice and other national security agencies, and also, registrars, ISPs, and trade associations.

Based on those consultations, we actually amended our cooperative agreement with VeriSign, to retain the right to approve any substantial modifications to those contracts going forward.

Mr. DINGELL. All right. Mr. Chairman, I have two more questions I think are very useful here. Ms. Alexander, given these allegations, does the Department intend to ratify another agreement between ICANN and VeriSign on the expiration of the current agreement? Yes or no.

Ms. ALEXANDER. The agreement expires in 2012, and at that time, when the information is furnished to the Department, we will again, once again, conduct a fulsome review of that, discussing it with the Department of Justice, other stakeholders, and figuring out the best way forward.

Mr. DINGELL. Thank you. Now, other panelists, if you please. Let us return to the earlier question. Allegations have been made that the six year contract agreed upon between ICANN and VeriSign in 2006 lacks transparency.

Do you agree with that statement? Yes or no.

Mr. TWOMEY. The contract is on public record, so I don't agree with it.

Mr. SILVA. I don't agree with that statement.

Ms. JONES. We agree that the manner in which the contract was negotiated lacks transparency, but inasmuch as the contract has now been published and we know what it says, I guess it is transparent now. We don't necessarily agree with the outcome.

Mr. DINGELL. But it wasn't transparent earlier.

Ms. JONES. I am sorry.

Mr. DINGELL. It wasn't transparent earlier.

Ms. JONES. That is correct.

Mr. DINGELL. Next panelist.

Ms. DEUTSCH. I am unfortunately not an expert on that particular question, so I don't know the answer.

Mr. DINGELL. Next panelist, please.

Mr. LENARD. I am not an expert on that contract, either, so——

Mr. DINGELL. Mr. Chairman, I ask unanimous consent that I be permitted to write a letter to the panelists, making further inquiries, and that the record remain open, so that both that letter and their response can be included in the record of the day.

Mr. BOUCHER. Without objection.

Mr. DINGELL. Thank you.

Mr. BOUCHER. And other members, I am sure, are going to want to propound questions to you, as well. So, as you receive those inquiries, making a prompt reply would be very helpful to us.

And without objection, the record shall remain open until replies are received.

The gentleman from Arizona, Mr. Shadegg, is recognized for five minutes.

Mr. SHADEGG. Thank you, Mr. Chairman.

Ms. Jones, I would like to begin with you. I believe you testified that Go Daddy would like ICANN to operate in a more transparent and accountable manner. How would you like to see that happen, and do you believe the JPA can be strengthened to achieve that goal?

Ms. JONES. I will answer your second question first. Yes.

Mr. SHADEGG. OK.

Ms. JONES. There are a multitude of ways in which we think accountability can be improved. I will give you an example. ICANN holds three open board meetings a year. The rest of their meetings of the Board are done in private.

We have repeatedly asked for those meetings to produce transcripts. It is a very simple, black and white request. We can't get it. A couple of days after they happen, we can get an agenda, and a couple of days after that, we can get minutes, but we would actually like to know what is going on in those meetings. That would be an example.

The way they negotiate contracts with registries. We would love to know what is going on in those meetings. Let us make them accountable for the decisions they make, particularly as they relate to the questions that Mr. Stearns asked about prices, what they are doing with their money, line items in their budget. I mean, we make requests for information, we basically get stonewalled.

I could go on and on, but there are some basic, fundamental things that we would like to see. All of that can be and will be, if we have any input, written into the JPA in its new version.

Mr. SHADEGG. Does ICANN set the standards by which you operate when you issue a name?

Ms. JONES. Generally. We are accredited by ICANN and then, we operate with a contract with, for example, VeriSign, on a .com. And ICANN, I think its mission is to be a coordinating body. We don't expect them to issue rules, for example, about what we would do with Internet content or domain name disputes, because we don't decide the outcome of those disputes, but we operate at their luxury. So, inasmuch as they are our accrediting body, yes. They make the rules for us.

Mr. SHADEGG. Dr. Twomey, can you tell me what steps ICANN has taken to address the concerns raised during the JPA midterm review that further work was needed to increase institutional confidence in ICANN?

Mr. TWOMEY. Thank you, Congressman, and I appreciate your question.

I have to say, in response to the last answer you heard, I have got to be quite clear. It was just wrong. ICANN publishes its agendas for all meetings, seven days before the meetings. The Board meetings, their decisions are released within three days, and with-

in a couple of days after that, a full transcript of the Board is released.

Mr. SHADEGG. A full transcript of the Board meeting?

Mr. TWOMEY. A full transcript of the Board discussions. Transcript of how, full details of the Board discussion.

Mr. SHADEGG. Well, wait, wait. There is a difference details and transcript. Is it a transcript, taken like a court report, the gentleman here is taking right now, or is it a——

Mr. TWOMEY. It is a comprehensive set of minutes.

Mr. SHADEGG. It is a set of minutes.

Mr. TWOMEY. It is a comprehensive set of minutes.

Mr. SHADEGG. But it is not a transcript.

Mr. TWOMEY. But it is not this decision and that decision. It is a full description of the——

Mr. SHADEGG. I think we are familiar——

Mr. TWOMEY [continuing]. Of each Board member, so——

Mr. SHADEGG. I think we are familiar with Board minutes versus a transcript.

Mr. TWOMEY. No, I think——

Mr. SHADEGG. And what Ms. Jones said was they would like a transcript of the discussions that occurred, and the reasoning that occurred, Board minutes summarize that, rather than produce it in a word for word discussion.

Mr. TWOMEY. Congressman, I will be happy to share with you examples, and I will send them to you for you to make that judgment.

In terms of transparency, we have three minutes a year. We have public meetings. We have the fully minute and posted Board meetings. We translate all our documentation into the five of the UN languages. We transcribe discussions at our meetings, full transcripts at the meetings. We have 53 public consultations in 2008. We had one every week.

We have an independent ombudsman. We have corporate blogs. We have full public comment, to come to your question of transparency. I think it is——

Mr. SHADEGG. I think you are still trying to respond to my question to Ms. Jones, and I asked you if ICANN had taken work, or taken steps to increase confidence in, institutional confidence in ICANN. I was asking you what steps you have taken, and I don't believe—well, are these all steps you have taken since that midterm review?

Mr. TWOMEY. Well, no, they are not. Many of these we had in place, but we have taken more steps on transparency. We have taken, we have produced in more detail our accountability, a full description of our accountability processes. We have improved, extensively, the participation, openness and participation in meetings, to full online participation in all meetings. We have, in, we have proposed now to amend our bylaws to further expand our Internet, independent review mechanisms, including basically setting up, expanding our Review Panel processes.

So, there has been a series of steps. Again, I, they are actually quite comprehensive, so I would be happy to respond to those more in detail with you in writing.

Mr. SHADEGG. Mr. Chairman, my time has expired, but I would like to hear, I would like to allow the other panelists to comment

on the steps that ICANN has taken since the midterm review. If there is anyone on the panel that would like to comment on those steps.

Ms. JONES. I will comment.

So, again, we commend the progress that they have made. We don't disagree that he is sitting on top of a numerous page document that describes their accountability functions. That they publish minutes, detailed minutes from their Board meetings. I think I said that in my answer before, but we still think, and we know from the current version of the JPA, that there are goals articulated in that document that they have yet to fulfill.

Has progress been made in the last 18 months? Is there more room for progress to be made in the next 18 months? Absolutely. And that is why we feel like an extension today and a renewed version in the future will help define the progress that is yet to be made in the future.

Mr. SHADEGG. Anybody else like to comment? Yes, Doctor.

Mr. LENARD. The only thing I would observe is that I think, although they get conflated in this discussion, I think there is a big difference between transparency and accountability. You can be very transparent and be totally unaccountable, and——

Mr. SHADEGG. Excellent point.

Mr. LENARD. The way we have viewed accountability in the work we have done is basically accountability to some external party, which you can be very transparent, and still not have that, so——

Mr. SHADEGG. Thank you very much.

Mr. BOUCHER. Thank you very much, Mr. Shadegg.

Mr. SHADEGG. Thank you, Mr. Chairman.

Mr. BOUCHER. The gentlelady from the Virgin Islands, Mrs. Christensen, is recognized for five minutes.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman.

My first question would be to you, Ms. Alexander. Do you, on the fees, in 2000, GAO conducted a review on the Department of Commerce's relationship with ICANN, and noted that, as a project partner with the Department under the Memorandum of Understanding, ICANN is allowed to collect fees, but is limited to recovering only the actual cost.

Does NTIA believe that the fees being charged by ICANN are consistent with the Department's policy to allow project partners to cover only actual project costs, and are you concerned that the potential revenue to be generated by ICANN's proposal, which may exceed $100 million, do you believe that those fees should be limited to the actual costs of managing the new GTLDs?

Ms. ALEXANDER. Thank you very much, Congresswoman, for the question.

There are a variety of different fees that ICANN charges, and it is very difficult, in the panel discussions, everyone is talking about different fees. But to the extent the question you are raising, yes. The Department still believes that ICANN, as a nonprofit, should be charging fees that are consistent with what their costs are.

And in our letter that we filed last year, in the GTLD public consultation process, we actually raised the issue, with the actual better explanation of the fee structure and disposition of excess revenues, if there were to be any.

Mrs. CHRISTENSEN. Thank you. Mr. Twomey, Dr. Twomey, on the accountability issue.

You mentioned that just recently, ICANN released proposals to establish a new independent review tribunal, to review ICANN's Board decisions. And one, I am wondering why it took so long to recognize that need, but doesn't ICANN also, don't your bylaws already provide an independent review mechanism to review ICANN's Board action, and has it ever been used?

Mr. TWOMEY. Thank you, Congresswoman. And you are quite right. We actually have a series of existing mechanisms for, multiple series of accountabilities. On the particular one about appeals, we have an independent ombudsman. We have a Board review process. We have an Independent Review Panel, which is an independent arbitration mechanism, that is presently being utilized by one particular party. So we are actually presently, that is presently being utilized by one party.

I should reinforce for all the members, we are under U.S. law, and we have been accountable before the U.S. courts on many occasions. So, we get sued under U.S. courts. The provisions I have pointed to were further consultations with our community since the midterm review, with some further things we were putting into the accountability process.

But I would also recommend to you and other members of the panel, to the committee, that as being a not for profit under the Californian law, we are also accountable to the California Attorney General. So, we have multiple legal accountabilities already under the California Code, as well as under courts. So, there is a range of those ways of being accountable.

Mrs. CHRISTENSEN. Ms. Jones, how would you respond to ICANN's argument that as a California-based not for profit, it is bound by state and federal laws concerning contract, tort, and antitrust?

Ms. JONES. Well, I think every organization that is organized in any state is accountable to its state's attorney general. I don't think that is the point we are making here.

And by the way, if I could respond to your earlier point about the Independent Review Board.

Mrs. CHRISTENSEN. The tribunal, sure.

Ms. JONES. Just, we could throw in another acronym, but I will try to forego that for your purposes.

Mrs. CHRISTENSEN. OK.

Ms. JONES. If the ICANN Board appoints the members of the Review Board, it is, by definition, not independent, and therefore, not accountable. All of the review mechanisms we have in place right now, the ombudsman, the re-review, they are all reviewing ICANN. What we are saying is we want them to be accountable to the community. If we are going to have a community-based Review Board, that is an actual international organization that can say, the ICANN Board made a decision, and we are going to take a look at it, and determine if it was appropriate or not. That is accountability, right?

We shouldn't have to have somebody go to the Attorney General and make a complaint. They shouldn't have to go to the court and file a lawsuit. Why do we have to go there? Why do we have to

have Verizon spending millions upon millions of dollars in litigation every year? It is not necessary.

That Board should be independent. It should be appointed by independent constituents, and review the decisions without input from the Board itself.

Mrs. CHRISTENSEN. I tend to agree, but Dr. Twomey, do you think it is independent? I see you shaking your head. I will give you a chance to respond.

Mr. TWOMEY. Well, I just want to, again, one of the statements is just wrong. The Independent Review Panel is not set by the ICANN Board. The Independent Review Panel's members are drawn by the International Center for Dispute Resolution, an international arbitration body, and we follow traditional international arbitration mechanisms, so that we don't set the panel members whatsoever. The independent review arbitration body is the one who puts forward panel members. We don't.

Mrs. CHRISTENSEN. Go ahead.

Ms. JONES. I just wonder if he can give us an example of one that has been used. And I know I am not allowed to ask questions.

Mrs. CHRISTENSEN. Well, I think at the end of one of my questions, I asked that the Independent Review Board that already exists has ever been utilized, and that will be my last question.

Mr. TWOMEY. Thank you, Congresswoman.

As I said before, it is actually being utilized at the moment. We are actually actively in an arbitration in that Review Panel at the moment.

Mr. BOUCHER. Thank you very much, Mrs. Christensen. The gentlelady from California, Ms. Matsui, is recognized for five minutes.

Ms. MATSUI. Thank you, Mr. Chairman.

Under the Joint Partnership Agreement, the U.S. Government affirmed its goals of preserving the security and stability of the Internet domain system. I want to focus on cyberattacks, mostly initiated abroad. They continue to pose a threat to consumers, businesses, and to government.

Mr. Silva, in your oral testimony, you mentioned that a number of cyberattacks are initiated by individuals or groups in foreign countries, like Estonia and Russia. Given the increase we are witnessing in cyberattacks globally and, I guess, the United States, critical infrastructure, it seems to me, that many of our cybersecurity efforts tend to be more reactive and not proactive enough.

The President's announcement this week of a newly created National Cybersecurity Advisor will certainly bring renewed focus and coordination on this issue. Is there anything the government can be doing, as well as consumers, to stay ahead of the latest techniques used by today's organized and sophisticated cybercriminals?

Mr. SILVA. Thank you. I believe that in concert with the announcement that the President made was also a report that was published, which was the result of a 60 day review by Dr. Hathaway and her term.

I believe that that outlined some very positive steps that the government can take, and there were some good recommendations, which I certainly support in that document. As for consumers, I believe that consumers first need to be educated on the issue.

Unfortunately, cybercrime is something that always seems to happen to someone else until it happens to them. And it is unfortunate, because they have probably already been a victim of it and don't even know it. In the confiscated machines of the attackers who have conducted phishing attacks, or attacks where they have attempted to steal credit cards, the contents of those machines don't have tens of thousands of numbers. They have millions of numbers.

Ms. MATSUI. OK.

Mr. SILVA. So, as far as consumers go, and what they can do better, I think that will be the result, the outcome of that will be the result of a broader educational campaign, either through public awareness or through our education system.

Ms. MATSUI. OK. Ms. Jones, in your testimony, you state that one of your major concerns is that ICANN is not adequately prepared to defend itself against cyberattack. What are some of your specific concerns about this?

Ms. JONES. The type of attack that we are talking about is the entire organization being taken over by another entity, and that could come in the form of an international organization, another government, some kind of other business, and that is not to say that they can't ever build a protection against being taken over, but we are just concerned that today, and I think even Dr. Twomey said this in his testimony, they need to establish a permanent, long lasting set of principles upon which we can prevent them from being taken over.

Now, I can tell you, if you take a look at the record from the WSNS round of talks, conversations about the UN or the ITU taking over ICANN, there are plenty of countries that aren't necessarily friendly to the open exchange of ideas, shall we say, to put it delicately, that would be very happy to take over this function.

Ms. MATSUI. Then let me follow up here. Dr. Twomey, what assurances could you provide us that the United States will always play a critical role with the organization, let us say, if the JPA is allowed to expire in September?

Mr. TWOMEY. Excellent question. First and foremost, and very importantly, is the IANA contract. The procurement contract is at the core of the link with the United States Government with ICANN. Because the actual operation of IANA functions is at the core of what ICANN does. So, that is the first and foremost instrument.

Secondly, as I said before, we are based in the United States, covered by United States law, covered by the purview of people like this committee, as well. Thirdly, is that we have quite comprehensive interactions with the United States Government as part of its leading place in the ICANN Government Committee, and fourthly, because like any leading government, we need to be closely engaged. We have been heavily engaged, for instance, on cybersecurity issues, but also, on other issues, competition, choice, and whatever.

So, there is multiple layers of that engagement. I have to say, that is one of the reasons why I actually make the point about the Joint Project Agreement, which I think is a very different type of instrument, that if the Joint Project Agreement expires, nothing

changes. I think that is the key point we are trying to make, and I am concerned by some of the statements made today, is that if the Joint Project Agreement expires, nothing changes in the way in which ICANN interacts and continues its role, or the importance of the link with the United States Government.

Ms. MATSUI. OK. I see my time has expired. I probably have some other questions in the second round. Thank you very much, Mr. Chairman.

Mr. BOUCHER. Thank you very much, Ms. Matsui. We have a series of three recorded votes pending on the floor of the House, and additional members who have questions they want to propound to you.

We also probably will find the need to engage in a second round of questions propounded by the members who are here. And so, pending all of that, we are going to recess, while these recorded votes are completed. We will ask for your patience. Please remain in the room or nearby, and the subcommittee will reconvene shortly.

[Recess.]

Mr. BOUCHER. The subcommittee will reconvene, and at this time, I am pleased to recognize the gentlelady from California, Ms. Eshoo, for her questions, and she is recognized for five minutes.

Ms. ESHOO. Thank you, Mr. Chairman, for continuing this important hearing, and I do support having more on this, because I think there is work for the committee to do.

I want to thank the witnesses for your testimony today, and first, I want to start out with a few observations, and then ask a couple of questions. I will go as quickly as possible, because we only have five minutes.

In my opening statement, I thought it was important to acknowledge that ICANN, as an organization, has had several noteworthy accomplishments, and I mentioned some of those. And so, I want to be fair in acknowledging that. That is one side of the ledger, and it is an important side, and I salute you for the accomplishments that you have achieved.

On the other side of the page, I think that there is some work to be done. I think that to allow the spinning off of ICANN at the end of this timeframe is not the right way to go, and I just don't. I hope that the committee comes to the same conclusion. What is troubling to me are the following things.

First of all, it is with much curiosity to me that, as the United States of America is the mother, the father of the Internet, and that its ultimate trademark, so to speak, imprimatur, is that it is open. And we have had many debates, many fights, to define what is open, how to keep it open, because it is democratizing. It is all of these things and so much more.

And yet, it seems to me, from some of the testimony today, that the way ICANN operates does not match that. And I don't think that is healthy. And I don't think it really promotes what the Internet is about. If ICANN were spun off, how do we guarantee an open future, relative to the Internet? Who would? Who would they be accountable to? How do we have any kind of say-so in this?

I know that Iran, Cuba, China, are interested. They would love to take it over. And hey, God bless them. They have got good taste.

They know something good when they see it. But I am troubled by the lack of accountability. I believe that we need to be thinking about a new set of rules, that would be part of the Agreement in the JPA.

It is my understanding, Mr. Twomey, that in 2003, that there were public members, and they were voted off the Board. Is that correct, or is it incorrect?

Mr. TWOMEY. There was a round of Board members who were elected worldwide. It was much earlier than that. It was in 1999 and 2000.

Ms. ESHOO. I don't know what you are saying. Were they public members, or just regular members, and then, they rotated off the Board?

Mr. TWOMEY. These were Board members. Some—the Board——

Ms. ESHOO. Are there any public members?

Mr. TWOMEY. There is—members—even you mean consumers, representing consumers, yes, there are.

Ms. ESHOO. And who are they? And how many are there?

Mr. TWOMEY. There is one member on the Board now, Wendy Seltzer, and she is a member of the Board, and we are looking at, potentially looking at increasing those numbers.

Ms. ESHOO. Looking at increasing. So, one out of how many?

Mr. TWOMEY. Well, that is out of 21.

Ms. ESHOO. That is a pretty lousy ratio, if I might say so myself.

Mr. TWOMEY. But I would say that the same group helped select nearly half of the Board members in terms of our nominating committee, so the same group of people, the same consumer voices involved in that——

Ms. ESHOO. Well, I think I have gotten my answer. It is not very good.

Let me ask you this, Dr. Twomey. What are the specific problems that you are trying to address, by seeking complete independence from the Commerce Department? In other words, what breakdowns have occurred? Why do you want to break? What are you going to go off and do? It seems to me that the Commerce Department and NTIA have a very loose affiliation with you. I mean, this is not a heavy hand, and I am not suggesting it should be. But what do you want to accomplish by spinning off? What is in your way now? What is in the way?

Mr. TWOMEY. Congresswoman, let me be very clear. We are not looking for independence. I mean, there is——

Ms. ESHOO. What are you looking for, then?

Mr. TWOMEY. We are looking for the continuation of the model.

Ms. ESHOO. Do you want the JPA? You want to continue in it?

Mr. TWOMEY. We think the JPA should come to its conclusion, because it has completed its task.

Ms. ESHOO. What does that mean? You want it to come to a conclusion? What does that mean, it comes to an end, and there isn't any JPA anymore?

Mr. TWOMEY. Well, what we think is we should move away from temporary, these sort of temporary documents. The JPA, at the moment, is a two page document, two pages.

Ms. ESHOO. Well, why is it so menacing to you, then, if it is only two pages.

Mr. TWOMEY. And so, what we are suggesting is, what we are actually suggesting is that we should actually put in place some of the principles that the members of the committee think are important, we should put them into a more permanent statement at the end of the JPA process.

Ms. ESHOO. You know what I think this is, and I hope I am wrong, but this is the impression that I am getting, is that there is disdain for any U.S. authority in this. And while we have to have very strong partners throughout the world, our role, you know, can't be and should not be, in my view, leapfrogged over. Is that——

Mr. TWOMEY. That is not the intention at all.

Ms. ESHOO. That is not the intention.

Mr. TWOMEY. Not at all.

Ms. ESHOO. Is there any sensibility around that, or is it totally false?

Mr. TWOMEY. There is a balance, right, in this broad debate, of how to have an organization that is accountable to the United States, in the way you are putting forward, and at the same time, engages all of the country code operators of the world, all of the governments who are in our Government Committee, all of the people who make the system work.

And so, we are not looking to——

Ms. ESHOO. Well, I don't know whether you have told us what the problem with the JPA arrangement is, which is a mystery to me that you want out of it, but it seems to me, Mr. Twomey, that you have been saying to us that stakeholders want to be independent, and we have stakeholders that are testifying, that are saying absolutely not.

So, there is a division of approach here, and that is why I think we have some more work to do on it, and I hope that what we can count on, when we get to a rewrite or an extension of the JPA, is that we get some very good ideas from stakeholders' suggestions about some of the rules of the road.

I don't pretend to know what all of them might be, but it seems to me that we have got some experts here today, and plenty of others, but I really do not believe that this thing should just be spun off. I don't think A, it is necessary, B, putting on my hat, and I know I am going over time, but I think I am the only other one here, as a member of the House Intelligence Committee, how important the Internet is to our country, in our national security, in the role that it plays.

And so, I think just allowing ICANN to go off, to spin off, to become I don't know what, is deeply concerning to me, when I put that hat on.

So, I want to thank all of you, and I look forward to working some more on this, Mr. Chairman, and I appreciate the extra time and your patience.

Mr. BOUCHER. Thank you very much, Ms. Eshoo.

I am going to ask unanimous consent, at this point, to insert three statements in the record that have been submitted to the subcommittee, commenting on the general subject matter before us today. These have been reviewed by the minority. Without objection, these will be inserted in the record.

[The information appears at the conclusion of the hearing.]

Mr. BOUCHER. Mr. Stearns and I both have some additional questions we would like to propound, and so, we are going to open a second round of questioning for such members of the subcommittee as desire to propound additional questions.

And Mr. Twomey, let me continue the questioning of you, and return to the subject of the proposal that you have to issue additional top-level domains.

What assurance do you have, and can we take, that if additional top-level domains are authorized, that real competition will emerge in the bidding for these domains? Have you taken any kind of survey of potential bidders?

As a related question, will you have any kind of bar on existing registrars being able to bid for these domains? In other words, registrars who currently administer other top-level domains?

And what other assurances can you put in place that there will be real competition, in the event that new top-levels are authorized?

Mr. TWOMEY. Well, thank you, Chairman. From all of the feedback we have received in the process, which has been going, this discussion of new GTLDs has been going for ten years. The policy process took five years, with all of the stakeholders involved. We are now going through this how do you implement 18 month discussion.

In that process, it has been clear to us that there is a range of people who are very interested in applying. Some are in pretty general terms, they are looking for general terms in English, .shops and .webs, that sort of thing. Quite a lot of people interested in geographic terms. As I mentioned before, some of those cities, Berlin, New York City, Paris.

Interest from indigenous communities. There is some talk about potentially a .maori or a .sami, so people are looking to represent that. There is clearly interest from some companies for brand names, and you wouldn't be surprised, Chairman, to know that companies are not monolithic. So, not only will be hear from intellectual property lawyers from inside the company that is concerned. We also hear from their marketing departments and the product development departments that they are really interested in having a top-level domain. So, we are hearing that difference. And I think the——

Mr. BOUCHER. Well, you have talked about areas where you might have one bidder. If it is an indigenous tribe, for example, potentially, you would have that tribe bidding to operate, or someone associated with it, I don't know. But do you think you would have real competition in the bidding for such a top-level domain? Would you have a variety of bidders seeking——

Mr. TWOMEY. The process would be fully open, so if other bidders wished to bid——

Mr. BOUCHER. Well, I understand the process would be open, but to what extent do you have confidence that there would be real competition in the bidding, through that open process?

Mr. TWOMEY. We are trying to make the process as open, as transparent, and as——

Mr. BOUCHER. Well, you are answering my question with a process answer, and I am really asking a more fundamental question. It is almost an empirical question. Have you actually done a survey, and identified, within these various TLDs that you might issue, more than one bidder, or any bidders for some of them?

Mr. TWOMEY. We are expecting, for some of them, there will be multiple bidders. It has been quite clear, some of the people have made clear that there would be multiple bidders, and we see——

Mr. BOUCHER. Would you demand that assurance, that there will be multiple bidders, before you would authorize a particular new top-level domain?

Mr. TWOMEY. The policy process to date is not prescriptive on that, because we would think there would be instances where people would like to have a top-level domain, for instance, if it was a company brand name, where that company itself would want to have the brand, and not want to have to bid to another person. I mean, that would go to the very heart of the issue we said before about cybersquatting.

Mr. BOUCHER. Well, fair enough, but if your top-level domain is more generic. In other words, if it is .phone, you would certainly want more than one bidder. You would anticipate multiple bidders for such a top-level domain, would you not?

And my question is, would you conduct some sort of empirical survey in advance, just to be sure that there actually would be a sufficient level of competition in the bidding for administering that TLD?

Mr. TWOMEY. One of the things we are putting forward is to have an extensive, is to have an extensive promotion of the process, before it would open. So that people were aware the process was available.

To come to the specific question you are asking, we are not putting forward that we choose the string, and then say, who wants to bid for this. We are actually saying it is not appropriate for us to decide what string people should bid for, but the process should be open and flat, and that it is up to people who think there is an opportunity to put forward a string.

Mr. BOUCHER. Well, the reason I am pursuing this at some length is because the public policy justification for putting companies to the additional costs associated with protecting their brand, that will come from them having to acquire buffers around that brand, not under just the existing TLDs, but potentially, multiple new TLDs as well, is the new competition that comes, and the choice that comes from that.

And if you really don't get a level of competition in the bidding for those TLDs, then that public policy justification seems to me to be diminished substantially. So, I think it is a legitimate are.

Let me ask if anyone else on the panel wants to comment on that question. Ms. Deutsch.

Ms. DEUTSCH. Yes, I would just raise, I guess three points. First of all, I don't think you got a clear answer, but to our knowledge, there has never been that empirical study on the need for new TLDs.

Second, we already think, you know, there are 21 GTLDs today. We think there is sufficient competition in the market today.

Maybe there, you know, could be a few more slowly released, or the international domain names might be something to think about, but 88 percent of all Internet traffic goes to .com. That is still the premier piece of real estate, so there is nothing to say that the addition of all these new ones still won't leave .com in that dominant space. And third, we think, you know, there is not that bidding process. It is more like speculating. People can bid, but you are not going to know who else is bidding for what names. If you happen to bid for the same name, maybe there will be some competition.

Mr. BOUCHER. OK. Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman.

Mr. Twomey, I think you mentioned to the gentlelady from California that you have 21 Board members. How many of those are U.S. citizens? I was told by staff that two thirds are not.

Mr. TWOMEY. Board members are required to come from one of five regions in the world.

Mr. STEARNS. OK.

Mr. TWOMEY. And North America is one of those regions.

Mr. STEARNS. Right.

Mr. TWOMEY. And each region has to be represented on the Board.

Mr. STEARNS. Yes.

Mr. TWOMEY. As it does on each of the Councils of our supporting organizations. The present number, I think, is seven or eight. I will have to check the specific——

Mr. STEARNS. OK. But roughly, I'm right. Two thirds are from other countries, which—and of the 100 employees you have, how many are from the United States? Is it the same ratio? About two thirds are from other countries?

Mr. TWOMEY. No, it is much more from the United States.

Mr. STEARNS. OK, 50/50, you think?

Mr. TWOMEY. It is well over 50 percent. It is over 50 percent.

Mr. STEARNS. So, 50 percent are from other countries. Yes. In looking through your P&L statement, just going back to this net cash reserve, you are up to about $46 million, 425, and you indicated that if you go ahead with these TLDs, it could generate another $90 million.

So, does that mean if you were at $150 million in revenue, that you would try to get this cash reserve up to $150 million? Was that your statement?

Mr. TWOMEY. No, that is not the statement.

Mr. STEARNS. OK.

Mr. TWOMEY. And if I can be quite clear on the budget. The reason the budget has increased is because the very things that some of the members, the committee have raised, or those concerns we have, about 20 percent of our budget is dedicated to security and stability issues.

We have increased quite significantly our allocations to compliance work, and we are now looking at allocating more money to the compliance work. The issues with GTLD funding is that we are required by the community to be cost recovery only for that, that there be no cross-subsidy for anybody who is applying for a new GTLD.

We expect that the fees you are referring are one-off application fees to be dealt with only in that year, and that the actual revenues would come down.

Mr. STEARNS. But you still indicated you, earlier, that you want to have a reserve fund equal to your revenues.

Mr. TWOMEY. I am on public record of saying that they should be equal to about one year of the present operational basis.

Mr. STEARNS. Yes, so, if you are doing $61 million, you want to do $61 million in reserve.

Mr. TWOMEY. It is around—I am on public record as saying I think the number should be around $50 million.

Mr. STEARNS. So, it is not what you said earlier, that it will be equivalent to one year's revenue.

Mr. TWOMEY. That was the advice we had received, but I think it should be—about the one. I have to reinforce why that is important. It is important for security and stability. In the early days of ICANN, we received multiple lawsuits, which we defended quite correctly.

Mr. STEARNS. Don't you have insurance to cover a lot of those multiple lawsuits?

Mr. TWOMEY. We had some insurance, but we have no confidence that would cover all the process.

Mr. STEARNS. Yes. OK, I understand that.

Ms. Alexander, I mean frankly, they are an international organization. They don't necessarily want to be in the United States. I mean, maybe Mr. Twomey wants to take them to Australia. I mean, if they wanted to leave, what could we do to stop them, after the contract expires in September? What could we, what legal things could we do?

You might not be able to answer this, because you are not, I don't know. What legal things could we do?

Ms. ALEXANDER. Thank you very much, Mr. Stearns.

I think, with respect to JPA, I am not in a position to answer those questions. But to the extent that ICANN remains the IANA functions contractor, that needs to be located in the United States.

Mr. STEARNS. There is a legal contract, a need to be in the United States.

Ms. ALEXANDER. Yes, sir.

Mr. STEARNS. OK. Now, Mr. Twomey, let us say, you know, you wanted to be free from the contract with the Commerce Department, and you wanted to be separate and independent, and that is what you and the people would do.

Would you be willing to have competition, have some, another agency set up and compete with you?

Mr. TWOMEY. The functions that are being, well, there is a couple of propositions there. We are not looking to be more independent than we are now. So, I want to keep reinforcing that. We are an independent organization under the law.

Mr. STEARNS. No, I understand.

Mr. TWOMEY. But the actual functions are, in the original design work, functions that needed to be essentially coordinated across the global Internet. This is the allocation of this coordination of domain names and IP addressing.

And in the original analysis, which was done back in the 1990s, as to how to bring that forward. It was seen that they were functions that were unique, that needed to be coordinated at one place. That is why the original white paper called for such an organization, and the Internet community responded to it.

I think the analysis at the technical level remains that is the case. So, we are very carefully structured to try to deal with many antitrust issues, and have, the antitrust issues inside ICANN have been tested and tried several times in U.S. courts, which have confirmed the model.

If the technical analysis were to say that you could have multiple mechanisms of doing that coordination, then potentially, you know, we wouldn't stand against it, but the technical analysis does not support it.

Mr. STEARNS. Ms. Alexander, this is my last question. This is changing the subject totally here. I am going back to the DTV transition.

About 725,000 more households have to prepare themselves for the DTV transition, using the stimulus money. Based upon the Nielsen Rating data, and information from the NTIA itself, at that pace, about 900,000 will have used the money to prepare by June 12. That means we will have spent more than $700 per household for a $50 device. Does that make sense? Assuming my mathematics is correct.

Ms. ALEXANDER. Thank you very much, Congressman. I just want to reassure you that the DTV transition is a high priority for the Secretary of Commerce.

Mr. STEARNS. I notice you are reading that, so that is what they told you to tell me.

Ms. ALEXANDER. And acting Assistant Secretary Anna Gomez. I am not the subject matter expert on this area. We would be happy to provide further answers to these questions, for the committee.

Mr. STEARNS. Yes. All right. Thank you, Mr. Chairman.

Mr. BOUCHER. Thank you very much, Mr. Stearns.

The thanks of the subcommittee to our panel of witnesses. You have been here for a long time. This has been, I think, a very interesting and informative discussion, and we appreciate your contributions to it.

I am sure that members of the subcommittee are going to have additional questions, and some members who were not able to attend the hearing today, because of conflicts will also have questions.

Those will be propounded to you, over a period of the coming weeks, and when you receive those inquiries, to the extent that you can make rapid replies, that will be helpful to us.

We are going to keep the record open from this hearing to receive those replies for a period of about one month, so please be prompt in getting those responses back.

We appreciate very much your attendance this morning, and your informative presentations, and this hearing stands adjourned.

[Whereupon, at 1:00 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

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Opening Statement of Rep. Henry A. Waxman
Chairman, Committee on Energy and Commerce
Oversight of the Internet Corporation for Assigned Names and Numbers (ICANN)
Subcommittee on Communications, Technology, and the Internet
June 4, 2009

I am pleased that the Subcommittee is holding this timely hearing on the Internet Corporation for Assigned Names and Numbers, or ICANN.

As will be discussed today, the Joint Project Agreement between the Department of Commerce and ICANN will expire on September 30, 2009. Around that time ICANN is proposing to introduce an unprecedented number of new generic Top Level Domain names and its Chief Executive Officer, Paul Twomey, is preparing to depart.

Many experts believe that ICANN is facing one of the most critical junctures in its short history. Some believe that how ICANN manages these events could significantly impact not only the global Internet community, but the world economy.

I am pleased that ICANN CEO Paul Twomey is able to join our distinguished panel of witnesses today to shed light on the mission, structure, and governance of ICANN. For the past 11 years, ICANN has played a critical role ensuring the growth, security, and stability of the global Internet. And most would agree that the organization has come a very long way since the Clinton Administration helped establish ICANN.

As we review ICANN's capabilities and resources in relation to the effective and efficient operation of the Domain Name System, we must not lose sight of how this organization affects 1.5 billion Internet users worldwide. It is not just the registers, registrars, e-commerce providers, or government entities that have a stake in ICANN. Every person who relies on the Internet for work, entertainment, study, or simply to manage a hectic schedule, should care about this issue.

It is from that perspective that I am interested in what today's panelists have to say about whether ICANN has matured to the point where the Joint Project Agreement with the

Department of Commerce should be allowed to expire. More specifically, can ICANN on its own "promote stability and security, competition, bottom-up coordination and representation?" Or do we need to maintain direct U.S. government involvement for a while longer?

I also hope today's hearing will explore ICANN's recent proposal to expand greatly the number of generic top-level domain (g-TLDs) names. Although I generally believe that expanding the number of g-TLDs is consistent with ICANN's mission to promote competition and consumer choice, I want to make sure that any such process takes into account the concerns of various stakeholders, including those that are concerned about protecting trademarks.

I look forward to learning more about these issues from our distinguished panelists.

eNom, Inc, 15801 NE 24th Street, Bellevue WA, 98008

June 3, 2009

Chairman Rick Boucher
House Energy and Commerce Committee
Subcommittee on Communications, Technology and the Internet
2125 Rayburn House Office Building
Washington, DC 20515

Chairman Boucher and Members of the Subcommittee:

We appreciate this opportunity to provide comments for the House Energy and Commerce Committee's subcommittee on Communications, Technology and the Internet's June 4, 2009 ICANN oversight hearing.

eNom is a Bellevue, WA based corporation that is the second largest ICANN accredited domain name registrar, by volume, in the world. It powers over 10 million domain names on its platform and connects Internet users to websites two billion times each day. Our executives have been involved in nearly every aspect of the domain name system from technical, policy and business perspectives at both registries and registrars, and dating back to the early years of Internet commerce before ICANN even existed. eNom's parent company is Demand Media, a company that develops, promotes, and distributes web content. It is a top-50 web property worldwide in terms of unique visitors to its network of Internet media properties.

We believe ICANN performs a critical function regarding the administration and protection of the domain name system (DNS). We support its mission of "keeping the Internet secure, stable and interoperable," and "promoting competition and developing policy on the Internet's unique identifiers." We also believe the United Stated government has an important relationship with ICANN which is best represented and preserved by the IANA contract by which the U.S. Department of Commerce contracts with ICANN to administer the data in the root name serves, which form the top of the hierarchical DNS tree.

Like most international organizations that are international in scope with multiple constituencies, ICANN is not perfect. However, ICANN has a talented and dedicated staff and the organization follows an open and transparent process by which a worldwide array of stakeholders can and do participate in the DNS policy process.

There are many important issues surrounding ICANN and we are happy to serve as a resource for any of them, including issues such as DNSSEC, consumer fraud via the Internet and DNS technical capabilities. However, given that the subcommittee is hearing today from a variety of witnesses with varying perspectives on the role of ICANN, we would like to take this opportunity to present a viewpoint that may not be presented today on the issue of introducing new top level domains (TLDs) into the DNS.

As the members of this subcommittee now, ICANN has been deeply engaged for many years in formulating a process for the introduction of new TLDs into the DNS. The introduction of competition through new gTLDs is part of ICANN's charter and is called for in the Joint Project Agreement between ICANN and the U.S. Department of Commerce.

Top-level domains (TLDs) are the "right of the dot" names in an Internet address. Of course, the most widely known and used TLD in the United States and worldwide is .COM, managed by VeriSign, one of the witnesses today. The new proposed TLD program will provide more choices for consumers (especially those who are new to the internet and missed getting a short, memorable and meaningful name in .COM), genuine uniqueness and specificity in TLDs, and greater competition among registries (the companies that manage TLDs such as Verisign).

We strongly believe the addition of new TLDs will bring more innovation, consumer choice and economic growth to global Internet commerce. We see TLDs such as .MOVIE, .NEWS, .MAIL, and .MUSIC providing better marketing focus and consumer choice, as well as new applications tied to domains that have broad appeal to businesses and Internet users. For example, Warner Bros. may be able to better promote their movies by using the actual name in .MOVIE rather than some variation of the movie name in .COM (because so many names are already taken in .COM). Users would know this is the official site for the Warner Brothers movie. A TLD like .MUSIC may provide artists and record companies an opportunity to market their music and products in a verified "piracy free" zone and a .MAIL TLD may become a safer harbor from spam than existing TLDs like .COM.

In October 2008, after several years of work and public comment, ICANN released a "Draft Applicant Guidebook" (DAG or RFP) outlining the proposed process for new TLDs to be applied for; objected to; and awarded. It also proposes the costs to be incurred by the registries who desire to acquire and manage new gTLDs. A formal public comment period to the DAG closed in December, 2008; a second guidebook was issued in March, followed by another public comment period that ICANN has already responded to. A third version of the DAG is expected to be published by early September and a third comment period will follow. ICANN expects a final guidebook near the end of this year and acceptance of applications in early 2010.

We have been closely following the new TLD process for three years and intend to apply. Our plan is to use our TLDs to bring rich content and innovation to the internet, as well as competition in the provision of domain names. We submitted detailed recommendations during ICANN's public comment periods and have been closely involved in ICANN's examination of 'overarching issues' for new TLDs such as trademark protection. We have closely participated with the trademark Implementation Recommendation Team (IRT).

Choice and competition have fostered breathtaking development in the Internet world and extraordinary economic progress over the past 15 years. It is likely new business models will spring up with the availability of new TLDs. As with many aspects of the Internet innovation has always been key, has always outpaced expectations, and has led to the creation of new businesses (large and small), the expansion of existing businesses and the creation of many new jobs. Such innovation is inherently unpredictable and rarely captured by formal studies or research.

A new TLD can provide a great marketing and branding opportunity for a new suite of services. Quite frankly, the possibilities are nearly endless...who could have predicted the development and success of eBay, Google, MySpace or YouTube. Of course, all of the new applications and opportunities are unknown but we should promote, not limit, these possibilities. Fortunately, policy makers have been supportive of a growing Internet by not placing artificial barriers in the way.

One issue that ICANN continues to work on as it progresses toward the timely introduction of new TLDs concerns the protection of trademark rights in the domain name space. ICANN, trademark owners and applicants such as ourselves care deeply about the protection of trademarks in the domain name system and have been significantly involved in developing new "rights protection mechanisms."

Even with no further modifications to the Draft Applicant Guidebook, trademark interests have more protection in new TLDs than exist in COM. Furthermore, our publicly available analysis of new TLDs introduced since 2001 (such as BIZ, INFO and MOBI) shows there have been limited trademark defensive registrations within these TLDs. Trademark issues continue to be vastly and disproportionately greater in .COM than in new TLDs

Nevertheless, ICANN has established a committee (the Implementation Recommendation Team or "IRT") of trademark law experts to make recommendations for even stronger and more efficient protection of trademarks in new TLDs and we support the IRT's efforts. The IRT issued its final report last Friday. The recommendations include 1) an ICANN contracted, centralized database of trademark information that must be used by registries, 2) a method for TM holders to "pre" register their Trademarked names as a domain name in a new top level domain and 3) a new, faster and cheaper procedure to "take down" a domain name that is violating a trademark owners rights. These new "rights protection mechanisms", with some small but necessary adjustments, will be a very significant improvement over the protections and remedies trademark holders currently have in .COM.

The IRT has also recommended the creation of a "globally protected marks list" (GPML) which would grant preferential treatment in the DNS to a small number of large, corporate trademark holders. We have significant concerns with the practicality and usefulness of this Super List. To begin with, no one, including the IRT, can seem to come up with the appropriate criteria to be on the Super List. Furthermore, the process for Super List inclusion will likely be exceedingly political, for example, developing countries will fight for special criteria so it is not dominated by large corporate interests from developed countries. Finally, updated intellectual property laws and methods, particularly in the Internet age, have upheld the principle of post-usage enforcement rather than pre-usage approval. However the GPML will reverse this long-held principle and create a pre-usage approval burden. The bottom line is that we believe the costs and problems of the Super List will greatly exceed its benefits and that Trademark rights protection is much better served by other proposed RPMs including the objection process outlined in the current RFP/DAG.

Another issue that merits brief discussion is the suggestion by some that ICANN should limit the number of new TLDs or implement a phasing in approach. ICANN tried a slow release of new TLDS in 2001 and 2004. Unfortunately, those limited rounds failed to bring true competition to the TLD space as the "winners" were judged on very subjective criteria. ICANN realizes it's not in the best position to pick winners and losers and that market forces will better determine which TLDs are successful. Thus, ICANN and the DNS community have spent an extraordinarily long time devising a process that will be fair to all TLD applicants while balancing the needs of trademark holders.

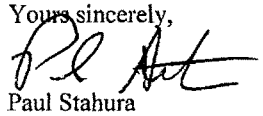
That is the only way to truly bring competition and innovation. An analogy is the USPTO. The USPTO does not simply issue a limited number of patents per year that seem to look promising. Rather, they approve patent applications that meet statutory criteria and the market decides what is most innovative and desired by consumers.

In conclusion, the creation of genuine competition at the top level is one of the key reasons for ICANN's creation. In addition to improving choice, service and price for registrants, we think true competition will help solve many of the operational and policy issues that ICANN currently confronts (as more competitive markets tend to find solutions to consumer problems). We view the Draft Applicant Guidebook as a solid procedural basis to introduce new TLDs. Considerable time, effort and thought was applied to developing this Guidebook and we think it reflects the compromises necessary to balance the views and needs of diverse interest groups.

Our primary concern is that there is not a further delay in the process. It has been ongoing for a long period of time with several timeline extensions already. We believe further delay will create a loss of confidence in the process and will negatively impact the business plans and investment capabilities of many potential applicants. Should this happen the eventual implementation will be much less successful in creating true competition and innovation.

We urge you to support Internet growth, competition and job creation through the introduction of new gTLDs.

Yours sincerely,



Paul Stahura
Founder, eNom, Inc.
Chief Strategy Officer, Demand Media, Inc.

June 3, 2009

Congressman Rick Boucher
The United States House of Representatives
2187 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman,

Mr. Chairman and distinguished members of the committee, thank you for convening tomorrow's timely hearing on issues concerning the Internet Corporation for Assigned Names and Numbers (ICANN). It is a topic that too few understand and that too little attention has been given to it. Today, there are over 360 billion users of the Internet, but it is likely that less than one percent of the users are aware that Internet policy is set by ICANN. Given the commercial significance of the Internet and the potential national security threats possible through the Internet, it is critical that the United States Congress involves itself in this matter.

I am the president and founder of the Coalition Against Domain Name Abuse (CADNA). CADNA, a 501(c)(6) non-profit association, which was founded over two years ago with the help of Fairwinds Partners and interested companies to combat a variety of abuses on the Internet. CADNA represents businesses vital to the American and global economies, including American International Group, Inc., Bacardi & Company Limited, Compagnie Financière Richemont SA, Dell Inc., DIRECTV, Inc., Eli Lilly and Company, Goldman, Sachs & Co., Harrah's Entertainment, Inc., Hewlett-Packard Company, Hilton Hotels Corporation, HSBC Holdings Plc, InterContinental Hotels Group, Marriott International, Inc., New York Life Insurance Company, Nike, Inc., Rosetta Stone, Inc., Verizon Communications, Inc., Wells Fargo & Company, and Wyndham Worldwide Corporation.

CADNA was founded in response to the growing international problem of cybersquatting, which is the bad faith registration of a domain name that includes or is confusingly similar to an existing trademark. In addition to the mounting legal costs that companies now face in defense of their own domains, this infringement costs organizations billions of dollars in lost or misdirected revenue. CADNA works to decrease instances of cybersquatting in all its forms by facilitating dialogue, effecting change, and spurring action on the part of policymakers in the national and international arenas. CADNA also aims to build awareness about illegal and unethical infringement of brands and trademarks online. In the two years since its inception, CADNA has generated new intelligence that helps inform and expertly guide its members and increase awareness of CADNA's mission.

CADNA | The Coalition Against Domain Name Abuse, Inc.
2122 P Street, NW | Suite 300
Washington, D.C. 20037
+1 202.223.9252

CADNA seeks to make the Internet a safer and less confusing place for consumers and businesses alike. Taking action against the practices of cybersquatting and domain name tasting and kiting, CADNA provides a framework for brand owners to protect themselves—as well as their investors, customers and partners—from illegal trademark infringement.

Thank you very much for the opportunity to present the views of our organization, the Coalition Against Domain Name Abuse (CADNA), on this very important topic.

With only four months remaining on the Joint Project Agreement (JPA), we feel that it is critical for the Internet community and the US government to pause, take a step back, and reassess ICANN's success as a regulatory body. When US policy was developed in the late 1990s, the United States Government thought that by September of 2009 ICANN would exist as a transparent and reliable force for sensible and practical policies for the Internet. Unfortunately, this has proven not to be the case, and so governments must rethink its stance towards ICANN in a thoughtful and considered manner.

These members of the global business community believe that while ICANN has achieved many things, broad participation and involvement is not one of them. To date, those involved in ICANN policy have not represented the diverse nature of users and user groups that utilize and depend on the Internet in widely varying respects. The diversity, cross-constituency interaction, and overall balanced debate and discussion present in day-to-day policy development, as well as in the international meetings, leave much to be desired. While Internet users, businesses, and governments have slowly begun to take a greater interest in the naming and numbering spaces, we fear that ICANN's current framework does not offer adequate opportunities or incentives to encourage broader involvement. It also does not allow for the development and implementation of good policy.

Unfortunately, ICANN has often fallen short of its duty to maintain the stability, reliability and security of the Internet and tends to favor certain special interests rather than looking out for the diverse interests of the global Internet community. One recent example of this is the decision to open up the Internet to the creation of a limitless number of extensions.

ICANN's plans to dramatically increase the number of website names available for registration will make the web exponentially more complex. Given the state of the current domain name governance system, priority should be given to correcting existing issues rather than expanding the space. For example, it is still too easy for cybersquatters to register domain names in bad faith that are lawfully associated with legitimate entities. Even without these proposed TLDs, cybersquatting grew by 18% in the last quarter of 2008.

CADNA | The Coalition Against Domain Name Abuse, Inc.
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+1 202.223.9252

Conservative estimates put the average cost per sunrise registration around $300. If a typical company registered 20 domains in each sunrise period, the cost to participate in all 200 new TLDs that could be added in 2009 would be $1.2MM. The costs of participating in new TLD launches can be much greater than outlined above due to offers of special registrar queues to raise probability, extra validation services, and gimmicky programs presented by new registries. In addition, many companies chose to register hundreds of domains in recent new TLDs including dot-MOBI, dot-EU and dot-ASIA.

If brand owners chose to participate in just 10% of the new TLDs to be launched in 2009, the average expenditure per brand just for 20 trademark sunrise registrations in each could be $120,000. This represents a steep 37.5 per cent cost increase since the average company spends less than $200,000/year maintaining their domain portfolio.

Brand owners who are already under water due to infringements in the 1000+ worldwide domain extensions will be forced to contend with the added complexity of policing the use of their brands in domain names. The costs of monitoring and enforcing the new TLDs are likely to be significant.

The projected monetary impact on the 1,500 largest businesses if 1,000 New TLDs are released over the next three years can be significant; according to our research, in the most likely scenario, **$1,604,125,000.00 will be spent by the business community on defensive registrations.**

This is not to mention the brand dilution, proliferation of cybercrime and damage to the integrity of the Internet that are sure to occur. These new TLDs will afford the most benefit to domain industry insiders, criminals and others that look to profit in an expanded Internet real estate market.

It is important to consider generic TLDs such as "software" or "computer" that may be applied for by both domain insiders and major corporations. Since ICANN allows registries to establish the rules for awarding names and set the prices, brand owners should create a contingency plan in the event that a competitor registers a key generic TLD that defines their industry.

Below is a simple summary of the cost to businesses and consumers that a proliferation of gTLDs will create:

- An average company will spend $40,000 per year for online and domain monitoring
- Cybersquatting will grow at a rate of 100% year after year
- On average, a global corporation will face 5,000 infringements every year
  50% of all cybersquatting sites receive meaningful traffic
- Cybersquatting sites that garner meaningful traffic receive an average of 600 visitors/year

- 25% of visitors to Pay-Per-Click (PPC) sites click on the posted links
- Of those who click on PPC sites, 75% click on the link provided and paid for by the brand owner represented in the domain name
- Average cost per click is $.50 (conservative est. since clicks can be 10+ times this amount)
- An average company files 10 Uniform Dispute Resolution Policy (UDRP) complaints per year (one domain per UDRP)
- The average total cost of each UDRP is $5,000
- An average company sends 150 cease and desist letters annually (assuming a 100% success rate)
- Cost per cease and desist letter is $50 (even if generated in-house)

*These estimates do not include an estimate regarding the loss of sales or damage to brand value that occur as a result of cybersquatting activities.

Thank you for your time and consideration on this very important matter.

Sincerely yours,

Josh Bourne
President, Coalition Against Domain Name Abuse

CADNA | The Coalition Against Domain Name Abuse, Inc.
2122 P Street, NW | Suite 300
Washington, D.C. 20037
+1 202.223.9252

Statement of
Vince Cerf
Former ICANN Chairman

The expiration of the Joint Project Agreement between the U.S. Department of Commerce and ICANN

The Subcommittee on Communications, Technology, and the Internet

of the

United States House of Representatives

June 4, 2009

I greatly appreciate the opportunity to submit this statement to the subcommittee as it begins to examine the expiration of the Joint Project Agreement (JPA) between the U.S. Department of Commerce and ICANN on September 30, 2009. In doing so, I will echo many of the comments which I have already submitted to the U.S. Department of Commerce.

Background

The Internet Corporation for Assigned Names and Numbers (ICANN) was formed almost 11 years ago. I was Chairman of the organization from November 1999 until November 2007.

Its creation followed a period of considerable debate about the institutionalization of the basic functions performed by the Internet Assigned Numbers Authority (IANA). Nearly simultaneous with the inauguration of ICANN in September 1998 came the unexpected and untimely death of the man, Jonathan B. Postel, who had responsibility for these functions for over a quarter century.

The organization began with very limited sources of funds, a small and overworked staff, and debate about its organizational structure, policy apparatus, and operational procedures, to say nothing of a persistent impugning of its legitimacy from many quarters.

The Memorandum of Understanding Process

Over those 11 years ICANN has benefited from a memorandum of understanding (MOU) with the United States Department of Commerce. There have been 7 versions of that MOU and thirteen report cards from ICANN over that time. The latest amendment to the original MOU is known as the Joint Project Agreement (JPA).

The ICANN of today is larger, more capable, more international, and better positioned to fulfill its mandate. Its major objective is to maintain one global interoperable Internet. The model of multi-stakeholder representation it introduced to a defined area of responsibility (the coordination of the unique identifiers that computers use to connect with each other on the Internet) has worked.

It is my belief that ICANN has benefited from the stability that the MOU process has provided, but that the time has now come to conclude the JPA.

Future Challenges

Partly due to the stability afforded by the ICANN model, the Internet and its vast user population have grown during the same time by a factor of over 20 in all dimensions. The 50 million users of 1997 have become over 1.5 billion users today. The 22 million hosts on the network have increased to over 625 million today (and many more "hidden" behind enterprise firewalls). The bandwidth of the core data circuits in the Internet have grown from 622 million bits per second to between 10 and 40 billion bits per second.

But in spite of this growth (or perhaps because of it), the governance structure of the Internet is still today being closely scrutinized. Last year ICANN was again fending off suggestions from the International Telecommunications Union that there was not enough government influence at ICANN. Recently there have been proposals floated for a G12 type of governance structure at ICANN as an additional accountability mechanism. The fact is ever since 1999 there have been challenges to the fundamental ICANN model as originally, thoughtfully devised through the intervention of the United States Government amongst others.

As ICANN moves into its second decade, the operational Internet will be passing twenty-five. In the course of its evolution, the Internet has become a global digital canvas on which a seemingly endless array of applications has been painted. Despite the broad swath of its current applications, it is almost certain that many, many more will be invented. All of them will rely, for the foreseeable future, on the basic architecture of the system, including the global Internet address space and Domain Name System.

The Model Works

With all this change and challenge, it is a time for certainty, not the forestalling of a decision about whether this model is the right one for another one, two or three years.

As of this writing, there are about 1.6 billion Internet users around the world. Over the course of the next decade that number could conceivably reach 6 billion and they will be depending on ICANN, among many others, to do its part to make the Internet a productive infrastructure that invites and facilitates innovation and serves as a platform for egalitarian access to information. It should be a platform that amplifies voices that might otherwise never be heard and creates equal opportunities for increasing the wealth of nations and their citizens.

That promise will be undermined unless we commit in an un-mistakable way to this model of decentralized coordination of this important resource.

Accountability at ICANN

ICANN's primary responsibility is to contribute to the security and stability of the Internet's system of unique identifiers. In the most direct way, it carries out this mandate through its operation of the Internet Assigned Numbers Authority. The United States Government, through the Department of Commerce, contracts that function to ICANN. There can be no doubt that the conduct of this function in an exemplary fashion is essential not only to maintaining the contract but also to inspiring confidence amongst the international community in ICANN as an organization. The performance of that function is a key point of accountability for ICANN.

But these specific IANA functions, whilst crucial, are not the only point of accountability. ICANN balances multiple stakeholder interests in policy about the implementation, operation and use of the Domain Name System and the address spaces of the Internet. There is a whole community of diverse participants in the ICANN process that scrutinizes ICANN very carefully and this structure also applies checks and balances. The ICANN model means that its processes (whilst it should always be improved) are as transparent as one can find in any comparable organization.

It is these elements that provide the real accountabilities where ICANN is concerned - not the JPA. In fact it is arguable that the JPA has started to become a de-stabilizer. Its repetitive renewal and apparent review by one government has lead many to question the model. That will continue until there is closure and certainty that after 11 years the fundamentals of the model are right.

Of course it is not perfect. But that was never the point of the MOU process. As part of its normal operation, ICANN engages in self-examination and external review of the effectiveness of its organizational structure and processes. Improvements in all aspects of ICANN operation and structure increase confidence in the organization

and its long-term operation. Rather than less accountability, I know ICANN is actively seeking more.

Declaring What Works

The conclusion of the JPA will not make a difference to the practices that are now etched into the firmament of the Internet. Indeed I believe that the JPA should mark not a declaration of independence as some interpret it to be (ICANN has been an independent organization for it's entire eleven years). Instead I believe we need to take this opportunity to make a declaration of another kind altogether.

The MOU/JPA process should be declared a success. That success should be outlined through the writing of a joint report between the US Department of Commerce and ICANN that makes clear the findings of the test that was constructed in the MOU/JPA process

That test phase has clearly demonstrated that the coordination of the Internet's unique identifiers is best done by and organization that is and always will be:

Multi-stakeholder led;
Independent, private sector operated;
Continually seeking more accountability;
A not for profit corporation;
Committed to the performance of a narrow technical function.

ICANN's foundation has been well and truly fashioned. It is the work of many heads and hands. It represents a long and sometimes hard journey. It has called upon many to transform an idea into a constructive and tested model. ICANN is now an enduring institution with a solid foundation.

On this basis I am confident that conclusion of the JPA is not only possible but that it is now also necessary.

The challenge is to ensure a line is drawn in the sand for those that would use the repetitive renewal of the JPA as an opportunity to question ICANN's worth. The conclusion of the JPA will once and for all ensure ICANN is recognized as having earned its place in the Internet universe while still maintaining important and still relevant accountabilities through the IANA contract and the responsibilities ICANN has to global stakeholders.

Again, I would like to express my gratitude to the subcommittee for allowing me to submit this statement on this critical issue.

Vinton G. Cerf

NTIA Responses to QFRs from Congressmen Dingell from June 4, 2009 Hearing "Oversight of the Internet Corporation for Assigned Names and Numbers (ICANN)"

1. **The results of the mid-term review of the Joint Project Agreement between NTIA and ICANN completed in February 2008 indicated that further work was required to increase institutional confidence in ICANN. These areas included long-term stability, accountability, responsiveness, continued private sector leadership, stakeholder participation, increased contract compliance, and enhanced competition. Is it the opinion of NTIA that ICANN has to date adequately addressed these concerns?**

   On April 24, 2009, NTIA released a Notice of Inquiry (NOI) seeking comments regarding the progress of the transition of the technical coordination and management of the Internet domain name and addressing system (DNS) to the private sector, as well as the model of private sector leadership and bottom-up policy development which ICANN represents. One of the questions included in the NOI focused specifically on what steps ICANN has taken to address the concerns expressed in the mid-term review process, and whether these steps have been successful. The record closed on June 8, 2009 with roughly 86 comments. A review of the record reveals almost universal support for the model that ICANN represents, but concerns were expressed regarding ICANN's execution of tasks, in particular as it relates to accountability and transparency in its decision-making. NTIA is currently in discussions with ICANN about the best way to move forward as the September 30, 2009 expiration of the Joint Project Agreement (JPA) approaches.

2. **If the JPA terminates and is not extended, does NTIA have concerns about the ability of ICANN to ensure the stability and security of the Internet? Yes or no.**

   Yes, NTIA recognizes the usefulness of the JPA in developing the ICANN model and regardless of whether the JPA is terminated, modified, or extended NTIA is committed to continuing to preserve the security and stability of the Internet DNS going forward.

3. **Similarly, in view of recent reports that the U.S. government has been subject to cyber-attacks from abroad, does the Department believe that, upon expiration of the JPA, the U.S. government will have adequate input in ICANN's efforts to ensure the stability and security of the Internet?**

   NTIA considers cybersecurity a critical issue and recognizes that there are many entities involved with different roles, including ICANN, given its activities as the technical coordinator for the Internet DNS. NTIA is working closely with ICANN and VeriSign on an initiative to enhance the security and stability of the Internet by developing an interim approach to the deployment, by year's end, of a security technology, called the Domain Name System Security Extensions (DNSSEC) at the authoritative root zone of the Internet. NTIA will continue to work with its private sector and governmental partners on this and other cybersecurity-related projects, irrespective of the disposition of the JPA.

4. **If the JPA terminates and is not extended, does NTIA have concerns that other countries may try to "capture" ICANN and move it out of the United States?**

While NTIA is aware that some countries have challenged the legitimacy of the private-sector led, multi-stakeholder model that ICANN represents, the representation of 83 governments and observers from several intergovernmental organizations in ICANN's Governmental Advisory Committee (GAC) indicates significant governmental support for the ICANN model and suggests that capture by other governments is not an immediate concern. In addition, the Department has required that the Internet Assigned Names Authority (IANA) functions (which ICANN currently performs under contract to the Department) be performed by a contractor physically located in the United States.

5. **In response to a letter sent by this Committee in May 2008, former Secretary of Commerce Carlos Gutierrez stated the Department "will continue to provide oversight so that ICANN [...] maintains its focus and meets its core technical mission." Will the Department of Commerce continue doing so under the new Administration?**

   Yes, the Department of Commerce remains committed to the preserving the security and stability of the Internet DNS. As such the Department will take no action that would have the potential to adversely impact the effective and efficient operation of the DNS or the security and stability of the Internet. The Department takes very seriously its responsibilities with respect to ICANN, both those contained in the JPA as well as in the Internet Assigned Names Authority (IANA) Functions Contract.

6. **In what way does the Department intend to continue that role? Will this include extension of the JPA between NTIA and ICANN?**

   Regardless whether the JPA is terminated, modified, or extended, the Department, through NTIA, will continue its role as an active participant in ICANN by representing the United States Government in ICANN's GAC and by filing comments, as appropriate, in ICANN's various public consultation processes. In addition, the Department's relationship with ICANN will continue as ICANN currently performs the IANA functions under contract to the Department. The Department is in ongoing discussions with ICANN regarding the future of the JPA, and will, of course, provide more information to the Committee once those discussions conclude.

7. **You note in your testimony that "regardless of whether the JPA is terminated, modified, or extended, the Department [...] will continue to be an active participant in ICANN by representing the United States government in ICANN's Governmental Advisory Committee and by filing comments, as appropriate, in ICANN's various public consultation processes." Do you believe that such a level of participation is adequate to ensure proper government oversight of ICANN?**

   The JPA does not provide for, nor does the Department exercise, oversight in the traditional context of regulation and plays no role in the internal governance or day-to-day operations of ICANN. However, NTIA is currently reviewing the record created as a result of the April 24, 2009 NOI and is in discussions with ICANN about the best way to move forward as the September 30, 2009 expiration of the JPA approaches.

8. **Does the Department intend to ensure that the key facilities of the root server system continue to be housed in the United States?**

   Performance of the administrative functions associated with the management of the authoritative root zone file, a critical component of the root server system, are part of the IANA Functions Contract. Contained in this contract is a requirement for the contractor to possess and maintain throughout the performance of the contract a physical address within the United States. In addition, a majority of the 13 root servers are physically located in the United States. However, many of these sites are replicated or mirrored throughout the world to provide process efficiency and additional security.

9. **The Chairman of ICANN said in February 2008 that ICANN will never leave the United States. How does the Department intend to ensure that ICANN fulfills this commitment?**

   The Department does not have the regulatory authority to dictate the physical location of ICANN, a not-for-profit corporation based in California. However, we have required that the IANA functions (which ICANN currently performs under contract to the Department) be performed by a contractor physically located in the United States.

10. **It has been suggested by some that instead of expanding the number of available top level domains, ICANN should instead give priority to correcting existing issues, such as "cyber-squatting." Do you agree with this assessment?**

    NTIA has submitted comments, on behalf of the U.S. Government, in one of ICANN's public consultations regarding its proposed approach to introducing new generic top level domains (gTLDs). Among the issues called out was the need for ICANN to demonstrate that it has sufficient capacity to enforce contract compliance with an unknown number of new contracting parties, in light of outstanding questions regarding existing contracts. NTIA continues to have these concerns. NTIA's letter is available at http://forum.icann.org/lists/gtld-guide/pdfNVtPVo5wcJ.pdf.

11. **Is NTIA concerned that ICANN's rapid expansion of available top-level domains will jeopardize Internet stability and security?**

    NTIA believes that ICANN must ensure that the introduction of a potentially large number of new gTLDs, including internationalized top level domains, will not jeopardize the stability and security of the Internet DNS. NTIA understands that ICANN is currently undertaking a scalability study of the root server system to accommodate the addition of new gTLDS as well as concurrent introduction of IPv6, DNSSEC, and internationalized domain names and looks forward to the results of this study to inform our position going forward.

12. **Given the current difficulty many consumers have in finding legitimate Web sites through which to purchase products, services, and information, is NTIA concerned that**

an expansion of the available number of top level domains may lead to increased instances of fraud perpetrated against consumers?

NTIA continues to be concerned that ICANN has not clearly demonstrated whether the potential costs to consumers and businesses of new gTLDs would be outweighed by the potential consumer benefits, and has urged ICANN to undertake a comprehensive economic study of the TLD market prior to moving forward with the introduction of new gTLDs. NTIA fully expects ICANN to complete the economic study as called for by ICANN's Board prior to moving forward with the introduction of new gTLDs.

13. **Is NTIA concerned that a rapid expansion of available top level domains may lead to an unfair increase in the amount of domain name registration fees that trademark holders must pay in order to circumvent "cyber-squatters?" Yes or no.**

    NTIA has expressly requested that ICANN state how it will conduct legal reviews of applications, consider legal objections from third parties, which includes objections regarding the fairness of fees, and discharge its responsibility to ensure that the process of introducing new gTLDs respects all relevant national and international law, including intellectual property rights, prior to moving forward with the introduction of new gTLDs.

14. **Is NTIA satisfied that ICANN has adequately studied the effects of expanding the number of available top level domains on businesses and consumers?**

    NTIA does not believe that the studies commissioned by ICANN to date have provided sufficient data to permit an appropriate analysis of the effects of expanding the TLD market on businesses and consumers, and considers this a threshold question that must be addressed prior to ICANN moving forward with the introduction of new gTLDs.

15. **Allegations have been made that the six-year contract agreed upon in 2006 between ICANN and VeriSign for the registry of the domain ".com" suffers from a lack of transparency. Upon review, does the Department of Commerce share this view?**

    Pursuant to the Department's agreements with VeriSign and ICANN and as a condition of the Department's approval of the .com settlement agreement in November 2006, the Department negotiated Amendment 30 to its Cooperative Agreement with VeriSign to address competition issues, including pricing and renewal, and Internet security and stability concerns. Through this Amendment to the Cooperative Agreement, the Department retains the authority to approve any material change, including renewal or substitution of a future .com Registry Agreement. All modifications to these agreements have been published and are available at www.ntia.doc.gov.

16. **Given these allegations, does the Department intend to ratify another agreement between ICANN and VeriSign upon expiration of the current one?**

    Given that the current agreement does not expire until 2012, the Department does not yet have a position regarding a subsequent agreement.

Dear Earley

As per our discussion on the telephone, please use this letter as our response to questions from various committee members NOT the one forwarded via email Friday.

I appreciate your help and assistance.

Paul Levins
ICANN

The Internet Corporation for Assigned Names and Numbers

24 July 2009

The Honorable Henry A. Waxman
Chairman
Committee on Energy and Commerce
House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515-6115

Dear Chairman Waxman:

This letter is in response to written questions for the record directed to ICANN from Members of the Committee as set out in your letter dated 10 July 2009. As you may be aware, the ICANN Board has very recently appointed Mr Rod Beckstrom to the position of President and Chief Executive Officer to replace Dr Paul Twomey who gave evidence at the hearing on 4 June 2009 and who had indicated in March 2009 he would not be renewing his contract. Accordingly, I am offering these responses on behalf of ICANN.

ICANN supports a globally unified Internet on which addressing remains unique to ensure interoperability. This year and next ICANN will be introducing Internationalized Domain Names (IDNs) and will be supporting the deployment of Domain Name System Security Extensions (DNSSEC). IDNs will make sure that all people can have a place on the Internet in their native script, and DNSSEC will make the domain name system more secure – a line of defense against pharming and other malicious invasions that will help ensure that when we type an address in our browser we are directed to the desired, authentic site and not an impersonator potentially collecting password information.

ICANN will also within the next year launch a new round of generic top-level domains (TLDs), to allow more communities and organizations to have their own unique identity on the Internet. Developing new methods for securely introducing new TLDs was specified in the original White Paper that led to ICANN's formation, and ICANN's original 1998 memorandum of understanding with the U.S. Government stated one of our key responsibilities this way: "Oversight of the policy for determining the circumstances under which new top level domains would be added to the root system." It went on to say, "The Parties will jointly design, develop, and test the mechanisms, methods, and procedures that will achieve the transition without disrupting the functional operation of the Internet."

Brussels 6 Rond Point Schuman, Bt. 5 B-1040 Brussels BELGIUM T +32 2 234 7870 F +32 2 234 7848
Marina del Rey 4676 Admiralty Way, Suite 330 Marina del Rey, CA 90292 USA T +1 310 823 9358 F +1 310 823 8649

A healthy debate is continuing, and constructive solutions are being developed by ICANN's stakeholder groups on how to handle the key facets of these new TLDs smoothly. We have been pleased with the concrete solutions being developed by experts in the intellectual property field. Just like the internationalization of domain names, this will help make the Internet an even more open technological phenomenon in the years to come. We look forward to working through these and other issues with the community.

In addition to these initiatives, ICANN will continue to enhance its efforts in the areas of transparency, accountability, and contractual compliance. These efforts are highlighted in the following responses to the questions from the Members of the Committee:

Responses to Questions from the Honorable Rick Boucher

1. *I find the issue of enforcement against cybersquatting to be particularly troubling. Please describe exactly what ICANN is doing in this area and provide a quantitative sense of the extent to which ICANN has address the cybersquatting concern, including:*

   a. the actual number of proceedings ICANN has commenced against alleged cybersquatters

   b. the number and types of actions ICANN has taken as a result of those proceedings

   c. the number of registrars that have been decertified where cybersquatting has been alleged

ICANN has terminated 33 registrar agreements since 2003, sending 23 termination notices and refusing to renew 10 registrar agreements, over the objection of those registrars. Just this week we did not renew the registrar accreditation agreement of the registrar "Lead Networks" – because of a pattern of questionable business practices, and a disregard for the protection of registrants.

See http://www.icann.org/en/announcements/announcement-17jul09-en.htm

ICANN has engaged in contractual compliance activity since its inception but the resources necessary to fund a dedicated compliance team became available about two and one-half years ago.

Many ask why ICANN's budget has to grow. This is one of the reasons. We can't on the one hand be asked to increase our compliance activities globally and then stop growing our budget. So, over recent years, the compliance function has consistently been one of ICANN's fastest growing, and has been approved to grow at almost 30 percent in the next budget year, at a time when ICANN's overall budget growth is about five percent.

The transmission of enforcement notices is part of ICANN's normal escalation process. Generally, the process includes the following: notice of noncompliance, initial breach

notice, follow-up breach notices, escalation when parties fail to cure breaches, and termination notices.

In 2008 alone, ICANN transmitted over 5,000 enforcement notices. This includes over 400 breach notices, to ensure compliance with RAA provisions. Our records reveal that 72% of ICANN-accredited registrars that received initial enforcement notices from ICANN, cured the identified breaches, thereby avoiding escalated compliance action by ICANN. ICANN actively pursues those remaining registrars and those that fail to cure sited breaches are considered for termination on a case-by-case basis.

At the Subcommittee on Communications, Technology and the Internet, congressional members expressed concerns about cybersquatting. This is an area that involves many actors, including ICANN, the intellectual property community, accredited Registrars, and others, all working together and in the context of national law. For its part, ICANN recognizes that more work is necessary to fully address this issue.

It is important to note that ICANN's Registrar Accreditation Agreement (RAA), the formal agreement that governs the relationship between ICANN and its accredited registrars, does explicitly identify illegal behavior as a basis for termination of the agreement. In many countries, including the United States, laws exist to address such activities (Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN SPAM Act) and the Anticybersquatting Consumer Protection Act (ACPA)). In the United States, civil penalties may be imposed when parties are found engaging in these activities.

It is also important to consider that the act of cybersquatting may not be tied to registrar behavior, and that **cybersquatting can be directly addressed through the Uniform Domain Name Dispute Resolution Policy (UDRP), established by ICANN in 1999**. UDRP is an administrative procedure that addresses intellectual property concerns, including cybersquatting, with arbitration panels under the auspices of the World Intellectual Property Organization, the National Arbitration Forum, and others.

In 2008, almost 15,000 cases had been handled by this system.

To enhance efforts relative to cybersquatting, ICANN staff, in collaboration with members of the intellectual property community, will determine the best process for investigating claims of cybersquatting by registrars and their affiliates. ICANN is working with its Registrar and Intellectual Property Constituencies to issue advisories to clarify RAA terms, including terms that may be relevant to the unlawful practice of

cybersquatting. Further, ICANN's multi-stakeholder community is working on revisions to the existing RAA, and this process will consider additional elements that would prevent possible cybersquatting by registrars.

For more details on ICANN's Contractual Compliance Program, including recently posted Notices of Breach, Termination and Non-Renewal, please visit:

http://www.icann.org/en/compliance/

Responses to Questions from the Honorable John Dingell

1. *In relation to the introduction of new top- level domains, has ICANN completed an impartial and comprehensive economic study of the domain name marketplace that explores whether there is a need for new top level domains in the first place? If so, what were the results of this study?*

In fact ICANN has commissioned two reports by noted economist, Dr Dennis Carlton, relating to the introduction of new gTLDs. On 6 June 2009, ICANN published both those reports:

http://icann.org/en/announcements/announcement-06jun09-en.htm

Dr. Carlton is a Professor of Economics at the University of Chicago Booth School of Business. **From October 2006 through January 2008, Dr. Carlton served as Deputy Assistant Attorney General for Economic Analysis, Antitrust Division, U.S. Department of Justice, the most senior position in the Antitrust Division held by an economist.** He also served as a Commissioner of the Antitrust Modernization Commission, created by the U.S. Congress in 2002 to evaluate U.S. antitrust laws. Dr. Carlton has provided expert testimony before various state and federal courts, the U.S. Congress, a variety of state and federal regulatory agencies and foreign tribunals and has served as a consultant to several government agencies including the Department of Justice and the Federal Trade Commission.

Dr. Carlton was retained by ICANN to analyze from an economic perspective ICANN's anticipated introduction of new generic top-level domain names (gTLDs), and to identify and address the benefits and costs associated with ICANN's proposal.

Dr. Carlton concluded that:

"ICANN's proposed framework for introducing new gTLDs is likely to facilitate entry and create new competition to the major gTLDs such as .com, .net, and .org. Like other actions that remove artificial restrictions on entry, the likely effect of ICANN's proposal is to increase output, lower price and increase innovation. This conclusion is based on the fundamental principles that competition promotes consumer welfare and restrictions on entry impede competition."

Dr. Carlton also recommended against delaying the introduction of new gTLDs in order to complete any economic study contemplated by ICANN that would address whether the domain registration market is one economic market or whether each TLD operates as a separate market. He noted that this was an interesting question deserving of analysis, but that "evaluation of the impact of ICANN's gTLD proposal on consumer welfare does not depend on the answer to this question. Indeed, even if new gTLDs do not compete with .com and the other major TLDs for existing registrants, it is likely that consumers would nonetheless realize significant benefits from new gTLDs due to increased competition for new registrants and increased innovation that would likely be fostered by entry."

Introducing new gTLDs has been a key part of ICANN's mandate dating back to the U.S. Government's 1998 "Statement of Policy, Management of Internet Names and Addresses" commonly known as the "White Paper," which led to ICANN's creation.

ICANN has been working for years on the responsible introduction of new gTLDs, including policy development with input from governments and both commercial and non-commercial stakeholders. Constructive solutions are being developed by ICANN's stakeholder groups on how to handle the key facets of these new TLDs smoothly, including concrete solutions being developed by experts in the intellectual property field to address the concerns they have expressed. The coming introduction of new gTLDs will help make the Internet an even more open and globally sensitive technological phenomenon in the years to come.

> 2. *In its testimony, Verizon states, the "[i]f its initial round of applications is successful, ICANN stands to bring in more than $90 million. ICANN also will collect ongoing fees of $75,000 per applicant from annual renewals of each new gTLD, as well as a 25-cent transaction fee from every domain name registered in every gTLD." Is this assertion true?*

The proposal ICANN is discussing calls for a recurring fee structure for new gTLD registries of $25,000 per year, plus transaction fees of 25-cents for registries with over 50,000 names. It is not $75,000 per year. That was a previous proposal amended after comment. Existing registries, pay ICANN fees as well, so this is not a new concept. The primary ICANN fee will be the evaluation fee. This one time fee is currently estimated to be $185,000. The amount of $90million would be achieved if 500 applications were received.

ICANN is a California non-profit public benefit corporation. **The fees ICANN will charge**

for the evaluation of applications for new gTLDs are designed to be fully self-funding (i.e. costs are not intended to exceed fees)

The new gTLD policy requires a detailed and thorough implementation process to achieve its goals, and the process is inherently costly. In addition, since this is a new program, it is difficult to predict costs or volumes with certainty. A detailed costing process has been employed, and costs are in line with historical precedent. But a portion of the application fee accounts for these risks.

Examples of costs and volumes that are uncertain include: What would happen in the event that many more or many fewer applications were received than anticipated? How simple or complex will the average application be (dictating how many process steps must be executed for each application)? Are the staffing and outside consultant fees estimated correctly? Have expenses for difficult-to-predict support services such as information technology systems, legal support, contract support, etc. been fully identified?

These costs must be accounted for (to ensure full funding of the new gTLD program), without inflating the total cost estimate for evaluating an application by making all line item estimates "worst case". To ensure a sound methodology in costing these risk/hard-to-estimate cost elements, ICANN engaged Willis Inc., the world's third largest insurance broker and risk consultant with over US $3.4B in annual revenues, 20,000 employees and operating in over 100 countries, and in particular the Willis Enterprise & Risk Finance (WERF) practice, which is the center of excellence within Willis for risk quantification and risk modeling. Using a scenario modeling technique that incorporates Monte Carlo simulation and regression analysis, and that looks at both risk elements and the probability they will occur, this analysis generated a risk profile for the overall new gTLD program, that identified approximately $60,000 in risk/difficult-to-estimate costs per application in the first round. This accounts for uncertainty at approximately the 80% level of confidence.

If all cost-related estimates are accurate, there will be no net increase to ICANN's net funds or net assets as a result of evaluating new gTLD applications; fees will just equal costs.

For additional information on New gTLD program costs and fees, please refer to the explanatory memorandum titled "Cost Considerations of the New gTLD Program" published by ICANN on 23 October 2008:
http://www.icann.org/en/topics/new-gtlds/cost-considerations-23oct08-en.pdf

Responses to Questions from the Honorable Doris Matsui

1. Please share with the Committee the board meeting minutes that ICANN makes available to the public from each of the last three closed ICANN board meetings.

As we have always has done, ICANN maintains a "Board Meeting Minutes" webpage at <http://www.icann.org/en/minutes/> providing links to all ICANN Board meetings materials (for Special Board Meetings and the Board meetings taking place at the international public meetings).

All meeting minutes since 1999 have been posted.

ICANN holds three ICANN Regular Board Meetings per year in public session at International meetings that we hold three times a year.

For the Board meetings at the international public meetings, ICANN posts a comprehensive listing of the Adopted Resolutions and the scribed transcript.

In addition to the three Regular Board Meetings, ICANN conducts a number of other Special Board Meetings (during 2008, eight Special Board Meetings have been scheduled), and these meetings are held via telephone. For the Special Board Meetings, ICANN follows the following process to ensure transparency surrounding these meetings.

First, ICANN posts a proposed agenda for each meeting one week in advance of the Board meeting. Though the agenda order may change to better structure conversation at a meeting, or deal with exigencies, the Chair of the Board strives to constrain each to the items that have been identified to the community. This is to make sure that the process is as transparent as reasonably possible.

Second, within a matter of days after each meeting, the Secretary of the Board posts a Preliminary Report containing the resolutions passed by the Board, and at times reflecting major topics of discussion.

Third, the Secretary of the Board then prepares a more extensive version of the minutes (much more detailed than regular corporate minutes), noting the votes and further

expanding on the Board discussions, where applicable. These proposed minutes are then presented to the Board for approval at their next meeting and posted as the official minutes of the meeting. It is important to note that the Board has recently adopted a practice of utilizing a consent agenda to approve of resolutions expected to receive unanimous support and which are not expected to require significant discussion.

In addition, as many of the resolutions discussed and adopted at ICANN's Board meetings arise out of recommendations from ICANN's Board Committees, ICANN posts minutes of each of the Committee meetings on the Board Meeting Minutes page as well. Finally, though the ICANN Board Retreats are not official meetings of the Board, ICANN still posts a summary of the activity at the Board Retreats in an effort to work as openly and transparently as feasible.

During the time period covered by the request for information relating to the "last three closed ICANN Board meetings," ICANN's Board has met twice at the international public meetings (26 June 2009 in Sydney, and 6 March 2009 in Mexico City) and detailed transcripts and resolutions passed during those meetings are also available on the Board Meeting Minutes page. Also, the Agenda and Minutes for the last three Special Board Meetings (21 May 2009, 23 April 2009, and 12 February 2009) are all available at the Board Meeting Minutes page. You will also find that ICANN maintains online archives of all of its board meetings dating back to its inception in 1998.

The following are links to the materials requested. (Printouts will be delivered to the Committee).

12 February 2009 Special Meeting

Agenda: Single topic agenda of "Discussion of new gTLDs" noted at main Board Meeting Minutes page, at http://www.icann.org/en/minutes/

Minutes: http://www.icann.org/minutes/minutes-12feb09.htm

6 March 2009 Regular Meeting

Agenda: http://www.icann.org/minutes/agenda-06mar09.htm

Adopted Resolutions: http://www.icann.org/minutes/resolutions-06mar09.htm

Transcript:
http://mex.icann.org/files/meetings/mexico2009/transcript-board-meeting-06mar09-en.txt

23 April 2009 Special Meeting

Agenda: http://www.icann.org/minutes/agenda-23apr09.htm
Minutes: http://www.icann.org/minutes/minutes-23apr09.htm

21 May 2009 Special Meeting

Agenda: http://www.icann.org/minutes/agenda-21may09.htm

Minutes: http://www.icann.org/minutes/minutes-21may09.htm

26 June 2009 Regular Meeting

Agenda: http://www.icann.org/minutes/agenda-26jun09.htm

Adopted Resolutions: http://www.icann.org/minutes/resolutions-26jun09.htm

Transcript:
http://syd.icann.org/files/meetings/sydney2009/transcript-board-meeting-26jun09-en.txt

2. Please describe in detail the specific additional steps taken by ICANN to improve its transparency and accountability following NTIA's 2008 mid-term review of the JPA.

Since 2008, ICANN has continued and strengthened its accountability and transparency mechanisms under a general program for "Improving Institutional Confidence" <http://icann.org/en/jpa/iic/>. On 1 June 2009, following several rounds of public consultation, and extensive work by the ICANN President's Strategy Committee, ICANN published a document entitled "Improving Institutional Confidence: The Way Forward" <http://icann.org/en/announcements/announcement-2-01jun09-en.htm> That document recommended several proposals for Board consideration, including, among others, possible changes to ICANN's bylaws to establish a new and newly constituted Independent Review Tribunal, with powers to review the exercise of decision-making

powers of the ICANN Board under three general rubrics of fairness, fidelity and rationality; accepting the PSC recommendation that ICANN maintain its headquarters in the United States, specifically in Marina del Rey, California; and, considering means to work with ICANN's Governmental Advisory Committee (GAC) and the ICANN community on a fully consultative process to publicly review the GAC's role within ICANN.

Also, ICANN has recently established a Board Public Participation Committee to assist in defining ICANN's public participation strategies and guidelines, initiated a usability survey and deployed enhancements to ICANN's website, began posting minutes of Board committee meetings, and established document posting deadlines to allow for greater opportunity for community review prior to discussions at ICANN meetings.

> 3. *During your testimony before the subcommittee, you mentioned that ICANN recently released proposals to establish a new Independent Review Tribunal to review ICANN Board decisions. How will this independent tribunal differ from the review mechanism required under ICANN's bylaws? Please provide examples of when board decisions have been reviewed under the existing independent review panel.*

ICANN's Bylaws set forth three mechanisms for the review of Board decisions: (A) the Reconsideration Process, Article IV, Section 2; (B) the Independent Review Process, Article IV, Section 3; and (C) the Office of the Ombudsman, Article V.

(A) The Independent Review Process as currently formed within the Bylaws is limited to reviews of "Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws." The International Centre for Dispute Resolution (ICDR) currently serves a the provider for the Independent Review Process, and the process is conducted under the ICDR's International Arbitration Rules located at <http://www.adr.org/sp.asp?id=33994#INTERNATIONAL%20ARBITRATION%20RULES> and the ICDR Supplementary Procedures for ICANN Proceedings, available at <http://www.adr.org/sp.asp?id=32197>.

The Independent Review Process has only been invoked one time, brought by an organization named ICM to challenge the Board's decision to not approve a contract for ICM to operate the dot-XXX top-level domain (TLD). ICM applied to operate the dot-XXX TLD as a sponsored TLD, a classification requiring a showing of certain levels of support for the operation of the TLD from the community that the applicant purports as the "sponsoring" community. Here, during the pendency of the application for the dot-XXX TLD, the Board noted that the levels of community support from the adult

entertainment community were decreasing, and ultimately determined that the applicant failed to meet the sponsorship criteria. ICM challenges the ability of the ICANN Board to review the base level sponsorship criteria after the Board approved the applicant to proceed to the contract negotiation phase. The ICM Independent Review is still pending, and is set for hearing in the autumn of 2009. All papers filed by ICANN and ICM in the Independent Review are posted on ICANN's website at http://www.icann.org/en/irp/icm-v-icann.htm.

As noted in the testimony before the subcommittee, there is work being done to re-configure the Independent Review Process. Enclosed with this response is a copy of the proposal for a new Independent Review Tribunal as posted in a 31 May 2009 report entitled "Improving Institutional Confidence: The Way Forward," available at http://www.icann.org/en/jpa/iic/iic-the-way-forward-31may09-en.pdf. To briefly summarize the differences between the Independent Review Process, as it currently exists and as proposed, the main points are:

- The proposal creates a standing tribunal of both respected jurists as well as technical experts. The current process relies only the parties' selection of a panel of arbitrators/jurists.

- The proposal expands the scope of matters that can be considered through the Independent Review Process. While review is currently limited to actions that are alleged to be taken in violation of the ICANN Articles of Incorporation and Bylaws, the proposal takes into further account actions that are alleged to be inconsistent with prior Board decisions, if the Board reviewed information irrelevant to the issue under discussion, if the Board acted with an ulterior motive, if the Board failed to undertake genuine consideration of the matter, if the Board's action was wholly unreasonable, and if the action disproportionately affected the rights and interests of the challenging party and a least disruptive outcome could have been practically and reasonably achieved.

- The proposal would give the Independent Review Tribunal more power in rendering a decision than is currently allowed. In the current process, the Independent Review Panel issues a declaration that the Board is to consider as soon as practicable. In the proposal, the Independent Review Tribunal is able to affirmatively require the Board to reconsider the action, and to give advice to the Board on fair procedures for such reconsideration. The proposal also requires the Board to issue a report to the community if the Board determines that the Independent Review Tribunal's recommendation is not in the best interest of

ICANN. This affirmative reporting requirement is not found within the current process.

- The proposal also requires applicants to proceed through ICANN's Reconsideration process prior to initiating an Independent Review Process. Currently, the two review mechanisms are independent and the Reconsideration process is not a mandatory step to proceed to Independent Review. The authors of the proposal note that the factual investigation and findings arising out of the Reconsideration process could (1) assist the Board in resolving the issue prior to the initiation of an Independent Review; and (2) provide a helpful background for the Independent Review Tribunal.

(B) ICANN's Reconsideration process as set forth in ICANN's Bylaws allows "any person or entity materially affected by an action of ICANN may request review or reconsideration of that action by the Board." Bylaws, Art. IV, Section 2.1. A committee of the Board is designated to review Requests for Reconsideration, conduct factual investigations as appropriate, and make recommendations thereon to the Board.

Forty-two Requests for Reconsideration have been filed, though none have been filed since 2006, when ICM sought (and later withdrew) a Request for Reconsideration arising out of an earlier Board decision on the dot-XXX TLD Application discussed above. As the Reconsideration process also allows for reconsideration of staff actions, not all of the 42 Requests are related to Board decisions. For example, all Requests received in 2004 related to staff actions. In 2000, a number of Requests were filed relating to the Board's decisions on introducing a limited number of TLDs in a proof of concept round, where the unselected applicants challenged the Board's decision. The Reconsideration Committee determined that the process was fair and allowed all applicants equal access to the process that was understood at the outset to be limited in scope. In 2006, two Requests for Reconsideration were filed regarding the Board's approval of a litigation settlement with VeriSign, and both were filed by third parties to the settlement. All Requests for Reconsideration, and any subsequent documentation and decision, are publicly available at http://www.icann.org/en/committees/reconsideration/.

(C) The ICANN Ombudsman operates as an independent, impartial and neutral office within ICANN, and acts as an alternative dispute resolution office for the ICANN community. The Ombudsman issues reports of his investigations, and can provide recommendations to the Board regarding those investigations. Under the current Ombudsman Framework, available at
http://www.icann.org/ombudsman/documents/ombudsman-framework-26mar09-en.p

df, the Board will endeavor to respond to the Ombudsman's recommendations within a set period of time.

The proposal for the re-configuration of the Independent Review Tribunal also included a companion proposal for the introduction of a new mechanism for the review of Board decisions taken by resolution. In recognition of the unique structure of ICANN, the proposal introduces the concept of an ICANN community vote for the Board to re-examine any decision taken by resolution. If the ICANN community requests the reconsideration of any Board decision taken by resolution, by a 66% vote of 66% of ICANN's Advisory Committees and the Council of ICANN's Supporting Organizations (as set forth by ICANN's Bylaws), the Board must re-examine the decision.

Both the proposal for the re-configured Independent Review Tribunal and the proposal for community re-examination vote remain in proposal form. ICANN is preparing to post both of these proposals for public comment in order to facilitate public consultation and work towards evaluations of implementation of each proposal.

Finally, ICANN commissioned a report by the United Kingdom based "One World Trust" (OWT) organization. OWT is an independent think tank that conducts research, develops recommendations and advocates for reform to make policy and decision-making processes in global governance more accountable to the people they affect, now and in the future.

OWT produced a significant report in March 2007 - well before any of the above additional transparency and accountability measures - and they found:

"Overall ICANN is a very transparent organization. It shares a large quantity of information on its website, probably more than any other global organization" One World Trust Organization (UK) March 2007.

The full report can be found here:
http://www.icann.org/en/announcements/announcement-4-29mar07.htm

Thank you for the opportunity to provide this follow-up information concerning ICANN's efforts to support a globally unified Internet on which addressing remains unique to ensure interoperability

I trust that these responses will be useful to you and the Members of the Committee, and ICANN welcomes any further questions you may have.

Sincerely,

Paul Levins
Executive Officer and
Vice President, Corporate Affairs
ICANN

Draft Minutes of the Special Board Meeting

12 February 2009

A Special Meeting of the ICANN Board of Directors was held via teleconference 12 February 2009 @ 20.00 UTC. Chairman Peter Dengate Thrush promptly called the meeting to order.

In addition to Chairman Peter Dengate Thrush the following Directors participated in all or part of the meeting: Harald Tveit Alvestrand, Raimundo Beca, Steve Crocker, Demi Getschko, Steven Goldstein, Dennis Jennings, Rajasekhar Ramaraj, Rita Rodin Johnston, Jean-Jacques Subrenat, Bruce Tonkin, Katim Touray, Paul Twomey (President and CEO), and David Wodelet. Roberto Gaetano was not present. The following Board Liaisons participated in all or part of the meeting: Janis Karklins, GAC Liaison; Ram Mohan, SSAC Liaison; Thomas Narten, IETF Liaison; Thomas Roessler, TLG Liaison; Wendy Seltzer, ALAC Liaison; and Suzanne Woolf, RSSAC Liaison. The Chairman, Dennis Jennings, Rita Rodin Johnson and Paul Twomey all joined via telephone with ICANN management and staff from the ICANN Marina del Rey office.

Also, the following ICANN Management and Staff participated in all or part of the meeting: John Jeffrey, General Counsel and Secretary; Doug Brent, Chief Operating Officer; Kurt Pritz, Senior Vice President, Services; Paul Levins, Executive Officer and Vice President, Corporate Affairs; Kevin Wilson, Chief Financial Operator; Denise Michel, Vice President, Policy; Diane Schroeder, Director of Board Support; and Barbara Roseman, General Operations Manager, IANA.

Meeting Topic: The New gTLD Program:

Kurt Pritz introduced the new gTLDs topic, discussed the staff process of collecting the comments, analysis, and publication of information. He also reviewed the agenda and topics to be discussed, and open issues for board discussion.

Specific Issues:

Trademark Issues

Kurt Pritz discussed specific trademark rights issues. He explained that we have existing as well as new players in the environment suggesting rights protection mechanisms be introduced into the process. Kurt noted that he wants to engage with them on what would be implementable and effective, and that additional communication will take place over the next several months. Paul Levins and John Jeffrey will be providing additional leadership in those discussions. He discussed the possibility of setting up formalized discussions in different regions, including Asia, North America, Europe. John Jeffrey also noted that we have started discussions with WIPO, regarding how they could help with that process.

The Chairman noted that just saying we will have further consultations about protecting rights sounds a bit open-ended. He noted that ICANN needed to be clearer on what we are asking for in the consultations and need to be presenting on a much tighter format. He thinks we can be more specific in breaking down discussions on terms of rights in top level and what to do about second level. If the thought is a list of reserved names that we would consider we should say that because just saying we will consult is less direct and detailed, inquiring whether there are other ideas that are being discussed.

Rita Rodin Johnson stated that she and Wendy Seltzer and others have talked about the various issues on these topics. Trademarks are national in nature and one company can have rights in one country while another party holds the rights to the same name in another country. She is sympathetic to the idea of companies needing to engage in multiple and costly defensive registrations. Staff needs to distill all of the issues down to specifics so the Board can discuss and help reach solutions .

John Jeffrey noted that out of the PDP process, a number of principles were set out, but that we should expect to review some of the issues that have been raised through that process, particularly those issues which were not dealt with in the policy as they are more implementation oriented, as new parties come to the table. He noted that in the comments and during recent sessions with the community there were significant business participants, such as counsel for Fortune 500 companies wishing to protect their companies brands. Rather than staff producing a proposed solution, it is necessary to go back out and have more conversation and constructive discussion, because there were new issues being raised from new parties. He noted that in this timeline, it makes more sense to discuss outreach to talk about this constructively.

Rita Rodin Johnson agreed, but asked if staff could present the options that are being considered. John Jeffrey noted that it is important that staff not introduce new plans alone, but that the community has input and that input should be brought out in discussions in a public forum so all can discuss and consider. He noted the possibility that there are solutions that might benefit all involved.

Steve Goldstein then asked that when American Banking Association wants to hold back on .BANK, why should we hold back on

any string for anyone?

Dennis Jennings noted that it would be useful to have a clear understanding of the rights that registering a trademark actually gives someone. He noted that it is not protection, but exclusive use in a particular category and protection from anyone else using the same mark, in the same category, in the same jurisdiction. We need a clear statement of what one gets with a trademark.

Paul Twomey noted that this is a reason why we want WIPO as part of process as independent expert. We need to find an expert partner to work through some of those solutions.

Thomas Roessler noted that the board should carefully balance the different interests at stake, and noted that the GNSO is set up to deal with these issues through the PDP, including highly effective representation of IPR issues. He also noted that the board needed to pay attention not to re-open issues if there is no new information.

The Chairman noted that there is a difference between indicating that we need consultation on the implementation now and saying that it should have been part of the process earlier, so we're making it up on the fly. We need to make sure we are not re-opening old discussions that were rejected as part of the policy process.

Rita Rodin Johnson agrees with The Chairman and likes the concept of working with WIPO, as well. This is a difficult issue that cannot be underestimated, but also should not allow people to undermine the process.

The Chairman suggests that the way forward is to put details around the bones of further discussions, indicating what seem to be issues and what are the rights at issue. With that we would ask for their solutions to this problem. We have been around this when the UDRP was introduced and do not want to re-open problems without reaching better solutions. He will support going back to community with comments, solutions and ask what is missing, but they should not be open-ended discussions.

Rita Rodin Johnson asked if there is a reason we cannot ask various parties to send us summary papers with the issues that many agreed to, as part of that process. Harald Alvestrand agreed that we should have a consultation process, a deadline and a default outcome. The Chairman thought Harald Alvestrand set out a good point.

Demand for new gTLDs:

Kurt Pritz posed the question – What is the demand for new gTLDs and what case has ICANN made to launch this round? ICANN did do demand studies that drove us to use about 500 applications as a model (although maybe less now given economy). In light of the various comments and letters received, we are now conducting further analysis in addition to the policy work that has already gone on.

The Chairman noted that this question is only marginally valid because it appears that it is asking innovators to justify innovations, which they should not have to do. There should be an open market to innovate and protecting interests is not an argument for requiring justification of demand.

Rita Rodin Johnson agreed with the Chairman. She does not necessarily agree that there should be hundreds of new TLDS, but her opinion doesn't matter as the Board should not try to second guess the GNSO policy. Our stakeholders said we need to do it and that there is demand, so we should move forward.

Janis Karklins noted that the GAC is working on contributions and comment on the applicant guidebook and it will be delivered in Mexico. He stated that in preliminary document he has seen, there are a number of questions about the study Kurt Pritz referenced relating to competition, new IDNs and TLDs. The GAC will indicate that we think the questions will need to be answered before the introduction of new TLDs.

Paul Twomey noted that we expect to have an economic report around the time of Mexico, but not within a sufficient time before to make it part of the information to be released with the applicant guidebook. He noted how the GAC process works and asked that if the GAC comments on the first version are coming at the time we are issuing a nest version of the applicant guidebook, would it be appropriate to recognize a new timetable and that GAC comments on the second version will be provided later?

Janis Karklins noted that if posting of next version of applicant guidebook is just 10 days before the meeting; there would not be sufficient time to respond. Comments will be published in Mexico and the GAC will have another conference call on the 19th and will take into account whatever changes will be provided, but the underlying issues raised in comments by some governments are part of what will be published in Mexico. So if the GAC members find that a new version satisfies their concerns there will not be any statement. But if not satisfactory changes then we will be talking about that as well, if possible.

The Chairman stated we are looking forward to getting the GAC analysis. He also noted that no one will be expected to have

digested the new applicant guidebook by Mexico, but hopefully the amount of changes will be smaller on the next applicant guidebook. So a quicker analysis will be hoped for on that one. Mexico City will be to set out and discuss the work that has been done.

Annual Registration and Applications Fees.

Kurt Pritz stated that in the new version of the applicant guidebook, the application fee remains the same and the annual fees will go down to $25,000 minimum, with transaction fee at 25 cents per. The application fee is cost justified. We have done additional analysis of costs and while some components decreased a bit with new analysis, others increased, so it is essentially the same. Kurt Pritz noted that we did get questions about helping support application fees for those not able to afford them, but we think we need to wait for the second round as an improvement to process. In this first round, it would be added complexity that might be gamed. We are getting information from panelists that may be evaluators, and that will have a significant costing element. In short, the application fee stays the same and annual fees are reduced. And he believes most comments were about the annual fee.

Raimundo Beca stated that he has made two proposals on the application fees that are inconsistent from what he heard in Cairo. First he believes we should reduce the application fee by the amount of historical costs because he does not believe there is a clear calculation of the amount or understanding as to what is covered by new gTLDs. His second proposal is that people should be able to pay portions of the application fee in stages, rather than all at once and possible get refunds, which he feels will always be a matter of discussion. He does not believe it is defendable to ask for money up front from those who do not have the money and he thinks it would be easier for people to obtain incremental loans if they can show the application is progressing through the process.

The Chairman noted that the justification for historic component is something that the BFC has been through at some length, and he asked if others on the Finance Committee wanted to comment.

Raimundo Beca pointed out that he is a member of the Board Finance Committee (BFC) and made the same point several times, but has not been heard until now. The Chairman noted that his point has been debated in the BFC and he wanted to hear someone else form the BFC on the issue. Dennis Jennings noted that as for the historical component, the view was taken that is it a element for recouping investment made by ICANN in helping increase competition in the TLD space and that ICANN should be able to do that.

Doug Brent noted that Raimundo Beca's suggestion that an applicant could pay a portion of the application fee as it reaches milestones was being discussed in the process. It has been heard and not acted on, because the direction of requiring the fee up front is founded on the principle of conservatism. If we ask for $185,000 up front, we ensure they have the ability to pay it. The refund mechanism is the balance point to ensure that if the application does not go all the way through the process they will receive a refund.

The Chairman noted that the refund is an important aspect. If an application does not proceed through entire process, applicants should be able to get some money back. Rita Rodin Johnson noted that ICANN should be clear to the community if it will not be a full refund, but rather prorated.

Dennis Jennings explained that the BFC's view was that in the process of operating a TLD, the $185,000 application fee is only portion of the actual costs and it is demonstration of the capability an applicant to follow through. While we are sympathetic to the idea of taking money as we go, the complexity does not seem worth it.

Jean-Jacques Subrenat noted that Kurt Pritz mentioned that requests for financial assistance with application fee could be addressed in second round. Setting aside cost, he asked if any questions or concerns have been raised about accessibility or availability of domain names in the second round.

Kurt Pritz confirmed there had been thinking on this topic, but the decision is part of the balancing of the issues. So discussion of every issue in implementing new gTLDs is balancing and devising a method by which the need for "scholarship applications" can be measured in first round in terms of gaining knowledge. And given the availability of literally billions of available names, we have heard comments and done balancing in this first round, and we have not specifically addressed possibility of depletion of certain names.

Harald Alvestrand stated that if we are worried about too many applications, then having those in line that cannot pay the whole fee at beginning is not helpful. Also, Harald noted that to Jean-Jacques Subrenat points, if there is a string and a community did not apply but is concerned about losing the name, then the objection process is available, and that if they lose they can just pick another name.

Janis Karklins noted that in its comments, the GAC will question a single fee structure and will be suggesting there might be

differentiation of fee structure for TLD applicants that are not seeking a commercial string, but rather a social or cultural string. The second concern is the fee level and management of potential surplus. We think the fee structure should encourage the new applicants, and incumbent TLD operators should not put in favored positions, as it might undermine stability and raise questions of competition. There will be a number of comments on this issue.

Rita Rodin Johnson asked if Janis Karklins was saying that if an entity wants to run a not-for-profit TLD it should get a discount?

Janis Karklins confirmed that this is what the GAC is suggesting. Maybe a community wants a TLD that might serve interests of the cultural community. It would be not-for-profit organization and they would serve only limited number of people. He did acknowledge that the question is where to draw the line and how to define, and that it should be considered with the fee structure.

Rita Rodin Johnson noted that as chair of the audit committee, the committee has requested that the CFO create a process to ensure that cost recovery is clearly and transparently documented and reportable to the community. She noted that if it is the Board's view to conduct a cost-recovery process, then she feels strongly about stating that principle and not differentiating between applicants during this round.

Dennis Jennings agreed with Rita Rodin Johnson that it is not ICANN's role, but a sovereign role, to provide social assistance. The Chairman noted, however that the original proposal from GNSO did allow for flexible fees, but that it was recognized that there is a tremendous problem of value setting and determining worthiness.

Janis Karklins responded that this argument is valid if we are looking to America and Western Europe. He added that looking to other continents like Asia and Africa is different. If we do really want to promote competition and encourage registries from non-Western countries, we need to think about incentives to encourage them to step into the market. We need to as what we can do to promote participation, innovation, and new players in market not just from the US or Western Europe.

The Chairman stated that one of the ways we've looked at it is to consider Rita Rodin Johnson's point of cost recovery in this exercise, along with Janis Karklins's point of bringing in different resources, is through setting up a foundation to support that, but not doing that at the same time as the first round of applications. That is appealing as dealing with both. We need to know what is the cost recovery amount, publish the numbers, and then trying to figure out how to fund it later and not make policy now with holes.

Bruce Tonkin sated that this item has had a lot of discussion in the GNSO. The view was that in the first round, there is enough complexity in process without adding another level. But then in the second round we could give a lot more attention to the issue, and it could be a foundation or some other way, but ICANN needs to telegraph that this will be addressed in second round and to estimate when that may happen.

The Chairman asked if it would be possible to include what Bruce Tonkin is suggesting. Paul Twomey commented that once we see how the first round works, we may try to develop a way to help guide people to set up applications that do not create unnecessary costs. So maybe certain types of guided applications could be considered, as lower-cost applications.

Bruce Tonkin responded that in first round, a portion of applications cost is allocated to risk. If those risks are managed or lowered, then that portion of the fee would likely decrease in the second round. The Chairman then also suggested that maybe we can explain that experience from the first round will help us more accurately quantify the portion of fees attributed to risk for the second round.

Katim Touray agrees with Rita Rodin Johnson speaking strongly about cost recovery, but if everything is on that basis then there is no room for discounts for non-profits. But if cost is main issue, we could tell the story on the cost structure. Is there anything that is a cost element that can be out-sourced to reduce cost of service? This could make it easier to allow non-profits to submit gTLD proposals.

The Chairman responded that a number of mechanisms have been discussed such as providing foundation for funding or guiding applicants. But this will be telegraphed for the second round, at which time we will have quantified some of the risk.

Geographical Names:

Kurt Pritz noted that we are not materially changing what is in applicant guidebook at this time, but that additional material and refinements will be made. The applicant guidebook discusses a process that looks for governmental approval for TLDs of geographic names. The GNSO policy seeks to protect certain interests and one purpose of the Community-based objection process is to protect those interests. And advice from the GAC said geographic names should not be given as TLDs without approval of relevant government. So in implementation we wanted to protect interests identified by GNSO and one way to verify that the application is from a bona fide party is that it has support of that community. So process asks for the support upfront to

help mitigate contention later.

Staff's position is that this implementation is not a departure from either the policy recommendation, and remains unchanged in applicant guidebook. This requirement also provides a way to resolve conflict between ccTLD and gTLD process. If both have approval for the same string, the relevant government should work it out.

Steve Goldstein questioned whether we have followed GAC advice on this issue. He stated that he is still trying to figure out how we would resolve application for .AMERICA. What government would prevail and how would we decide what Government would prevail?

The Chairman thinks it is more than that because I believe the premise is built on a fundamental misconception that a government has propriety right over name of the country.

The Chairman agreed with Steve Goldstein that we have not followed GAC recommendation on this issue and he thinks that we need to be clear why we are departing from the GNSO recommendation as well. He noted that we should look for discussion on this topic during the Mexico City Meeting.

Rajasekhar Ramaraj asked how the applicants are to know, what level of government support is required?

Kurt Pritz stated that the applicant guidebook requires ministerial level approval and provides additional detail of what a letter from a government would have to say. The GNSO anticipated objections from governments and if such an objection is taken the dispute resolution panel would look to see if the applicant has the support of the community.

The GNSO process was intended to protect those names, but to do so would require objection by governments, or at least sets out what is community-based and that TLDs should not abuse or misappropriate a community label. This the implementation is to provide a dispute process for such objections, but in trying to address risk of process where governments may come to us and say process is not working or they need to take the dispute outside of ICANN, this provides a safeguard that governments are requesting by requiring advance support.

Paul Twomey – I agree there is an IP perspective on this issue, but the GAC dealt with a series of political risks as well. I think the GAC was looking at the issue from a more practical viewpoint. Their list was especially extensive, and we had discussion. For some of the names, we could work through process, but for others it was impossible to come to your example of .AMERICA, we have proposed that all relevant governments would have to agree.

The Chairman then asked if that means that if anyone wants . Africa, they will need all 55 states to agree? Dennis Jennings then asked if we are looking for a "no objection" statement or a "formal agreement and approval"? Paul Twomey explained that the documentation says that "no objection" must be in writing.

The Chairman noted that this is an issue of the Board in terms of which policy we will take. At the moment, the applicant guidebook follows the GAC principles and we have not negotiated any deviation, which is what we would have to do to change the applicant guidebook.

Katim Touray noted the discussion of governments having proprietary rights over geographic names. He then asked what would we do if a government was so unhappy with the awarding of a gTLD that it took retaliatory action that could be disruptive to the process, and what are we doing to address this risk?

The Chairman stated that the authority ICANN has is to meet needs of Internet and user community. He noted that we should propose policies and implementations, that do not provoke actions like that, and that ICANN needs solution acceptable by the broad Internet community. We should not come up to the situation where we're bullied to serve one or two interest. The Chairman then asked how responders have accepted the proposition in the applicant guidebook, which differs from the GNSO recommendation.

Kurt Pritz noted that the GNSO reserved names working group (WG) published a report that said there should not be a reserved names list or special process for governments. He noted that members that worked on that with the GNSO, which is a broad cross-section of the community, determined there should be no special process. There is less disagreement over protection of just country names, but we have also included sub-regional and capital names, with the sub-regional names be limited to those found on the ISO 3166-2 lists.

Morality and Public Order (M&PO):

Kurt Pritz stated that ICANN's counsel has taken advice from outside counsel, international arbitration organizations, senior jurists and international lawyers. He noted that the recommendation from the October 2008 Explanatory Memo has been moved into the

revised applicant guidebook. It defines that the standard for Morality and Public Order Objections, has three bright line tests and a fourth for others that may rise to this same level under international principles of law. It also provides for expansive rather than narrow standing. He noted that one purpose of the dispute resolution process is to safeguard specific interests and the GNSO indicated in its policy recommendation to allow for this process and to address risk to ICANN in the process, and that risks are heightened if panelists have no discretion.

The Chairman noted that the staff recommendation is that anyone who wants to object should be allowed to do so, because no one has monopoly over this issue and governments may not utilize the process. He asked if the Board is comfortable that this ground of objection is open to all.

Jean-Jacques Subrenat asked about the meaning of the phrase "metered use of discretion." Kurt Pritz explained that metered means that the fourth bullet requires an understanding of a legal norm recognized under international principles of law, not in a single jurisdiction.

Wendy Seltzer noted that the tension is that with the broad standing and broad discretion, we sacrifice a lot of predictability. She noted that there is a connection between standing and standards. If we expand both we lose predictability in the process. If anyone can bring a complaint, then difficult to predict when application is brought if it will be knocked out.

The Chairman noted Wendy's point and then suggested the Board discuss standing, pause, and then go through standards, and then see consequences of having both open and broad.

The Chairman commented that anyone who uses the Internet should have ability to influence what goes on with Internet.

Thomas Roessler noted that we generally need to think about scaling process with undetermined number of inputs, including giving anyone standing and creating an institutionalized objector. Do we have any idea how combination of unlimited standing, broad discretion by panel, and Independent Objectors, work? Could be operational and institutional nightmare. The Chairman asked if his concern was regarding the volume issue and Thomas Roessler said yes a how we can scale it.

Thomas Roessler then noted that he is not sure what we mean by anyone – is it a legal entity or an individual? If it is individual, then we will end up situation that won't work because everything could grind to a halt. Maybe limit to those who can raise objection.

The Chairman agreed that making it a workable process is what we are trying to do. In making it so one can object on morality objection – gaming system, must be considered.

Rita Rodin Johnson noted that many of us have had a problem with this recommendation, as it is difficult and inappropriate to determine what is offensive to the entire world. However, if we are going to include this, the fourth item in the proposed standard is too subjective. There must be an objective standard to measure this objection among international treaties. She noted that she is not convinced that there is a rational basis to include an objection on the basis of morality and public order. She noted that if we are just talking about standing, then it is purely a legal term, and that typically you must have "skin in the game" to have standing. She noted that ICANN should not endorse a standard that will encourage an unlimited number of objectors, as that could make for quite a disorganized and unjustified process. She again stated that she is not sure why we should include morality and public order as an objection.

Paul Twomey commented that he thinks this is good conversation. On the standing issue, in the GNSO discussion, there were concerns about this. When it comes to standing, there were concerns that governments may not bring an objection. Also, it might be preferable for those governments that may be pressured by an interest group to get the interest group to take up the issue. Third and important, people were assuming governments will take action, they will use all avenues to achieve objective and will be drawn into political arena. In the GNSO is the standing governments or others so careful not to say but then where do we draw line?

Harald Alvestrand thinks the case for having expansive standing has been well made. Another issue is whether Board will consider a decision of the panel binding. Initially it was to get this away from the Board. But language in applicant guidebook puts it into our court.

The Chairman is sympathetic to having narrow standing. If we open it up to the entire world, it is too open. The objector should have "skin in the game". The Chair noted that more work is needed here, indicating if governments are the only choice, there is a need for a standing definition to establish interest connection between the group and their interest and what damage they would suffers to bring an objection. A trouble, with the approach is that it will create interlocutory hearings. We have to have some threshold for members of community.

The Chairman noted that maybe if you analyze standards, that may have a greater bite. What are options re: standards?

Kurt Pritz stated that legal research was performed by counsel, looking at law in numerous jurisdictions and what was developed were three areas that across all jurisdictions were acceptable restrictions. That opinion also included other areas not incorporated, but also advice that attention to be paid to treaties about human rights and account of those treaties should be made where some sting rises to the same level. This melds with the GNSO recommendation that those treaties should be considered. One of my answers to Rita may be that if there is string that is perfectly acceptable under international principles of law that we want to set up a mechanism in which a tribunal could also say that it is acceptable. There are to be internationally recognized jurists considering these objections. And it is better the have that dispute outside ICANN.

The Chairman noted that the issue for us is that we have been given a recommendation from the GNSO. We have identified three such conventions and there seems to be little objection for the first three. Incitement of violent lawless action, discrimination and child pornography seem to be well-accepted principles. Do we need to go further than that? In my mind, if some applicant can show there is one that as strong as the other three they should be allowed, but some are concerned about a catch-all. The catch-all is trying to reach the same level as the other three. Will that provide mechanism that stops strings form breaching international morality and public order.

Bruce Tonkin noted that could have a different requirement for reaching decision for the first three types of objections, compared to the last catch-all objection. For first three maybe we need two out of three panelists is agree and for the fourth one, maybe requires unanimous decisions.

Rita Rodin Johnson asked who has the burden of proof. Is it the applicant or person saying there is a violation? One of her issues is developing a structure without a judgment call especially given the international aspect of this process. She does not question the wisdom of having the independent body, but asked why we want to take the step at all and is it necessary? She has not heard anything that changes her mind.

John Jeffrey noted that, as Bruce commented, there will be objections to string applications and no place for them to go except the Board or to court. This attempts to provide a path where objection or public comment is anticipated and having a process for hearing the objections, rather than consider possibility of no objections. Further, the concept of the Independent Objector provides for a process where a government is unaware or unwilling to participate.

Paul Twomey noted that if panel does or does not agree with objector then we can at least support our position if we take the same view.

Rita Rodin Johnson stated that ICANN is a technical body. We are not supposed to be making any judgment on content. These are still content based objections – will the existence of this TLD cause some action? We are not creating mechanism to have that discussion – just letting an independent body say it is so.

The Chair responded that people are looking to have a safe and stable establishment and this looks like an orderly management of the process. Allowing others to go fight about content shows we are proper steward because we created a process where people can have that argument.

Rita Rodin Johnson asked why isn't the answer is that if a government does not like a string it just blocks it. She does not see how an arbiter decides someone is right or wrong with a string proposed via a subjective standard.

Bruce Tonkin reminded that it has to be international norms, not just one national law. Rita Rodin Johnson noted that her issue is that the subjective element of the test will permit a panel to determine if, for example, the TLD will result in violent lawless action. Maybe .GIRL could incite violent lawless action in a certain part of the world and if the arbitrator is sympathetic to that sentiment, the objection will be successful and the rest of the world will be deprived of having the TLD. That does not seem to be ICANNs job or the correct result as it plays to the lowest common content denominator.

Dennis noted that wherever we are we have to abide by the law of the jurisdiction where we operate under international law. We have to consider American and California laws, and we cannot be seen as inciting violence. That has to be outsourced to say whether that violates international law. He think what we have here is absolutely right. And the fourth item is appropriate. Dennis noted that he feels quite strongly this is correct.

The Chair notes that what Rita says has merit in terms of the first three criteria - the standard should be adjusted to say this the "incitement to lawless action" has to be according to internationally recognized standards.

Harald Alvestrand noted that his worry is that it is open ended so any panel can claim that something is contrary to generally accepted legal norm, if we add 'identified" generally accepted legal norm, that would be helpful

The Chair clarified that Harald Alvestrand is saying " Generally accepted identified legal norms?" Bruce Tonkin supports that one must identify the international treaty under which you are complaining.

The Chair also noted that he thinks we need to link fourth to previous three and it must have same status as previous three. Equally generally identified accepted legal norms. "Equally, generally accepted identified legal norms." Read it and add the fourth bullet.

The Chair then moved to standing – is it anyone, governments, or a hybrid?

Dennis Jennings noted that it is normal to require a sufficient body of general opinion. Maybe a certain number of people have to object before any action could be taken?

The Chair stated that we are trying to find a nexus with the harm rather than just a personal sense that someone does not like a string. Something more than just an interest needs to be established. Harald Alvestrand is afraid of the slippery slope with an arbiter deciding who has standing.

The Chair responded that this is what happens in the law and it is a legitimate defense. He is not sure we can avoid it, and noted that it is safeguard rather than problem. John Jeffrey noted that this issue is one of the reasons the staff recommendation makes it broad because we were afraid that it would make the process much slower. The Chairman noted that we also need to start cautiously.

Jean-Jacques noted that standing or interest of individuals may be constrained or neglected by governments. So he would go along with staff's recommendation to have broad standing.

The Chairman inquired what should be included in the guidebook?" We have an agreement on standards. As for standing, let's publish that we have concerns about openness, concerns about limiting to one class, and indicate that we are working on proposal, and mention interlocutory hearings on standing.

Kurt Pritz then described the Independent Objectors as a party that could lodge objections in the public interest. The other item still open is resolution of dealing with contending identical strings. He indicated that the advice we have received is that auction, should be used as the most efficient mechanism. There are some categories of community-based names that would not be auctioned. Then there is the registry agreement and how it would be amendment. There was some criticism that community would have to follow amendments. An economic study was done on separation of registries and registrars. After study done, there was public consultations and two meetings held to discuss possible model, and the discussion is ongoing and will be further discussed in Mexico City.

Auction:

The Chairman notes that there is still considerable discussion about auction. He thinks that others with better options than auctions should bring them, and without other proposal auction is the default. Raimundo Beca thinks default should be auctions, but before deciding it we should be clear what we will do with cash we get from auctions. Harald Alvestrand and Bruce Tonkin agrees.

The Chairman noted that there should be more explanation. State that we will look at others, although other types of distribution can be gamed, just as auction can be. Determine what happens with funds. Bruce Tonkin noted that if we have a random selection, people will just put in more applications.

Rita Rodin Johnson said wouldn't that just get us to same result? SC noted that maybe you would get to the same result, but seeking more applications is a less efficient and less clear way to getting to right answer. Steve Goldstein noted that the general counsel has provided privileged advice regarding legality of some mechanisms that must be considered.

Bruce Tonkin agreed and noted that .BIZ got involved in a law suit when its random selection process was considered by some to be a lottery.. Why not reserve name forever.

Bruce Tonkin noted that it we use this as a blocking mechanism, it would encourage people to submit applications with the intent of blocking a competitor getting a name.. He asked if we can we put something out that ICANN is considering establishing arms length fund and if staff can prepare preliminary paper on mechanism of foundation.

The Chairman asked staff to prepare preliminary discussion on that, include taking it out for public comment. Doug Brent asked if we could publish position about auctions, with indication that it is just our current thinking. And other areas, not current resolution. The Chairman noted that we can state that we waiting for a better proposal.

Rita Rodin Johnson is uncomfortable with auction as they favor the wealthier applicants. She does not think it is fair. She would like to see legal arguments in favor of the various positions..

Bruce Tonkin countered that auction gives certainty.

The Board then reached the following conclusions from the discussion:

1) General sense of the board was attained regarding need for additional public comments and the requirement for an additional round (third round) of comments before any RFP could be issued.

2) A resolution on the issues surrounding the need to resolve contending identical string applications. It was noted by Board Members that there had been considerable discussion on auctions as the mechanism for string contentions and other possible mechanisms. The Board members discussed the need to understand how proceeds from any auctions might be dealt with before it could be considered further. Following this discussion, the Chairman asked whether it would be appropriate to direct staff to prepare a preliminary paper and proposed the following resolution, which was moved by Bruce Tonkin and seconded by Steve Goldstein:

It is hereby resolved (2009-02-12-001), that Staff is directed to prepare a preliminary paper setting forth possible guidelines for a foundation or other mechanism that might be established to appropriately deal with the proceeds that might result from auctions.

The board unanimously passed this resolution by a voice vote.

3) On other topics where there was insufficient time for a full discussion, it was agreed that the proposed positions could be set out in the guidebook and publication documents and that this would allow for additional public comments to be considered.

The Meeting was adjourned at 23.10 UTC.

Board Meeting - Agenda

6 March 2009

1. Approval of Minutes
2. Update on GNSO Improvements
    a. GNSO Improvements Overview Update/Status Report --
    b. Individual Users in the GNSO
    c. GNSO Constituency Renewals
3. Proposed Global Policy for Remaining IPv4 Address
4. Location of the First 2010 ICANN Meeting in Africa
5. Update IDN ccTLD Fast Track
6. Update on New gTLDs
7. Registrar Accreditation Agreement Amendment Updates - for information
8. Geographic Regions Working Group Update/Status Report - For information
9. Approval of Charters of ICANN Board Committees
10. Approval of Ombudsman Framework
11. ICANN Board Terms
12. Board Response to Discussions arising from Mexico City Meeting
13. Other Business

Adopted Board Resolutions | Mexico

6 March 2009

1. Update on GNSO Improvements
2. Individual Users in the GNSO
3. GNSO Constituency Renewals
4. Global Policy Proposal for the Allocation of the Remaining IPv4 Address Space 2
5. Location of the First 2010 ICANN Meeting in Africa
6. IDN ccTLD Fast Track
7. Protection for Trademarks in New gTLDs
8. Protection for Geographic Terms in New gTLDs
9. Amendments to the Registrar Accreditation Agreement
10. Approval of Charters of ICANN Board Committees
11. BGC Recommendation for Approval of the Ombudsman Framework
12. ICANN Board Term Transition Proposal
13. President's Strategy Committee Report
14. Public Participation Committee Plan for Timely Posting of Materials
15. Board Response to Discussions Arising from Mexico City Meeting
16. Congratulations for Successful At-Large Summit
17. Thanks to Milton Mueller
18. Thanks to Demi Getschko
19. Thanks to Dave Wodelet
20. Thanks to Staff, Scribes, and Event Teams
21. Thanks to Sponsors
22. Thanks to Mexican Government and Local Hosts

1. Update on GNSO Improvements

(For discussion.)

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2. Individual Users in the GNSO

(For discussion.)

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3. GNSO Constituency Renewals

Whereas, the ICANN Board requested that existing constituencies confirm their status with the Board by the February 2009 ICANN Meeting, and requires constituencies to formally confirm their status every 3 years to ensure that they continue to meet the requirements of Article X, Section 5, subsection 3 of the ICANN Bylaws. This is intended to be an opportunity for existing constituencies to demonstrate compliance with the principles of representativeness, openness, transparency and fairness set forth in the ICANN Bylaws.

Whereas, the six constituencies have complied with the Board's direction, and a forum, which closed 25 February 2009, solicited public comments on their submissions.

It is resolved (2009.03.06.01), that the Board acknowledges and thanks the six GNSO constituencies for their submissions and awaits completion of the following activities:

(1) Staff analysis of constituencies' submissions and public comments, and identification of changes that the Board may want to request each constituency to make over the coming months to ensure that their charters (and subsequent activities), comply with the principles contained in the Bylaws, and expanded upon in the GNSO Improvements Report and subsequent GNSO restructuring resolutions approved by the Board last year.

(2) Follow-up submissions from constituencies, as needed, provided to the Board no later than its June 2009 meeting to confirm that the constituencies have implemented recommended changes.

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4. Global Policy Proposal for the Allocation of the Remaining IPv4 Address Space

Whereas, on 4 February 2009, the Address Supporting Organization Address Council (ASO AC) forwarded a Global Policy Proposal for the Allocation of the Remaining IPv4 Address Space from IANA to RIRs, to be handled by the Board in line with the Board's Review Procedures for Global Internet Number Resource Policies Forwarded for Ratification by the ASO Address Council in Accordance with the ASO MoU.

Whereas, the ASO AC has verified that consensus has been duly achieved in all RIRs for this Proposal.

Whereas, the Proposal was forwarded by ICANN staff to all of ICANN's Advisory Committees and Supporting Organizations on 4 February 2009.

Whereas, the Proposal was posted for public comments on the ICANN website <http://icann.org/en/announcements/announcement-2-05feb09-en.htm> on 5 February 2009 and, by the deadline of 26 February 2009, one comment had been received, expressing support for the Proposal.

Whereas, on 5 March 2009, the ASO AC submitted advice in full support of the Proposal to the Board.

Whereas, the Proposal gives clear direction for the allocation of the last remaining IPv4 address blocks in the IANA free pool, thereby increasing predictability concerning this matter for the community.

It is resolved (2009.03.06.02), that the Board hereby ratifies the Global Policy Proposal for the Allocation of the Remaining IPv4 Address Space as a Global Policy and instructs ICANN staff to implement its provisions in a timely manner and ensure that its provisions can take effect as stated.

5. Location of the First 2010 ICANN Meeting in Africa

(For discussion.)

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6. IDN ccTLD Fast Track

Whereas, the second revision of the Draft Implementation Plan for the IDN ccTLD Fast Track Process was posted for public comments prior to the ICANN meeting in Mexico City, in order to generate additional community discussion on that topic during and after the meeting.

Whereas, the Board has received advice from the GAC and the ccNSO on the Draft Implementation Plan; see <http://gac.icann.org/web/communiques/gac33com.pdf>; [link to ccNSO resolution to be added when available].

Whereas, the Board notes that the GAC and the ccNSO are in agreement that: more information is needed to support the cost recovery rationale identified in the Draft Implementation Plan; Documentations of Responsibilities should be encouraged but voluntary; financial contributions should be made on a voluntary basis and not be imposed as a condition for delegation; and future IDN ccTLDs should adhere to all relevant standards, including the IDNA protocol.

Whereas, significant additions have been made on the implementation details of the Plan, including a first draft of the Documentation of Responsibility: a standard arrangement between IDN ccTLD operators and ICANN; and the usage of IDN Tables and variant strings.

Whereas, other stakeholders and the Board believe that additional discussion, investigation and analysis is necessary to determine whether there should be a requirement for (i) Documentation of Responsibility, (ii) financial contributions, and (iii) adherence to the IDN Guidelines and IDN technical standards such as the IDNA protocol.

It is resolved (2009.03.06.03), that the Board thanks the ICANN community for its work to date and encourages it to continue its

work so that the implementation plan can be finalized and considered by the Board no later than at its annual meeting in 2009.

It is resolved (2009.03.06.04), that the Board directs staff to work towards completion of the Implementation Plan for the IDN ccTLD Fast Track Process by, among other tasks, continuing consultation on the Documentation of Responsibility, including a specification for adherence to the IDN Guidelines and IDN technical standards such as the IDNA protocol.

It is resolved (2009.03.06.05), that the Board directs staff to rapidly provide the community with financial information on ICANN costs attributable to ccTLDs, including the costs associated with IDN ccTLDs, that will inform the creation of a financial model for cost contributions to the launch and continued management of the IDN ccTLDs.

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7. Protection for Trademarks in New gTLDs

Whereas, based on the public comment submissions received regarding the New gTLD Draft Applicant Guidebook, ICANN Staff has determined that the implementation issues involving trademark protection need additional community input and analysis. These issues exist today within the existing gTLDs.

Whereas, members of the community with knowledge and expertise in this area have proposed a way to synthesize the comments received in this area, and, with input from the broader community, including WIPO, propose solutions to the Staff on these issues in a timely manner.

Whereas, the board recognizes that resolution of these issues would be beneficial to the introduction of new gTLDs, it is

Therefore resolved (2009.03.06.06), that the Board requests the GNSO's Intellectual Property Constituency in consultation with staff to convene an Implementation Recommendation Team comprised of an internationally diverse group of persons with knowledge, expertise, and experience in the fields of trademark, consumer protection, or competition law, and the interplay of trademarks and the domain name system to develop and propose solutions to the overarching issue of trademark protection in connection with the introduction of new gTLDs.

It is further resolved that the Implementation Recommendation Team will be comprised principally from the organizations and persons that proposed such solutions in the public comment period on the first draft Applicant Guidebook, and the Implementation Recommendation Team would use the solutions proposed in the public comments as its starting point for development.

The board directs the Implementation Recommendation Team to solicit input from the interested constituencies prior to its first session to ensure broad community input at the outset of its work.

The board further directs (i) staff to provide a dedicated staff person and additional staff resources as staff determines to facilitate the work of the Implementation Recommendation Team, and (ii) reasonable travel support be provided to up to fifteen members of the Implementation Recommendation Team for the purpose of conducting two face-to-face meetings in hub cities.

The board further requests that the Implementation Recommendation Team (i) distribute its draft report by 24 April 2009 to interested members of the community for comment, and (ii) produce a final report to be published no later than 24 May 2009 for consideration by the ICANN community at the Sydney meeting.

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8. Protection for Geographic Terms in New gTLDs

Whereas, the GNSO's Reserved Names Working Group recommended that an objection mechanism be the sole basis for protection of geographic names. See <http://gnso.icann.org/issues/new-gtlds/final-report-rn-wg-23may07.htm>.

Whereas, the GAC through the GAC Principles regarding New gTLDs recommended that country, territory, and place names should be protected at the top and second levels in new gTLDs. See <http://gac.icann.org/web/home/gTLD_principles.pdf>.

Whereas, version 2 of the draft Applicant Guidebook includes a compromise between the GNSO and GAC recommendations, requiring gTLD applicants for certain types of top-level geographical names to provide evidence of support or non-objection from the relevant governments or public authorities. See <http://www.icann.org/en/topics/new-gtlds/draft-evaluation-procedures-clean-18feb09-en.pdf>.

Whereas, the Board has discussed in detail the issues and implementation consequences raised by these various positions.

Resolved (2009.03.06.07), the Board is generally in agreement with the proposed treatment of geographic names at the top-level, and staff is directed to revise the relevant portions of the draft Applicant Guidebook to provide greater specificity on the scope of protection at the top level for the names of countries and territories listed in the ISO 3166-1 standard, and greater specificity in the support requirements for continent names, and post the revised position for public comment.

Resolved (2009.03.06.08), staff is directed to send a letter to the GAC by 17 March 2009 identifying the implementation issues that have been identified in association with the GAC's advice, in order to continue communications with the GAC to find a mutually acceptable solution. The Board would request a preliminary response by 24 April 2009 and a final report by 25 May 2009.

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9. Amendments to the Registrar Accreditation Agreement

Whereas, pursuant to Board resolutions adopted in San Juan (07.50, 07.51, and 07.52) <http://www.icann.org/en/minutes/resolutions-29jun07.htm#k>, ICANN staff solicited and considered the input of the Internet community, including the At-Large community and the GNSO constituencies, regarding proposed changes to the RAA.

Whereas, as directed by the ICANN Board, ICANN staff engaged with the Registrars Constituency in order to arrive at, and post for public comment, a set of proposed amendments or alternative version to the RAA intended to address to the extent feasible the concerns raised by the Internet community.

Whereas, ICANN published for public comment and provided notice to the At-Large Advisory Committee, the GNSO, and other interested parties to review the proposed revised RAA and provide advice to the Board in its review. <http://www.icann.org/en/announcements/announcement-18jun08-en.htm>

Whereas, ICANN staff analyzed all comments received and incorporated recommendations in the form of additional provisions, which were posted and discussed with the Internet community.

Whereas, the ALAC voted to support the updated set of RAA amendments.

Whereas, the GNSO voted unanimously to support adoption of the updated set of amendments, and agreed to convene two groups of representatives from the GNSO Community within 30 days of Board approval to: 1) draft a registrant rights charter; and 2) identify further amendments to the RAA on which further action may be desirable and provide its advice to the Council and ICANN staff no later than 31 July 2009.

It is resolved (2009.03.06.09), that the Board thanks the ALAC for its advice, and thanks the GNSO for its recommendation on the proposed RAA amendments, particularly thanks the members of the GNSO Council who worked this week to finalize their resolution.

It is resolved (2009.03.06.10), that the Board agrees with the substance of the amendments, and directs staff to immediately publish them for public comments for a period of no less than 30 days, and commits to act on approval of the amendments at the earliest opportunity.

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10. Approval of Charters of ICANN Board Committees

Whereas, on 7 November 2008, the Board created four new Board Committees: (i) the IANA Committee, (ii) the Public Participation Committee; (iii) the Risk Committee, and (iv) the Structural Improvements Committee.

Whereas, on 7 November 2008, the Board resolved to dissolve the Conflicts of Interest Committee and the Reconsideration Committee, and transfer the responsibilities of those two committees to the Board Governance Committee.

Whereas, on 3 February 2009, the Board approved revisions to the Bylaws to reflect that the Board Governance Committee shall now be responsible for handling matters previously handled by the Conflicts of Interest Committee and the Reconsideration Committee.

Whereas, each of the five Board committees referenced above has approved the charter language unique to its own committee;

[links to charters to be added when available].

Whereas, the Board Governance Committee has also approved language common to all of the charters.

Whereas, the Board Governance Committee has recommended that the Board approve the charters of these five committees.

It is resolved (2009.03.06.11), that the Board approves the revised Board Governance Committee charter and the charters for the following four recently constituted Board Committees: (i) the IANA Committee; (ii) the Public Participation Committee; (iii) the Risk Committee; and (iv) the Structural Improvements Committee.

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11. BGC Recommendation for Approval of the Ombudsman Framework

Whereas, the Ombudsman submitted a draft Ombudsman Framework to the Board for approval.

Whereas, the draft Ombudsman Framework was posted for public comment in 2004 <http://www.icann.org/ombudsman/ombudsman-framework-03dec04.htm>.

Whereas, at the Board's request the BGC has suggested revisions to the Framework and had several discussions with the Ombudsman about those revisions.

Whereas, the BGC and the Ombudsman have reached agreement on revised language to the Ombudsman Framework.

Whereas, the revised Ombudsman Framework documents the procedures and processes under which the Ombudsman currently operates.

Whereas, the BGC has recommended that the Board approve the posting of the framework for further public comment.

It is resolved (2009.03.06.12), that the Ombudsman Framework as revised be posted for further public comment and considered at the next possible Board meeting or be returned to the BGC for additional consultation.

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12. ICANN Board Term Transition Proposal

(For discussion.)

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13. President's Strategy Committee Report

Whereas, the President's Strategy Committee (PSC) has worked on delivering a report on "Improving Institutional Confidence."

Whereas, the report from the PSC was published on 27 February 2009.

It is resolved (2009.03.06.13), that the Board thanks the PSC for its work and undertakes to review the report.

It is resolved (2009.03.06.14), that the board receives the report and posts it for 60 days' public comment, and during this time the staff will evaluate implementation of the proposals and report its findings to the Board.

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14. Public Participation Committee Plan for Timely Posting of Materials

Whereas, the ICANN community has expressed concern at the late posting of materials prior to meetings, including some cases of documents being published during the meeting itself.

Whereas, meetings, discussions, workshops, etc. are most productive when participants have had sufficient time to review relevant material.

Whereas, the community feedback this week broadly supports the goal of having meeting material be available in advance of meetings, and specifically the GAC has requested the posting of materials at least fifteen working days in advance of each ICANN meeting.

Whereas, the PPC has been discussing the importance and benefits of making meeting materials available well in advance of meetings.

Whereas, it will take a strong commitment from the ICANN community, including ACs, SOs, WGs, and others, to achieve the goals of advance availability of meeting material.

It is resolved (2009.03.06.15), that the board requests that the PPC develop a plan for ensuring that all major meeting material be available at least two calendar weeks in advance of meetings, starting with Sydney.

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15. Board Response to Discussions Arising from Mexico City Meeting

(For discussion.)

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16. Congratulations for Successful At-Large Summit

Whereas, the ICANN Bylaws, Article XI, Section 2, Part 4, provide a process that allows individual Internet users to participate meaningfully in the work of ICANN, as the community known as 'At-Large'.

Whereas, more than 90 members representing individual Internet user organizations worldwide gathered in Mexico City to hold the At-Large Summit, which illustrates the ever-growing involvement and participation of the worldwide individual Internet user community.

Whereas, the participants of the At-Large Summit participated in the ICANN meetings, and organized a total of 29 events on topics the At-Large community identified as priorities, and discussed and developed recommendations on issues of chief importance to individual Internet users worldwide.

Resolved, the ICANN Board acknowledges receipt of the At-Large Summit Declaration <http://www.atlarge.icann.org/files/atlarge/correspondence-05mar09-en.pdf> signed by the Summit Working Group Chairs, congratulates the global At-Large community for these declarations and their successful Summit, and welcomes the continued participation of the global individual Internet user community.

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17. Thanks to Milton Mueller

Whereas, ICANN wishes to acknowledge the considerable energy and skills which members of the stakeholder community bring to the ICANN process.

Whereas, in recognition of these contributions, the ICANN wishes to acknowledge and thank members of the community when their terms of service end.

Whereas, Milton Mueller has served the Non-Commercial Users Constituency as chairman for four terms from 2003-2004, 2005-2006, 2006-2007, and 2007-2008.

Whereas, Milton has concluded his service term as Chairman of the Non-commercial Constituency.

It is resolved, that the ICANN Board resolves that Milton Mueller has earned the deep appreciation of the Board for his term of service, and the Board wishes Mr. Mueller well in all future endeavors.

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18. Thanks to Demi Getschko

Whereas, Demi Getschko was elected to the ICANN Board by the Country Code Names Supporting Organization, and started serving on the Board in January 2005. He was elected to a second term in 2006.

He has served as the Chairman of the Conflicts of Interest and Reconsideration Committees, and as a member of the Board Governance, IANA, and Meetings Committees and has provided excellent insight, leadership and expertise in these roles.

Whereas, Demi has served with great integrity and consistency to the Core Principles of ICANN.

Whereas, Demi will conclude his service as a Director of the ICANN Board in May 2009.

It is resolved, that the ICANN Board resolves that Demi Getschko has earned the deep appreciation of the Board for his term of service, and the Board wishes Mr. Getschko well in all future endeavors.

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19. Thanks to Dave Wodelet

Whereas, Dave Wodelet was elected to the ICANN Board by the Address Supporting Organization, and started serving on 4 June 2006.

He has served as a member of the Conflicts of Interest, Finance, Meetings and Public Participation Committees, and has provided excellent insight, leadership and expertise in these roles.

Whereas, Dave has served with great integrity and consistency to the Core Principles of ICANN.

Whereas, Dave will conclude his service as a Director of the ICANN Board in May 2009.

It is resolved, that the ICANN Board resolves that Dave Wodelet has earned the deep appreciation of the Board for his term of service, and the Board wishes Mr. Wodelet well in all future endeavors.

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20. Thanks to Staff, Scribes, and Event Teams

The Board expresses its appreciation to the scribes Laura Brewer, Teri Darrenougue, Jennifer Schuck, Charles Motter, Susan Wollenweber, Darlene Pickard, and to the interpreters and to the entire ICANN staff for their efforts in facilitating the smooth operation of the meeting.

The Board also wishes to express its appreciation to VeriLan Events Services, Inc. for technical support, and PSAV, Imagine Eventos, and Messe Mexico for their support. Special thanks are given to Gerardo Velazquez R. and his team.

The Board would also like to thank Rosa Maria Vaca, Executive Director, Monica Maldonado, Director of Sales, Eduardo Fournier, Director of F & B, Daniel Eduardo Cervantes Calzada, Capitan de Banquetes, and the event staff at the Sheraton Centro Historico for their support and for this beautiful facility to hold this event.

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21. Thanks to Sponsors

The Board extends its thanks to all sponsors of this meeting:

AXTEL, BBVA Bancomer, Telmex, Public Interest Registry, VeriSign, Inc., Afilias Limited, AusRegistry International, China Internet Network Information Center (CNNIC), Core Internet Council of Registrars, InternetX, IP MIRROR, Minds + Machines, dotMobi, NeuStar, Inc., RegistryASP, National Telecommunication Regulatory Agency (ANRT), EuRid, Iron Mountain Digital, NameAction, Inc., National Internet Development Agency of Korea (NIDA), Directi Internet Solutions Pvt. Ltd. d/b/a PublicDomainRegistry.com, and ICANNWiki.

The Board also wishes to thank Domaine.info for providing photography and filming for this meeting.

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22. Thanks to Mexican Government and Local Hosts

The Board wishes to extend its thanks to the local host organizers, The Mexican Internet Association, AMIPCI, The Network Information Center-México, (NIC-México) and ISOC (Internet Society) Mexico.

The Board extends thanks to the new Vice Minister of Communications of Mexico, Lic. Gabriela Hernandez, and the Coordinator of the Information Society and Knowledge, Ing. León David Pérez Hernández, for their support and participation during the meeting.

The Board would also like to express its greatest gratitude to Ing. Enrique Bustamante R., Director General at AMIPCI, Lic. Luis Ernesto Valdez Diaz, Subdirector General at AMIPCI and all AMIPCI staff that have put enormous dedication and hard work for this meeting to be possible.

The Board acknowledges the support and participation of Ing. Oscar Robles from NIC-México and Dr. Alejandro Pisanty from ISOC Mexico, who were actively involved in the organization of this meeting and who have made invaluable contributions throughout the history of the organization.

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ICANN Board Meeting

Friday, 6 March 2009 ICANN - Mexico City

>>PETER DENGATE THRUSH: Ladies and gentlemen, welcome to the board meeting, which I declare open.

The first item on the agenda is an update on GNSO improvements.

Steve.

Steve, you were going to speak on GNSO improvements.

>>STEVE GOLDSTEIN: Are we ready?

>>PETER DENGATE THRUSH: (Nods head.)

>>STEVE GOLDSTEIN: Good morning, everybody.

The board wishes to note that during this past week, and actually preceding it, there has been a tremendous amount of very good, credible, and valuable work on the GNSO improvements.

We are greatly encouraged by the spirit of good will and collaboration and compromise which has been evidenced throughout the GNSO.

And so the board encourages the GNSO to continue along the paths that they have been pursuing so that we can achieve closure on the several points that are under development.

I think Bruce wanted to elaborate on some of the detail.

>>PETER DENGATE THRUSH: He did. I think, Bruce, you wanted to comment further on that?

>>BRUCE TONKIN: I think if we look at the five areas of improvement that are under way -- so there's refining the working group model, revising the policy development process, enhancing the constituencies, and improving communications -- I think on all of these, one of the things that we are finding as an organization is that we need to be careful that we don't find ourselves spending all our time and all the best people doing reviews all the time.

So we need to, I think, advance these things fairly quickly on the topic of the working group model. That working group has already been used within the GNSO since the sort of new gTLD process. And encourage the GNSO to quickly identify incremental improvements, but keep their focus on the actual policy development.

I think what we're seeing in the constituencies is new constituencies coming forward, and I think we want to encourage that.

We do want to make sure that these constituencies have broad membership, both internationally broad and also diverse in their points of view.

I certainly encourage that because I think more constituencies with focus will improve the quality of the work that comes out of the new stakeholder groups. So I will leave it at that, Peter.

>>PETER DENGATE THRUSH: Thank you, Bruce.

And, Dennis, I think you also intended to comment on improvements in the GNSO.

>>DENNIS JENNINGS: Not so much on the improvements, Peter, but just on the level of effort that has gone in, and particularly by the volunteers and the quality of the work that comes out of this process is really impressive.

>>PETER DENGATE THRUSH: Yes. Thank you.

I would just close this, I think, by noting the work that's going on in the Operation Steering Committee and the Policy Process Steering Committee, and to confirm that we have heard of the pressures that this is causing, and look forward to coming to a conclusion on some of these items so that we can get on with the real work.

The next item, then, unless anybody has anything further, is the topic of individual users in the GNSO.

And Harald had, I think, indicated an intention to speak on that.

>>HARALD ALVERSTRAND: So it's been very clear to me from the discussions on the board and in the community that basically everyone favors individual uses as part of the policy development process in the GNSO.

There has been a long tradition of individual user participation in the business side of the noncontracted house. And the situation on the noncommercial side has been a little more complicated. But still, it seems that the community wants and appreciation the input of people who are at ICANN representing no particular external body, such as a corporation.

So it's also clear that there are no proposals on the board's table in the form of proposed charters that have been sent to the board, that address these issues.

So the board cannot approve anything. It has nothing to approve.

But it is a very good thing that there seems to be consensus in the community that individual users contributing to the policy development process is a good thing that should be encouraged. And I'm hoping that we will have the proposals for particular ways of setting up the relevant constituencies inside the GNSO in such a way that users are empowered in the right way to participate, in a way that contributes to the safe and secure operation of the Internet.

>>PETER DENGATE THRUSH: Thank you, Harald. I think Wendy had also indicated an intention to speak.

Wendy.

>>WENDY SELTZER: Thanks very much. I wanted to make sure that we acknowledged and appreciated the work of the cross-user community, GNSO Councillors, members of the ALAC, and individuals who worked together to give the board statement of the importance of user participation, and recognize the importance of giving the users easy ways to participate across the ICANN process, as we have seen at the At-Large Summit, through the at-large organization, and in direct policy development in the GNSO Council through GNSO processes.

And so I appreciate that we will have ongoing discussions about giving lightweight mechanisms for individual users of the Internet to participate in various parts of the ICANN structure.

>>PETER DENGATE THRUSH: Thank you, Wendy.

And Raimundo had indicated also, followed by Roberto.

>>RAIMUNDO BECA: Thank you, Peter.

The GNSO is, at this moment, in the process of the implementation of a (inaudible) reform. And in this reform, the main issue of it is that the PDP is coming down to make it really a bottom-up policy. It's coming down from the council of the GNSO to the working groups.

So I would like the opportunity to encourage all those individuals, even if they don't find a constituency with which to work, to go to the working groups, and the GNSO should, in the constitution of the working groups, should give them a place to be there. Maybe some of them could maybe -- maybe the drafters of some policies, as it happened in other places in the world, where the policies are presented by individuals.

And also, they may be chairs of some of the working groups.

So it seems to me that the message we should give to individuals is if they want to participate in the PDP, the right place to do it is in the working groups, and it's to work and not to have the power in the council.

>>PETER DENGATE THRUSH: Thank you, Raimundo.

Roberto.

>>ROBERTO GAETANO: I think that this issue about individual member's participation in the GNSO is an old issue.

It was raised since the time when the GNSO was the DNSO.

The proposal of having a constituency for individuals as the appropriate vehicle for representation has been attempted several times.

We know that there are some objective difficulties in bringing

together individuals to form a constituency and participate. It's just we have to accept the fact that it is more difficult, then, to bring together a set of organizations.

But I think that there hasn't been any doubt about the appropriateness of the formation of such groups, and hasn't been any doubt about the fact that by not having a vehicle for participation for individual users, the ICANN community misses an opportunity.

There are some great minds that could contribute and that just don't find the appropriate vehicle.

So I would like to go beyond just the acceptance of the fact, and I would encourage individuals of good will to go to the effort of creating such vehicle, prepare the charter for the constituency and present the proposal to this board for acceptance.

Thank you.

>>PETER DENGATE THRUSH: Thanks, Roberto.

Dennis.

>>DENNIS JENNINGS: Thank you, Peter.

The legitimacy of the global multistakeholder bottom-up policy development process, in my view, requires that that is balanced and takes into consideration the views and concerns of all stakeholders.

And an extremely important stakeholder, or set of stakeholders, are the individuals, the registrants, the end users, the customers, the consumers, the citizens who rely on the services that the Internet infrastructure provides.

Therefore, I regard it as an absolutely priority for us that we ensure that those views, those concerns are fully represented in our policy development processes, particularly in the gTLD and GNSO policy development processes.

I'm less concerned about the individual than the views and concerns of individuals: registrants, customers, et cetera. And so members to represent those views fairly and accurately in the policy development process is, I believe, an extremely important aspect of our legitimacy as we move forward.

Thank you.

>>PETER DENGATE THRUSH: Thank you, Dennis.

Can we move to item 3, then, which is the GNSO renewal of the various charters of the GNSO constituencies.

And, Roberto, we have a draft resolution.

Could you read that for us, please.

>>ROBERTO GAETANO: Whereas, the ICANN board requested that existing

constituencies confirm their status with the board by the February 2009 ICANN meeting, and requires constituencies to formally confirm their status every three years to ensure that they continue to meet the requirements of Article X, Section 5, subsection 3, of the ICANN bylaws. This is intended to be an opportunity for existing constituencies to demonstrate compliance with the principles of representativeness, openness, transparency, and fairness set forth in the ICANN bylaws.

Whereas, the six constituencies have complied with the board's direction, and a forum, which closed on the 25th February 2009, solicited public comments on their submissions.

It is resolved that the board acknowledges and thanks the six GNSO constituencies for their submissions and awaits completion of the following activities:

1, staff analysis of the constituencies' submissions and public comments, and identification of changes that the board may want to request each constituency to make over the coming months to ensure that their charters, and subsequent activities, comply with the principles contained in the bylaws and expanded upon in the GNSO improvements report and subsequent GNSO restructuring resolutions approved by the board last year.

2, follow-up submissions from constituencies, as needed, provided to the board no later than its June 2009 meeting to confirm that the constituencies have implemented recommended changes.

>>PETER DENGATE THRUSH: Thank you, Roberto. Is there a seconder for that resolution?

Steve Goldstein. Thank you, Steve.

Any further discussion about it?

It's comprehensive. We have understood. In which case I will put that resolution, all those in favor, please say aye.

>>MULTIPLE VOICES: Aye.

>>PETER DENGATE THRUSH: Any opposed in abstentions?

Carried.

The next item, then, is the board has received a global policy proposal for the allocation of the remaining IPv4 address space.

Can I ask Raimundo Beca from -- to take us through this particular topic.

Thank you, Raimundo.

>>RAIMUNDO BECA: Thank you, Peter.

I will make a short introduction in Spanish, and then I will read the resolution in English.

This policy that we present now or that we introduce now is crucial. More politically speaking that technically speaking.

It is crucial as it deals with the homogeneous distribution of the five regions in the last five blocks /8 of the IPv4 addresses.

For the more developed regions, this policy has no importance, perhaps. As with the degree of consumption they have, the last block will be there for another quarter. But the situation is quite different in Latin America and Africa, where a distribution of /8 will be there for one additional year plus another one which is in reserve. Therefore, we are speaking about two years in the case of LACNIC and three years plus one year in the case of AfriNIC.

Therefore, the depletion of IPv4 and the slowness with which IPv6 has appeared in the world allows two years in time to Latin America and four years to Africa.

This policy asks for some generosity that was very late in arriving on behalf of the other three regions, but it did arrive, and it did arrive when IPv4 is becoming depleted. And this is something that we have to celebrate. And for me, as a member of the board, the most important thing that I have done here is to introduce this policy at this point in time, and this is why I am so glad in doing so, and also with a great acknowledgment to those who were the authors of these policies who defended them in public fora.

And also, I would like to thank the generosity of RyC, ARIN and APNIC because they finally were able to approve these sort of policies.

Today, apparently, I don't know if this has happened but there is some hope that it will happen, that some of the space that has remained in IPv4 may be turned back to IANA.

There is a new policy which is appearing at this moment in time, and, therefore, this precedent of uniform distribution of the last blocks is a very important one.

The most complex policy was allocation. It is still being discussed, but at least we have a precedent where the regions that arrive later into Internet are not going to be punished for this delay.

I am going to read the resolution in English.

Whereas, on February -- 4 February 2009, the Address Supporting Organization address council, ASO AC, forwarded a global policy proposal for the allocation of the remaining IPv4 address space from IANA to the RIRs, to be handled by the board in line with the board's review procedures for global Internet number resource policies forwarded for ratification by the ASO address council in accordance with the ASO MOU.

Whereas, the ASO AC has verified that sequences has been dually achieved in all RIRs for this proposal.

Whereas, the proposal was forwarded by ICANN staff to all of ICANN's

advisory committees and supporting organizations on February 4, 2009.

Whereas, the proposal was posted for public comments on the ICANN Web site on February 5, 2009, and by the deadline of 26 February 2009, one comment had been received, expressing support for the proposal.

Whereas, on March 5, 2009, the ASO AC submitted advice in full support of the proposal to the board.

Whereas, the proposal gives clear direction for the allocation of the last remaining IPv4 address blocks in the IANA free pool, thereby increasing predictability concerning this matter for the community.

It is resolved that the board hereby ratifies the global policy proposal for the allocation of the remaining IPv4 address space as a global policy and instructs ICANN staff to implement its provisions in a timely manner and ensure that its provision can take effect as stated.

Thank you, Mr. Chairman.

>>PETER DENGATE THRUSH: Thank you. Dave Wodelet, you were going to second this?

You do? Thank you.

>>DAVE WODELET: I second it.

>>PETER DENGATE THRUSH: Dave, you wanted to say something about this?

>>DAVE WODELET: Yes, I do. I just wanted to mention, just to emphasize, this is kind of the end game. This is when IPv4 runs out, which is probably going to happen somewhere around the end of 2010, maybe 2011. It's really hard to tell. It really depends on the consumption between now and then.

Why this is important is that it takes the last remaining five /8 blocks, which are basically around 17 million addresses, and distributes them equally among all the five different RIRs for them to use.

As Raimundo mentioned, some RIRs are using them or consuming them at a slower pace than other RIRs, so they are going to last some RIRs only a few months and others perhaps a few years.

And the ones in the developing countries are the few years.

So I think this is a very good proposal. It gives address space the legacy IPv4 address space a longer run-out time for the developing countries, but we still have to move towards IPv6.

I mean, this isn't going to do anything about that. As a community, we need to concentrate on IPv6 because that's our future. That's where we're headed.

This just eases the pain a bit for some of the developing countries.

So I just wanted to emphasize that, and I'm very pleased to see this

moving forward because it does provide a fair and equitable distribution of the last remaining IPv4 space to the entire Internet community.

Thank you very much.

>>PETER DENGATE THRUSH: Thanks, Dave.

I have a speaking order on this with Steve G., Paul, and then Steve C.

Steve Goldstein.

>>STEVE GOLDSTEIN: Thank you, Chair. Since I joined the board a little over two years ago, I noticed that this matter of policy for IPv4 depletion and so forth has been pursued with tenacity and reported to the board with regularity by our staff member, Olof Nordling. And Olof, will you please stand up so people can see you and give you a little applause for this thing?

[Applause]

>>STEVE GOLDSTEIN: Thank you for your hard work.

>>PETER DENGATE THRUSH: Thank you, Steve.

Paul Twomey.

>>PAUL TWOMEY: Well, I was going to do exactly the same thing that Steve was going to say, so I will applaud Olof as well.

And I would also like to thank the members of the ASO address council for the role they have played for putting this through.

I think we should also note, and this is very important, I think this final global policy, as Dave pointed out, for the Regional Internet Registries for all to have worked through this, which has taken some time, to end up with this result I think is very significant. And I think we should also pay particular attention to each of the RIRs and give thanks to the initiatives and the coordination of this.

This is one of these difficult issues to coordinate across five regions, and for five regional RIRs to work it through together and have a bottom-up policy process which has resulted in exactly such an equitable allocation mechanism I think is something that should be noted. It should be noted in this place. It should certainly be noted in all places where Internet governance is discussed, because this is a very significant outcome. And this global policy is a very significant outcome in the context of the ongoing Internet governance discussion.

>>PETER DENGATE THRUSH: Thank you, Paul.

Steve Crocker.

>>STEVE CROCKER: Thank you, Chairman.

I just want to note that although what's happening here is exactly the right thing, to step back a little bit and look at the larger

context for the benefit of people who are trying to understand exactly where this transaction, where this activity of ours fits into the larger picture, when we say we are running out, we are allocating the last of the IPv4 space, that does not mean in any way that IPv4 service is going to come to an end throughout the world.

IPv4 service is going to continue for some unbounded, unforeseeable amount of time.

And the period we're going to go through is a co-existence period rather than a transfer wholesale from IPv4 to IPv6.

So this is a very important step, absolutely true. It is. But it is just a step in the larger picture of how addressing and transportation -- transport is going to play out across the Internet as we have these two similar but not identical networks, one IPv4 and IPv6, co-existing and interoperating in various ways over the next many years.

Thank you.

>>PETER DENGATE THRUSH: Thank you, Steve.

And Raimundo, one last quick word, please. We need to move on.

>>RAIMUNDO BECA: Peter, given the political importance of this policy, I would like if we could approve it by acclamation.

>>PETER DENGATE THRUSH: I think that's an excellent suggestion.

Let's put this -- and if people feel sufficiently moved, they can vote with applause.

All those in favor, please indicate.

[Applause]

>>PETER DENGATE THRUSH: Any abstentions?

Any opposed?

So the record will show, Mr. Secretary, that it was carried unanimously by acclamation.

Thank you, Raimundo, for the work that went into that.

Can we move, then, to a discussion about the location of two forthcoming meetings, and I would like to ask Paul Levins to give us an update on that.

Paul, thanks.

>>PAUL LEVINS: Thank you, Peter. Always good to get up to applause.

My name is Paul Levins. I'm the vice president of corporate Alejandro Pisanty affairs and among my responsibility, I have meetings coordination so I guess I am in a way responsible for the exhaustion that everyone is experiencing right now, so my apologies.

One of the things we have been aiming to do as an objective, certainly been exhorted to do this by the board, is to provide much greater advance warning of venue location for meetings.

So our objective has been to try to be alerting to the community to the meeting location about 12 months out.

And we had thought to reach that objective at this meeting with the announcement of a location for Africa at the first meeting of 2010.

These meetings are, as you would understand, you have been here a week, very complex and increasingly expensive events.

As a consequence, we're attempting to try and put a bit of a ceiling on the expense for these meetings. They tend to be about $2 million per meeting, in terms of expenditure and budget.

We're -- With the Africa meeting, we have three potential bidders, and we want to try and reach a point where we are much closer to the magical number of 2 million. And as a consequence, we are not in a position to be able to make a recommendation to the board at this stage. We want to do a bit more negotiation with the existing bidders to see if we can reach that figure.

That, in turn, means, Chair, that we are not in a position to be able to provide the board with a recommendation at this meeting, but we are confident that we will be able to do that at the board's next teleconference meeting, which will be on April 23rd, if I'm not mistaken.

I also wanted to provide with you an update by way of the Seoul meeting. Now, those of you who were in Cairo or if this is your first meeting, let me just provide with you a little bit of memory jogging.

At the Cairo meeting, the board agreed to change the rotation of meetings so that in addition to the meeting taking place at Sydney, Australia in June, we would have a meeting being held in Seoul, Korea at the end of that year. That would be our third meeting this year.

The other part of the resolution the board made in relation to this was that we were to try and achieve a budget figure for Seoul which was similar to the expenditure on the Sydney meeting, or the budget for the Sydney meeting. And that is about 1.93. So again you can see there is this figure of $2 million which we are trying to hit.

We're not at that point with the Seoul bid team at this stage, and as soon as -- We are not prepared to sign off on that, I guess, Chair, until such time as we have reached that figure. And just as soon as we have reached that figure, then we will be providing a recommendation -- a recommended budget to the board for approval. And again, we're confident that we can reach that position with the bidders by the April 23rd meeting.

Chair, I wonder if I can just very quickly provide you with some details about this meeting, which I think are informative and give you a sense of the diversity of our meetings.

Sorry, I just wanted to make one more point, and that was contingent upon approval by the board of those two locations in April, we will be 11 months out of in our warning to the community. So we are one month out from our commitment of 12 months, and we are hoping that by June of 2010 we will be in a position to be able to provide you with 12 months warning. So we are on target.

Very quickly about this meeting, we had over 1200 registrations, and the top countries represented here at these meetings were Mexico with 275 attendees; United States with 228; Canada with 35, Brazil, 32; and Germany, 26.

And the reason those figures are significant it's the first time in my memory that we have had the number of residents from the city where we have held the meeting outgunning the attendance of any other country. So something of significance to note there, chairman and board members.

Thank you.

>>PETER DENGATE THRUSH: Thank you, Paul.

I see a question from Bruce. Bruce.

>>BRUCE TONKIN: Peter, I guess it's partly more of a comment. But first I want to commend the Mexico organization that's obviously got the message out into the local community because it's so important that the people in this region know about the event and come to it.

I think my observation with respect to the meeting planning is that we're getting more and more requests for people to get some travel support for either airfares or accommodation or both. And I think we have seen the benefits of that. The At-Large Summit was an example where we did provide substantial funding.

The issue for us, though, is that that cost has grown dramatically. And as all Paul pointed out, we are sort of heading beyond $2 million as a meeting cost. And probably the best way to balance that out is to perhaps move from a model where we are relying on bidders and relying on planning meetings in a sort of 6- to 12-month time frame and being able to do longer, sort of three-year type contracts with airline and hotel chains to really get the long-term expenses down, which in turn means we can support more people traveling to the metes meetings.

So just something I think the staff can give further consideration to in getting that balance between participation and, obviously, diversity in meeting locations.

>>PETER DENGATE THRUSH: Thanks, Bruce.

I know the public participation committee also has a focus on meetings.

Jean-Jacques, did you want to say something?

>>JEAN-JACQUES SUBRENAT: Yes. Actually, I wanted to thank Bruce for his points.

This will be taken up by the committee you just mentioned.

I think it's very important that we have as long a planning cycle as we can. It should bring down costs. And at this moment in the economic cycle, of course, it is especially important.

Thank you.

>>PETER DENGATE THRUSH: And Rita and then Katim, and Dennis.

>>RITA RODIN JOHNSTON: Thanks, Peter. Thank you. I just wanted to make a quick observation, just to highlight for everyone that Paul did mention that he would have this sorted by April 23rd. The board is very conscious of people trying to get their schedule sorted. This could be a significant travel for many people, looking to go to this meeting, so that's why we've asked Paul to really get this sorted out by April 23rd. We're trying to get some tighter deadlines around lots of things and lots of process within what we're doing, so hopefully we'll have this information for you all by April 23rd. The board has told you Paul that if we can't get finality with this budget, we need to figure out where else we're going to go, and so to be quite firm with the people that he's negotiating to get this sorted very quickly.

>>PETER DENGATE THRUSH: Thanks, Rita. Katim.

>>KATIM TOURAY: Yeah. Thanks a lot, Peter. I just wanted the opportunity to apologize for my late arrival at the meetings. I think as we all know, people like us from developing countries face incredible challenges traveling around, especially those of us from Africa, so I have to run this morning to the South African embassy in Mexico City to make arrangements to get a visa to enable me to travel on ICANN-related business.

So please pardon me for my delay in arriving at the meeting.

Having said that, I just would like to ask Paul a question, because a couple of months ago, the dollar -- the price for a barrel of oil was almost like $200 a barrel, and of course that really depressed the price of the dollar. So I'm just -- and now, of course, things have eased up a little bit so the value of the dollar has appreciated some. I'm just wondering whether this fluctuation in the exchange rates has impacted your ability to come to a negotiated budget with the various parties that are bidding for hosting or bidding to host the Africa meetings, and whether it's actually also affected the abilities of these countries to, in fact, come up with very good deals for you. And thirdly, if you are making or taking adequate precautions to prevent against the consequences of such wild swings.

>>PETER DENGATE THRUSH: Thanks, Katim. Paul can I just ask you to hold the answer because I know you wanted to respond to another one and I'll just check if Dennis who wants to speak next may give you a question so we can get it all in one hit. So Dennis, your comment.

>>DENNIS JENNINGS: Thank you, Peter.

As board members probably realize by now, with my background I tend to focus in the costs and expenditures and getting accurate

information, and one of the things that I know staff are working on is to get a much better picture of the total costs of these generation meetings, so the 2 million figure is an approximate figure that we've been using in the past but it doesn't include some travel costs. The figures are actually higher than that and one thing I want to do, to be able to tell the community is exactly how much the meetings cost. Just wanted to make that comment.

>>PETER DENGATE THRUSH: Thanks, Dennis. Paul, can you close off on some of those issues?

>>PAUL LEVINS: Sure.

>>PETER DENGATE THRUSH: Thank you.

>>PAUL LEVINS: Sure. Katim, all the bids are in U.S. dollars but we are aware of currency fluctuations obviously and so for example, in the case of Sydney, I can tell you that we purchased Australian dollars in relation to this bid and that meant that the cost of hotel rooms is, you know, massively reduced for us.

Dennis, thank you for your point about the general budgeting and the drive towards excellence, and that's certainly something we're very conscious of, and that leads me to something that's a little self-indulgent but which is to acknowledge this gentleman sitting in front of me here, a man called Nick Tomasso who has really -- the staff work on both Africa and on Seoul has been excellent, and I don't want anyone misperceiving that somehow this was an error on the staff's behalf.

It wasn't. It's been, you know, really driving us on track to make sure we can be close to that 12-month alert for the community.

So I just wanted to acknowledge that. And also say that we are conscious of the need to be fiscally prudent and budgetarily accurate. Thank you.

>>PETER DENGATE THRUSH: Thanks, Paul. In closing this item, I'd like to add my thanks to Nick and the meetings team, having to, you know, chair sessions and organize things, I have to say I've had an extraordinary amount of help in running these things, and the formatting and the suggestions that have been coming through and the changes that we've been making, I think I'm getting quite a lot of feedback from the community. The break times, the timing, the meetings rooms, so many things are going so well, so congratulations, Nick, I really appreciate it.

Can we move then from that to the next item, which is a discussion about the IDN ccTLD fast track, and Demi, we have a draft resolution which I've asked you to move.

>>DEMI GETSCHKO: Thank you. Peter. First of all, I would say that I'm personally very happy to --

>>PETER DENGATE THRUSH: Demi, can you speak up please? I'm not sure whether that's on or you need to get closer.

>>DEMI GETSCHKO: Oh, sure.

>>PETER DENGATE THRUSH: Thank you.

>>DEMI GETSCHKO: But I'm saying that I'm very happy to see the progress in this area, and I'm eager to have this IDN ccTLD in place, and this is really a crucial issue for a long time, and we are really hoping to see as soon as possible this implemented and running.

I want to note also that in this meeting, the ccNSO constituency reached 90 members, and this is a very good thing to know, and I want to commend also the chair of the ccNSO, Chris, for the excellent work they are doing in populating this very important supporting organization, and have the things moving forward.

Then congratulations to the ccNSO for reaching 90 members in this meeting.

I will read the resolution.

It's about IDN ccTLD fast track.

Whereas, the second revision of the draft implementation plan for the IDN ccTLD fast track process was posted for public comments prior to the ICANN meeting in Mexico City, in order to generate additional community discussion on that topic during and after the meeting.

Whereas, the board has received advice from the GAC and the ccNSO on the draft implementation plan.

Whereas, the board notes that the GAC and the ccNSO are in agreement that more information is needed to support the cost recovery rationale identified in the draft implementation plan, documentations of responsibilities should be encouraged but voluntary, financial contributions should be made on a voluntary basis and not be imposed as a condition for delegation, and future IDN ccTLDs should adhere to all relevant standards, including the IDNA protocol.

Whereas, significant additions have been made on the implementation details of the plan, including a first draft of the documentation of responsibility, a standard arrangement between IDN ccTLD operators and ICANN, and the usage of the IDN tables and variant strings.

Whereas, other stakeholders and the board believe that additional discussion, investigation, and analysis is necessary to determine whether there should be a requirement for (1) documentation of responsibility (2) financial contributions and (3) adherence to the IDN guidelines and IDN technical standards such as IDNA protocol.

It is resolved, that the board thanks the ICANN community for its work to date and encourages it to continue its work so that the implementation plan can be finalized and considered by the board no later than at its annual meeting in 2009.

It is resolved that the board directs staff to work towards completion of the implementation plan for the IDN ccTLD fast track process by, among other tasks, continuing consultation on the documentation of responsibility, including a specification for

adherence to the IDN guidelines and IDN technical standards such as the IDNA protocol.

It is resolved, that the board directs staff to rapidly provide the community with financial information on ICANN costs attributable to ccTLDs, including the costs associated with IDN ccTLDs, that will inform the creation of a financial model for cost contributions to the launch and continued management of the IDN ccTLDs.

Thank you.

>>PETER DENGATE THRUSH: Thank you, Demi. I'll second that, for the record. I think it's probably fair to indicate that there are fairly crucial discussions going on, and I think the resolution has tried to capture recording where there's some agreement and those areas where work needs to be done.

At the moment, there seems to be some opposing positions. The GAC and the ccNSO are fairly clear that they don't want formal contracts. Some members of the board are very clear and some members of the community are very clear that this cannot provide without formal contracts.

However, there was also plenty of signs that the parties are willing to work together to solve this difficulty, and I think that's the intent of the resolution, to record that, and to encourage those discussions to continue. So I look forward to that, and I'm reasonably certain that in the usual way, we will reach some consensus. Ram?

>>RAJASEKHAR RAMARAJ: Peter, I wanted to touch upon another point on technical standards.

As you have heard, there are many languages in Asia, including in my own native country, India, where meaningful words and geographic names can be represented, actually, in two characters.

These are not abbreviations. Rather, they are actually complete words, with full meaning.

For instance, "fire" in Tamil, my mother tongue, is t-i. Just two characters. Our Asian friends in the public forum yesterday brought several cases to our attention where country names and other meaningful labels can be represented solely in two characters.

In the light of these essential requirements, I recommend that staff review the three-character minimum for IDN TLDs and find a safe way to accommodate the pressing needs of the global multilingual community. Thank you.

>>PETER DENGATE THRUSH: Yes. Thank you, Ram. I'm not sure you're moving that as an amendment or an addition to this. I think it's certainly very clear that the board has heard that request. We did on a number of occasions. Paul, can I take it the staff have -- will take that and action that without any further formal stips?

>>PAUL TWOMEY: Absolutely.

>>PETER DENGATE THRUSH: Ram?

>>RAM MOHAN: Thank you, Peter. It's good to see continued progress on IDN ccTLDs. As the SSAC liaison, I just wanted to state that the IDN ccTLD fast track, that entire process which will lead to the addition of ccTLDs and new names to the root zone, it's not an experimental process; it goes into the root. It goes live. And the decisions we make now about technical implementations will set precedent.

So I commend the ccNSO and the GAC for coming together on understanding the relevance and the importance of adhering and conforming to these technical standards, and I look forward to further efforts that get us to the point where IDN ccTLDs shall actually conform to these standards in a very unambiguous way. Thank you.

>>PETER DENGATE THRUSH: Okay. I have Rita, Thomas, and then Roberto.

>>RITA RODIN JOHNSTON: Thanks, Peter. I just wanted to note, especially after this week, my increased commitment to the rollout of new gTLDs, but I think that IDNs are now particularly dear to my heart.

I don't know about everyone in the audience, but I was quite moved by Gabriela Hernandez's presentation and it's so evident to me as you hear more and more people talk about IDN ccTLDs and the real desire to have these rolled out in their country, how important it is to give access to people that don't currently have access to the Internet. It's incredible to think about providing people with this tool to educate themselves, and I had about 30 seconds in my room to turn the TV on, and I saw a commercial that I unfortunately didn't understand because I don't speak Spanish, but it was a little girl with her mother in sort of somewhat dirty in a field and then she got to actually go to school and she was playing with a computer and there was some message at the end -- I'm presuming -- which said, you know, "Thank you." She was thanking some organization for funding, I was guessing. But, you know, "Thank you for the ability to use this computer and to get an education." And I think it's incredibly important that we all move forward on TLDs and these IDN issues that exist. I think the board is struggling, but if I could just make a -- make a request to the cc's and the GAC, I think that it -- we've heard from the community and you've heard somewhat from the board that it's important that we have some sort of ability to have some standards adhered to, and there's some sort of an ability to have some sort of financial contribution. And I do think that there's been a lot of progress made. The board is very, very encouraged by the discussions this week, and I encourage everyone, again, to keep driving towards solutions so that we can really start this very, very important global initiative.

>>PETER DENGATE THRUSH: Thank you, Rita. Thomas?

>>THOMAS ROESSLER: Speaking as the technical liaison to the board, I would, first of all, like to second the comments that Ram had just made. I will add that the technical standards work that is going on in the IDN area right now is extremely diligent, extremely important, and that it, in fact, is work that happens with the participation of many in this community. I would like the board to recognize that participation by all members of this community that are involved in this work and also by the ICANN staffers who are doing excellent and

very diligent work and are contributing actively to this. I think this is worthwhile calling out to everybody here.

>>PETER DENGATE THRUSH: Thank you, Thomas, for drawing that to our attention. Yes. Roberto.

>>ROBERTO GAETANO: I think that Thomas has expressed exactly my feelings. Thank you.

>>PETER DENGATE THRUSH: Thanks, Roberto. Harald?

>>HARALD TVEIT ALVESTRAND: So I was heartened to see the strong commitment of members of the GAC and the ccNSO and the board and all the other people to actually get this show on the road. And there's a number of words in the English language that have quite very emotional meanings or have attached a lot of history to them in the ICANN process of which, of course, "contract" is one. And I am confident that people of good will will be -- manage to find a way forward that allows us to say, "Okay, we agree, and we know that we are agreeing, let's get the show on the road."

Looking forward to the next round.

>>PETER DENGATE THRUSH: Thanks, Harald. And Janis.

>>JANIS KARKLINS: Thank you, Peter. For my part, I can also express our satisfaction with the progress. During this meeting, the ccNSO and the GAC sent very clear and unambiguous message to the board and to the rest of the community that a number of important principles should be followed.

First and foremost, that there should be adherence to standards.

And equally principled the cost involved in rollout of IDNs should be somehow covered.

The question is: How?

And I think that here we may have some divergence of opinions which needs to be resolved by next meeting, and we're looking forward to engagement on these subjects.

The resolution reflects very precisely the position of ccNSO and the GAC on the subjects and we are looking forward to further work.

Only wish -- and very strong wish -- is that this work should be finalized during the annual meeting of ICANN in 2009.

There are many countries which are already ready to start working on -- with IDN cc -- with IDNs in their territories. They are impatient. And I think we need to keep in mind, then, implications, political implications and also implications of image of ICANN if we will, for one reason or another, will not meet the deadline of the annual meeting of 2009.

The world is watching, and I think that this is our responsibility to conclude this work by the end of the year. Thank you.

>>PETER DENGATE THRUSH: Thank you, Janis. And then Dennis, I think.

>>DENNIS JENNINGS: Thank you, Peter. I regard the introduction of the new IDN ccTLDs as extremely important and very urgent. Nevertheless, having said that, we must get the technology right. We must get the relationships and the protections for registrants right. We must get the finances right. So there is work to be done. It's both urgent, on the one hand, but necessary that we get -- do it prudently and get it correct. I'd love to see that we're introducing the IDN ccTLDs in the third quarter this year. I'd even go so far as to say that, you know, I'd -- I know we've made a commitment that we'll try and introduce all the gTLDs at the same time, but I regard the IDN ccTLDs as so important that I would wish to see them accelerated even if the gTLDs are not ready to go, but having said that, we got to get it right.

>>PETER DENGATE THRUSH: We don't actually have to resolve that issue yet Dennis but the question of parity of process or not needs to be returned. I've got Paul Twomey next and then we on come back to Rita.

>>PAUL TWOMEY: Thank you, Chairman. And thank you, both Dennis and Janis, for your interventions. Perhaps picking up on those interventions, the resolution directs staff to work towards completion of implementation plan, including consultation and documents of responsibility.

Perhaps it would be worth sharing, just for the community's illumination, that at least at the moment, it's my view in moving forward with that -- implementing that direction that the proposal put forward by Jean-Jacques Subrenat in the meeting with the GAC of potentially convening a small group of GAC, ccNSO, staff and potentially staff members might be quite a useful way to help address that disconnect. So I expect to see some ongoing cross-constituency discussion on this, to see whether we can push this together in a timely manner.

>>PETER DENGATE THRUSH: Thanks, Paul. And Rita.

>>RITA RODIN JOHNSTON: I just wanted to make a comment for the record, since Dennis kind of opened an issue that I am actually not in favor of separating the introduction of new gTLDs and IDN ccTLDs. I think that both are important, and I -- I am committed to trying to resolve all of the issues at the same time, and I don't want people to think that there aren't board members that think that they both should come out at the same time.

>>PETER DENGATE THRUSH: Okay. Ah. Bruce.

>>BRUCE TONKIN: I just want to echo Rita's comment. I think it's important that we at least target the introduction of these things into the root together. That should be our objective.

>>PETER DENGATE THRUSH: Well, why don't we schedule a conversation about this for the Sydney meeting, because at the moment I think we have no formal position on the board. We've noted the position, I think, from the GNSO that one development should not delay the other,

and we have so far taken the position that we are working towards, you know, contemporaneous introduction. But that was done at a time before any of the implementation discussions had taken place, and we now know that -- where we are better in relation to both sets, so a discussion now that -- now that the possibility of divergence is becoming more real, what the policy behind that.

So perhaps Paul, you could note that we may need to be briefed on that for the Sydney meeting as to actually have a review of the policy position in relation to timing between ccTLD introduction and gTLD introduction of IDNs.

Anything further on that? In that case, I think it's probably time to put the resolution.

All those in favor of the resolution please raise their hands.

[Show of hands]

>>PETER DENGATE THRUSH: Any opposed? Abstentions? Carried unanimously.

Thank you. Now, another exciting issue we've been discussing here in Mexico has been the intellectual property protection issues around the introduction of new gTLDs. Rita, can you take us through the draft resolution on this, please?

>>RITA RODIN JOHNSTON: Sure, Peter. And this is a resolution, just for everyone in the audience, that is indicative of the board listening to some of the comments that we have received this week.

Whereas, based on the public comment submissions received regarding new gTLD draft applicant guidebook, ICANN staff has determined that the implementation issues involving trademark protection need additional community input and analysis. These issues exist today within the existing gTLDs.

Whereas, members of the community with knowledge and expertise in this area have proposed a way to synthesize the comments received in this area, and, with input from the broader community, including WIPO, propose solutions to the staff on these issues in a timely manner.

Whereas the board recognizes that resolution of these issues would be beneficial to the introduction of new gTLDs, it is, therefore, resolved, that the board requests the GNSO's intellectual property constituency, in consultation with staff, to convene an implementation recommendation team comprised of an internationally diverse group of persons with knowledge, expertise, and experience in the fields of trademark, consumer protection, or competition law, and the interplay of trademarks and the domain name system to develop and propose solutions to the overarching issues of trademark protection in connection with the introduction of new gTLDs.

It is further resolved that the implementation recommendation team will be comprised principally are from the organizations and persons that proposed such solutions in the public comment period on the first draft applicant guidebook, and the implementation recommendation team

would use the solutions proposed in the public comments as its starting point for development.

The board directs the implementation recommendation team to solicit input from the interested constituencies prior to its first session to ensure broad community input at the outset of its work.

The board further directs (1) staff to provide a dedicated staff person and additional staff resources as staff determines to facilitate the work of the implementation recommendation team and (2) reasonable travel support be provided to up to 15 members of the implementation recommendation team for the purpose of conducting two face-to-face meetings in hub cities.

The board further requests that the implementation recommendation team distribute its draft report by the 24th of April, 2009, to interested members of the community for comment, and propose a final report to be published no later than the 24th of May, 2009, for consideration by the ICANN community at the Sydney meeting.

>>BRUCE TONKIN: I second that motion.

>>PETER DENGATE THRUSH: Seconded Bruce. Is there any discussion about this resolution? Bruce? Wendy?

>>BRUCE TONKIN: Thank you, Peter. One of the things I observed this week in particular is a growing willingness within the GNSO for people to work constructively together. And we've seen that on topics like the RAA and also in some of the discussions on geographic names. The other thing that's been happening this week is that people have been proposing various solutions to some of the trademark problems, particularly at the second, level and I think what this motion does is support that momentum in providing some ICANN resources to assist those various people that have got solid proposals, assist those that made submissions in the public comment process to really try to converge their various approaches to either one or maybe two alternative solutions that could be considered by the community.

>>PETER DENGATE THRUSH: Thank you, Bruce. I have Wendy and then Katim. Wendy?

>>WENDY SELTZER: Thank you, Peter. I see this resolution as recognizing that members of the community have expressed concerns about the new gTLD process. And so we are providing them with institutional support to help refine the criticisms into implementable proposals that could make them more comfortable with the process and, at the same time, to vet those proposals by the community for responses from the other side. So I don't see this resolution as an endorsement of any particular position, but as an opportunity for the community to fully develop its positions so that they are bringing to us fully formed proposals which we can then act upon. And so I invite -- and I hope that members of the community will be -- of other communities will be consulted early in the process, as is recommended, and will have full opportunities to analyze proposals that come out of this working group to provide us with their views as well.

>>PETER DENGATE THRUSH: Thank you, Wendy. Katim?

>>KATIM TOURAY: Yes, Peter. I'd like to express my delight at this resolution. Especially by virtue -- excuse me, of the fact that it is the result of a process in which I think a lot of people in the community managed to turn what was potentially a very adversarial and explosive situation into a constructive engagement. And, of course, the end result is this resolution that we are considering here. Indeed, I'd like to encourage other parties, other constituencies to really take this as a template, most especially in regards to suggestions about the need to look at -- excuse me -- the need to look at pricing for the new gTLDs. The point I'm trying to make sure is that I encourage those people, like myself from the developing countries, and those from the nonprofit sector, to come together as the intellectual property constituents have done and come up with concrete proposals that the board can consider as to what we can do to move forward on the issue of reviewing the issue of the pricing structure for the new gTLDs. Again, thanks very much all of you for this really wonderful process.

>>PETER DENGATE THRUSH: Thanks, Katim. Dennis?

>>DENNIS JENNINGS: Thank you, Peter. I'm particularly pleased to see the use of the phrase "internationally diverse group of persons" in the resolution. Because my impression has been that much of the discussion has been driven by big business and west -- or North American intellectual property interests. And I think we've heard other interests speak during the week. And I'm very pleased to see that because I think there are other dimensions that need to be taken into account. So thank you to everybody here for getting that in to the resolution.

>>PETER DENGATE THRUSH: Thank you, Dennis. The -- Suzanne, You wanted to speak? Janis.

>>JANIS KARKLINS: Thank you, chair. I wanted to say, for the record, that in the GAC comments on the applicants guidebook, we attach a great deal of importance to protection of intellectual property. We encourage to look for solutions which would help limit need for defense of registrations in the new gTLDs, but equally to provide appropriate mechanisms to prevent fraudulent registrations. So -- and I want to, on behalf of the GAC, congratulate with this proposed way forward.

>>PETER DENGATE THRUSH: Thank you, Janis. Anyone else? Steve G.

>>STEVE GOLDSTEIN: Just to briefly note that all this really transpired because these issues were brought up in meetings here. And we were able to react to them and, you know, hopefully help to solve the issues.

>>PETER DENGATE THRUSH: Okay. Rita, back to you.

>>RITA RODIN JOHNSTON: Thank you. I guess I just want to say -- echo what my colleagues have said, which is I think we're very pleased that there seems to be broad support for this proposal and that members of the community have come together to try to determine solutions to these issues. I just want to emphasize to everyone the board's view here, which is this is not being put together -- and we are hopeful

that this is not going to be a situation where there's going to be overreaching or there's going to be a stagnation of the process or that this is just going to be about big business here. We really, really want this to be solutions, to be consultative with various constituencies, and to give us real and collaborative and practical ways to move forward. And we're all, actually, very hopeful that this is going to be the case and very much trust in this process.

>>PETER DENGATE THRUSH: Thank you, Rita. Can I put the resolution then? All those in favor, please raise their hands. [Show of hands]

>> Any opposed? Abstentions? Carried unanimously. Thank you.

Moving on, the next item is a resolution recording some discussions in relation to the protection of geographic terms. Harald, could I can you to introduce this, please.

>>HARALD TVEIT ALVESTRAND: Thank you, Peter. This has been an interesting subject in many ways. And this motion is the board's way of saying okay, we've gotten this far. Let's see what's next.

So I'll read the resolution.

"Whereas, the GNSO's Reserved Names Working Group recommended that an objection mechanism be the sole basis for protection of geographic names, see URL.

"Whereas, the GAC through the GAC Principles regarding New gTLDs recommended -- there's a word missing -- "that country, territory, and place names should be protected at the top and second levels in new gTLDs. See URL.

"Whereas, version 2 of the draft Applicant Guidebook includes a compromise between the GNSO and GAC recommendations, requiring gTLD applicants for certain types of top-level domain geographical names to provide evidence of support or non-objection from the relevant governments or public authorities. See URL.

"Whereas, the Board has discussed in detail the issues and implementation consequences raised by these various positions.

"Resolved, the Board is generally in agreement with the proposed treatment of geographic names at the top-level, and staff is directed to revise the relevant portions of the draft Applicant Guidebook to provide greater specificity on the scope of protection at the top level for the names of countries and territories listed in the ISO he 3166-1 standard, and greater specificity in the support requirements for continent names, and post the revised position for public comment.

"Resolved, staff is directed to send a letter to the GAC by 17 March 2009 identifying the implementation issues that have been identified in association with the GAC's advice, in order to continue communications with the GAC to find a mutually acceptable solution. The Board would request a preliminary response by 24 April 2009 and a final report by 25 May 2009."

>>PETER DENGATE THRUSH: Thank you, Harald. Is there a seconder

for that? Jean-Jacques. Any discussion? Dennis?

>>DENNIS JENNINGS: Just to add some levity and to illustrate the complexity of this matter, there is in the south of Ireland a province called Munster. There's also a rugby team called Munster. And I can tell you the rugby supporters are not going to allow any authority to hijack the name "Munster" for public use other than as a rugby TLD if and when that comes up.

[Applause]

>>PETER DENGATE THRUSH: Dennis, It's dangerous for you to bring rugby into the conversation with New Zealanders present. But point taken.

Ram, you're next on the list.

>>RAJASEKHAR RAMARAJ: I appreciate the way this resolution has been drafted, especially since, in the treatment of the geographic names at the top level, you know, that we're depending on a global standard such as the ISO 3166-1, which is actually providing a very clear and unambiguous reference point.

A couple of things that came up was that the GAC members, including India, had suggested a broader interpretation of the reservation of geographic names such as what I think Dennis was just mentioning. And I thought we needed to actually -- in this resolution we've done it well, I thought. We needed to balance the interests of nation with those of free trade. And critical names must be reserved, but we should be cautious of locking down tens of thousands of names before new registrations can even begin. So I thought the way we're now approaching with more consultation with GAC I think is the right way to make sure that this does not happen. Thank you.

[Applause]

>>PETER DENGATE THRUSH: Thank you, Ram. Janis, did you want to --

>>JANIS KARKLINS: I just wanted to wait until board members speak on the subject. But, if you're giving me the floor, I would like to state, for the record, that the GAC regrets that its advice on so important issue has not been taken into account fully. The GAC principles were published on March 28, 2007. And since then, they have been extensively discussed in different formats, including with the different supporting organizations and the advisory committees with the board during our meetings with the staff. All these conversations, regrettably, did not brought common understanding that the geographic names, country names, place names should be protected and should be protected as trademarks are protected. And the board just adopted a resolution which calls on further work on trademark protection. And we believe that similar attention should be given to geographic name protection.

Dennis just invoked rugby coming into play. I must say that, historically, since many centuries, nations have been waging wars to protect their territories and national pride. Today we see situations where countries dispute names of the countries and block entry in

international organizations. I think that it would be -- it would not be prudent for ICANN to not protect geographic names and not avoid potential conflicts in the future. Moreover, we know that there are some precedents on the protection of geographic names which exist already at the level of different registries. And dot info is one of the examples of existing policy regarding protection of geographic names. The GAC is happy to continue an implementation issues of GAC principles. And we are hoping that the board and the community will understand that protection of geographic names is not a trivial issue. Thank you.

[Applause]

>>PETER DENGATE THRUSH: Thank you, Janis. I'm not sure you were saying this, but I want to make it quite clear for the record that this resolution doesn't preclude lots of further working together. I understand your position that the GAC has taken a position. This resolution doesn't preclude us working together to find a compromise to solve this.

>>JANIS KARKLINS: This is what I was saying. That we're happy to continue discussions on this issue. And we hope that we will reach agreement on this -- on this issue how to apply GAC principles in relation for the protection of geographic names.

>>PETER DENGATE THRUSH: The point is those discussions are going to be more than just how to implement the GAC's advice. Again, though some parts of it may well be a request for the GAC to reconsider parts of advice. Partly because they're difficult to implement and partly because they're in conflict with other policy decisions. So some part of this are going to have to be robustly debated. Paul?

>>PAUL TWOMEY: Thank you, chairman. Janis, I wonder if I could just clarify your statement. Maybe I've recorded it incorrectly. But I think at the beginning of your statement, you said that the GAC was disappointed because its advice had been rejected or ignored. Just want to clarify that. because I don't think we're at that stage of -- the board is not resolved on anything yet, so --

>>JANIS KARKLINS: I was saying that the GAC advice has not been saying into account fully. And here I'm referring, namely, to protection of geographic names on secondary level. Because, as the resolution states, there is a compromise proposal which is acceptable to GNSO and the GAC when it comes to the top-level protection of -- geographic names on top level. When it comes to protection on the secondary level, I think that here further work needs to be done. And this has been stated several times, including in our communique in Cairo, where this issue has been put on the record during our -- this meeting's discussion, GAC board discussion, a delegate from Brazil very clearly and explicitly raised the issue of protection of geographic names on the secondary level. And I think that I'm very happy that we still have a chance to engage in the discussions, how this could be done.

>>PAUL TWOMEY: Okay. So I'm going to interpret what you're saying is that you're disappointed that to date it's not referred to in the guidebook in the documentation, but the opportunity now exists under the last resolution of this clause for further discussion. I wanted to

clarify that, because I didn't want any misinterpretation of where we in terms of board approval for the implementation plan. It's not yet approved. Particularly, if anybody was to interpret your words as triggering the bylaw provisions concerning board not accepting GAC advice. We're not yet at that stage formally.

>>PETER DENGATE THRUSH: Okay. Now that we've clarified that, let me go back to my speaking order. I have Harald, Bruce, and Dennis at this stage. I'll add Roberto. Harald?

>>HARALD TVEIT ALVESTRAND: So in the board resolution we are implicitly not instructing staff has to be made make changes to the guidebook in other places. I would just like to verify with staff one piece of understanding. That, under the current guidebook, there is a community-based objection process when anyone who claims to be a community would write to a name, can object to an assignment at a top level.

I just wanted to verify that intent is that any government of a named place can make an objection to applications that they regard as being the name of that place. Is that the correct understanding?

>>PETER DENGATE THRUSH: Could we ask Kurt, our senior vice president and who has been leading this progress, to provide the answer? We're just trying to get you wired for sound, are we, Kurt?

>>KURT PRITZ: Test. Thanks. So yeah. The answer to your question, Harald, is yes, the intent -- one of the intents of the community-based objection process was to provide protections for community-based labels and geographical place names in particular. And that was part of the GNSO discussion when the -- that community-based objection process was created.

>>HARALD TVEIT ALVESTRAND: Thank you. Because this was part of my understanding which underlies my determination that we -- my thought that we shouldn't change anything at that level.

>>PETER DENGATE THRUSH: Bruce?

>>BRUCE TONKIN: Thank you, Peter. I just wanted to refer to a couple things that -- like trademark protection at the second level, geographic name protection at the second level has really been with ICANN since its inception. And there's been a few different attempts to resolve that. And the GNSO sort of worked on some WIPO II recommendations. But I think it's important at this stage to almost take the same approach that parts of the GNSO are trying to do with the trademark protection. And that's, actually, if the GAC can form maybe a working group to come up with some proposed solutions. But, especially, trying to relate how country names are used in other areas. So, for example, do ccTLDs protect country names at the moment? What practices might we learn from the CCs in terms of their protection of geographic names? Secondly, trademarks. What protections if somebody in a country like Australia wanted to trademark a good with the name of a geographic place? Are there any provisions there in trademarks to stop somebody using a country name?

So just, in other words, try and get some learnings from other areas

of the community where the solutions are scalable, and propose those, perhaps with a joint working group with the GNSO.

So I think what we don't want is just a repeat of the principles, but really some tangible solutions to those principles.

>>PETER DENGATE THRUSH: Thanks, Bruce.

Dennis.

>>DENNIS JENNINGS: I think it should be noted how carefully we worked in crafting this resolution. And the specific reference to implementation issues.

The reality is that we have advice that we don't see can be implemented -- is that working? Yes -- and as a result, we need to have further study.

I mean, advice is advice. Implementation is making it work.

We can't see how to make it work, we have to go around again.

>>PETER DENGATE THRUSH: Thank you. Jean-Jacques and then Roberto.

>>JEAN-JACQUES SUBRENAT: Thank you, Peter.

(scribes are receiving no translation).

>>PETER DENGATE THRUSH: Jean-Jacques, can I ask you to hold for a moment.

(scribes are receiving Spanish in headphones).

>>PETER DENGATE THRUSH: Do you remember the situation yesterday where you were listening to yourself in French as were you speaking English, Jean-Jacques.

>>JEAN-JACQUES SUBRENAT: That was really my fault. That's the difference.

May I be advised in which language I should speak?

Well, for this --

>>PETER DENGATE THRUSH: Well, why don't -- can we have an indication from the translation? Are you receiving?

Try again. Why don't you recommence in French, and if we can, we will.

>>JEAN-JACQUES SUBRENAT: .

(scribes are receiving no translation).

Right. Okay. I will do this in English, without listening to myself.

Naturally, I agree with the overall message of GAC as expressed by GAC's president, Janis Karklins. I myself, for a very long time,

represented a state, so I know what it is, and I know the sensitivities which are involved with anything which has to do with identity, never mind names.

It is one of the chief manifestations of identity.

But at the same time, as a member of this board, I wish to refer to a principle of reality, and that is why, although I was not absolutely satisfied with the wording, I would have preferred something more amenable to what Janis had suggested.

This principle of reality has brought me to second Harald's motion very gladly.

And I note in conclusion that this motion is not a closure. On the contrary, it calls for further consultation, as Dennis rightly pointed out, and it even gives very precise dates.

So I think this should be seen as an encouraging sign.

Thank you.

>>PETER DENGATE THRUSH: Jean-Jacques, thank you.

Roberto, and then Rita, and that's the end of my speaking order, so I would like to move on.

>>ROBERTO GAETANO: Yes. Thank you, Mr. Chairman.

I would like to go back to the first principles. Don't worry, I will be short.

ICANN -- What ICANN is is a multistakeholder organization, is an organization where we take input and we take into account the instances of all the stakeholders.

Now, the beauty of this model is that we have the opinion of everybody.

The problem with this model, that we have accepted, once we have proposed and gone through this path, is that we need to take the time to listen to everybody.

Now, I think that the board has received with great interest and is listening carefully to the GAC and to its advice. And there are no problems in principle in honor the legitimate worry about the protection of geographical names. Not only country names, but I would say geo-political names.

However, this declaration of principle has to be matched with the practical implementation, but not only the practical implementation but also with our -- with the need to listen to the other parts of the community.

So I think that what we are saying, what we have tried to say but maybe the message didn't get through in all its relevance, is that we did, indeed, listen and understood the advice of the GAC. We are going to listen to other parts of the community. We are thinking about

practical implementations that are possible without giving an unbearable burden to third parties.

And having done this, we need to get together again and figure out whether, on all the parties that are involved in this discussion, we can smooth out our positions in order to come to a solution that will be more accessible than if we just barely accept the advice of the GAC and we go to implementation without having had this additional step.

So what we are trying to do here is to find the better solution that the simple translation of the GAC principles, as they have been -- the GAC advice, sorry, the way it has been expressed to us.

So I think that by doing this additional step, that will of course be a burden and further work, we can come to a solution that will be much better for the greater Internet community. And therefore, implicitly, for the GAC as well.

Thank you.

>>PETER DENGATE THRUSH: Thank you, Roberto.

Is there anyone else who wants to speak on this?

If not, I will put that resolution. All those in favor, please raise your hands.

(hands raised).

>>PETER DENGATE THRUSH: Any opposed?

Any dissent? Any abstentions?

Carried unanimously.

What I would like to do now is just propose a short break. Members of the community, the board have been working on this since 8:00 this morning and need a 15-minute break. But I do mean a 15-minute break.

I am going to start, regardless, 15 minutes from closure.

So please be back on stage. Members of the community, same as well.

Dennis.

>>DENNIS JENNINGS: Just before the break, may I make a short intervention?

We have a well-known assertion and question in Ireland which says, reality is a wonderful concept, but will it work in practice?

[Laughter]

>>PETER DENGATE THRUSH: Thank you.

See you back here in 15.

(15-minute break.)

>>PETER DENGATE THRUSH: Ladies and gentlemen, please take your seats. We are resuming the board meeting.

The next item is amendments to the Registrar Accreditation Agreement.

And we thought it would be appropriate to -- I thought it would be appropriate if we could just have a brief overview from Kurt to familiarize us with the contents of the amendment.

So, Kurt, could you please take us through the effects of these amendments.

>>KURT PRITZ: Great. Thank you for the time, Peter, and board members and liaisons.

Briefly, there's content and there's process associated with these new Registrar Accreditation Agreement amendments.

In broad categories, the amendments provide for better enforcement tools, they provide increased registrant protections by providing registrants with informed choices, they seek to promote a more stable and competitive registrar marketplace by ensuring a level playing field across competing registrars. And they provide for agreement modernization, bringing the agreement more into line with the current marketplace environment.

Specifically, some of the more important amendments have to do with registrar audits. There is a provision for a registrar audit in the amendment whereas in the existing agreement there really is none.

There's provision for graduated sanctions which gives ICANN improved tools with N which to enforce the contract. There is a group liability provision, so in the case of an entity owning multiple registrars, that entity and those registrars would be subject to liability if just one or two of those registrars breached the agreement.

There's a change in the arbitration stay, so in the case of a notice of termination to a registrar, that registrar would no longer have the delaying tool available to it in the arbitration stay.

With regard to registrant protections, the amendments seek to shine a light on the practice of proxy and privacy registrations by informing registrants of the risks they undertake if they register a name through a proxy service and the fact that that data is not escrowed will illustrate the risk for that registrant.

There's certain other disclosures that should be made.

Regarding a stable and competitive marketplace, there's a provision where, if an entity purchases a registrar by agreement, an accreditation through an acquisition, then that entity needs to go

through the accreditation process all over again.

So are we pleased with these amendments? Yes, we're pleased. We think they represent significant improvements and protections for registrants.

Are we satisfied with them? Not completely, and we think there's additional work that needs to be done.

You might remember that the board directed the staff to solicit community input on proposed Registrar Accreditation Agreement amendments, engage with the registrar constituency to develop a set of amendments, and then get the advice of the community -- notably, the ALAC and the GNSO -- regarding that effort.

That process has been a long one. The board first resolved to do that in June 2002.

There's been multiple open fora and consultations, multiple face-to-face meetings with representatives of the registrar constituency, and multiple conference calls, often in heated debate about the form and content of these amendments.

As a result, we published a set of 15 amendments. There was further consultation in the community. Two more were added to the list in December.

In January, the ALAC voted that the board -- their opinion that the board should approve the set of amendments. In January, also, the GNSO voted 14 for, 9 against and 4 abstentions, so a majority for, but failed to reach the two-thirds majority that are required to make these amendments incumbent on the registrars; you know, insert them -- require the registrars to comply with these amendments.

But here in Mexico City there has been considerable work. The GNSO constituencies negotiated a motion to approve the RAA and to commit to certain follow-up activities, and I will describe them in a second. But I wanted to let you know that the IP, business, and noncommericial consitituencies, the registrar constituencies, worked very hard at arriving at that compromise, and that the at-large -- at-large took a big role there also.

And as a result, also here in Mexico City, the GNSO approved unanimously this set of amendments.

So woo-hoo!

The compromise went around follow-up actions and the idea that the amendments do not go far enough. So the approved GNSO motion calls for convening two groups within 30 days of board approval to draft a registrants' rights charter and identify additional amendments and have both those reports done by the 31st of July of this year.

And the GNSO compromise was developed with the expectation that the board would consider these amendments as quickly as possible, as early as this meeting.

The community believes that the amendments have been vetted through the appropriate public comment.

What's important on timing is that these amendments become effective with each registrar upon renewal, and 70% of the registrars of the 952 registrars are scheduled to renew their agreement in the next 18 months.

But we intend -- ICANN intends that these amendments be effective with all registrars, so we will be working with ICANN staff to develop a set of incentives to encourage registrars to adopt the amendments immediately.

So in closing, I just want to thank the members of the GNSO constituencies that worked so hard on this compromise to get this work done here today.

I think it's a significant bit of work, and it, finally, after all this time, satisfies the objectives set out by the board when they identified them in in San Juan.

Thank you, Peter.

>>PETER DENGATE THRUSH: Thank you very much for that explanation. Rita, can I call on you, please, to read the resolution?

>>RITA RODIN JOHNSTON: Sure, Peter.

Whereas, pursuant to board resolutions adopted in San Juan, ICANN staff solicited and considered the input of the Internet community, including the at-large community and the GNSO constituencies, regarding proposed changes to the RAA.

Whereas, as directed by the ICANN board, ICANN staff engaged with the registrars constituency in order to arrive at, and post for public comment, a set of proposed amendments or alternative version to the RAA intended to address, to the extent feasible, the concerns raised by the Internet community.

Whereas, ICANN published for public comment and provided notice to the At-Large Advisory Committee, the GNSO, and other interested parties to review the proposed revised RAA and provide advice to the board in its review.

Can you move the screen, please.

Whereas ICANN staff analyzed all comments received and incorporated recommendations in the form of additional provisions, which were posted and discussed with the Internet community.

Whereas, the ALAC voted to support the updated set of RAA amendments.

Whereas the GNSO voted unanimously to support adoption of the updated set of amendments and agreed to convene two groups of representatives from the GNSO community within 30 days of board approval to, 1, draft a registrant rights charter, and, 2, identify further amendments to the RAA on which further action may be desirable and provide its advice to the council and ICANN staff no later than the 31st of July 2009.

It is resolved that the board thanks the ALAC for its advice and thanks the GNSO for its recommendation on the proposed RAA amendments, particularly thanks the members of the GNSO Council who worked this week to finalize their resolution.

It is resolved that the board agrees with the substance of the amendments and directs staff to immediately publish them for public comments for a period of no less than 30 days, and commits to act on approval of the amendments at the earliest opportunity.

>>PETER DENGATE THRUSH: Thank you, Rita.

Paul, do you wish to second that?

>>PAUL TWOMEY: Yes, please. Chairman.

>>PETER DENGATE THRUSH: Thank you.

Bruce.

>>BRUCE TONKIN: I just wanted to state for the record that my employer, Melbourne IT, is an ICANN accredited registrar, so I will abstain from further discussion on this item and will be abstaining in the vote.

>>PETER DENGATE THRUSH: Thank you, Bruce. Ram.

>>RAM MOHAN: I wanted to state for the record that my employer, Afilias, is a registry and works with ICANN accredited registrars. I do not have a vote but I wanted to state my affiliation for the record.

>>PETER DENGATE THRUSH: Thank you for that.

I also have Paul.

>>PAUL TWOMEY: Thank you, chairman. I also want to put on record my thanks to the members of the community who have worked this initiative through.

In March 2007, following difficulties that we faced with one particular registrar failure, I made a speech and called for a comprehensive review of the Registrar Accreditation Agreement and the accreditation process. And I think it was from that call that the process started with the registrar constituency and then into the GNSO.

So I would like to say my thanks to all those who have been involved in get to go where we actually are.

I would also like to put on record that I am glad we are also recognizing that this is not a complete step yet. That there potentially is further work that we need to keep doing as we look at why it is necessary to have the best possible practice compliance regime. But this is a very important step and I would like to thank everybody who were involved.

>>PETER DENGATE THRUSH: Thank you, palm. I had a speaking order of

Roberto, Wendy, and Thomas at the present.

Roberto.

>>ROBERTO GAETANO: Thank you, Mr. Chairman.

I would like to express great satisfaction and great gratitude to all the components of the GNSO that have been working hard, taking the chance of this physical meeting and were able, in this week, to resolve issues that -- in a great way.

And I think that I'm really looking forward to having this due-process period of public comment, and be able to approve, then, this at the board's earliest convenience, because we are talking about things that have been floating in the Internet community since quite a while, and I think that having to have this final agreement at the GNSO level deserves really being applauded.

Thank you.

>>PETER DENGATE THRUSH: Thanks, Roberto.

Wendy.

>>WENDY SELTZER: Thanks very much, and on behalf of the At-Large Advisory Committee, I think I should express my thanks that this process has been open to participation from the at-large since the contracts that ICANN has with its registrars are an important piece of what gives individuals, an individual domain name registrant and individual users of the Internet, access to the stable unique identifiers that ICANN provides.

And so I particularly welcome that in the amendments there's provision for a charter of registrants' rights, and the At-Large Advisory and its members look forward to participating in the development of that charter.

>>PETER DENGATE THRUSH: Thank you, Wendy.

Thomas.

>>THOMAS ROESSLER: As a former participant in the GNSO, I was particularly pleased to see the collaboration that occurred in finalizing this document and getting to a unanimously accepted GNSO Council resolution.

This collaboration extended across constituencies and included the At-Large Advisory Committee.

I think it is an excellent signal for the kind of collaboration and the kind of spirit that we all hope to see in the GNSO going forward and that we hope to further help with the GNSO improvements process.

So thanks a lot to all those who helped to forge this compromise at this meeting and ultimately made it possible to move ahead with this.

>>PETER DENGATE THRUSH: Thank you, Thomas. Is there any further

contributions?

Rita.

>>RITA RODIN JOHNSTON: Thank you.

I just wanted to say that we -- the board -- echo the things that everyone else has said. That the board is extremely pleased about the collaborative way that the community has come together on this RAA.

We were hoping that we could approve it at our meeting today, but we are reminded of the GNSO processes of posting for policy development any changes to a contract.

So hopefully we will be able to move through this comment period and be able to approve it as soon as possible.

Thanks.

>>PETER DENGATE THRUSH: Thanks very much.

Any further contributions?

If not, I'll put the resolution.

All those in favor, please raise their hands.

(hands raised).

>>PETER DENGATE THRUSH: Any opposed? Abstentions?

>>BRUCE TONKIN: I abstain.

>>PETER DENGATE THRUSH: Sorry, Bruce, your abstention is noted. Ram, you don't have a vote but your position was noted for the record.

Thank you. A major milestone achieved.

Well done.

Now, approval of charters of the new board committees.

Dennis, you are the chairman of the Board Governance Committee that supervises board charters. Please read us the resolution.

>>DENNIS JENNINGS: Thank you, Peter. This is routine board governance stuff but it is important, so I will just read the resolution, if I get it correctly in front of me.

Thank you.

Whereas, on the 7th of November 2008, the board created four new board committees. 1, the IANA committee; 2, the public participation committee; 3, the Risk Committee, and 4, the structural improvements committee.

Whereas on the 7th of November 2008, the board resolved to dissolve

the conflicts of interest committee and the reconsideration committee and transfer the responsibilities of those two committees to the Board Governance Committee.

Whereas, on the 3rd of February 2009, the board approved revisions to the bylaws to reflect that the Board Governance Committee shall now be responsible for handling matters previously handled by the conflicts of interest committee and the reconsideration committee.

Whereas, each of the five board committees referenced above has approved the charter language unique to its own committee, and the links to those charters will be published.

Whereas, the Board Governance Committee has also approved language common to all of the charters.

Whereas, the Board Governance Committee has recommended that the board approve the charters of these five committees.

It is resolved that the board approves the revised Board Governance Committee charter and the charters for the four following recently constituted board committees: 1, the IANA committee; 2, the public participation committee; 3, the Risk Committee; and 4, the structural improvements committee.

>>PETER DENGATE THRUSH: Thank you, Dennis. Is there a seconder for that resolution?

Ramaraj.

Any discussion?

Excellent. It was a pleasure yesterday to introduce the new chairs of those committees and to get the first reports.

Part of my time as chair has been to try to refocus the work of the board on some of those more strategic issues. Particularly mentioned IANA, public participation, but also, obviously, risk and structural improvements as way of taking over the work that had sort of grown in an ad hoc fashion in the BGC.

So I am particularly pleased to see these committees working.

I can also report to the community that I had to suffer being on the lists. Suffer because as soon as they reported, all these chairs have grabbed these opportunities to improve the work, and my list of reading is almost unbearable. But that's a good thing. Well done to all of those chairs, and thank you, Dennis, for the charter -- for supervising the work of the charters.

Any -- Harald.

>>HARALD ALVERSTRAND: I was just reminded on a point on the previous agenda, previous agenda that I should mention before we all forget about it. That my employer is Google, is actually an ICANN accredited registrar, and I should have recused myself from the previous vote on that basis.

>>PETER DENGATE THRUSH: Ah, would you like me to rebut that vote so you can or would you just like to -- we can do it any number of ways. We can treat you as withdrawing your vote.

>>HARALD ALVERSTRAND: I can just withdraw. It's faster.

>>PETER DENGATE THRUSH: All right. Let's do that.

Any further discussion about the board committee charters?

In that case I will put the resolution adopting those charters. All those in favor, please raise their hands.

(hands raised).

>>PETER DENGATE THRUSH: Any opposed? Abstentions? Carried unanimously.

We come, then, to a recommendation concerning the ombudsman framework, which are the effectively the rules by which the ombudsman operates. And Steve Goldstein, can I ask you to take us through this?

>>STEVE GOLDSTEIN: Yes, Chair, I'd be delighted. I don't believe that our ombudsman, Frank Fowlie is here. I think he's probably still having office hours.

>>PETER DENGATE THRUSH: Yes, I understand he's still doing the work of the ombudsman in his office.

>>STEVE GOLDSTEIN: Yeah, I understand he's had quite a procession at his door. So let me just say a few words.

Frank has distinguished himself in the ombudsman community. He has pioneered with online dispute resolution in ombudsman situations. He recently received his doctorate and, for lack of a better word, let's say an ombudsmanship, but I'm sure there's a more precise title that goes with it, and he has seen great credit redound upon ICANN in the ombudsman world and in the dispute resolution world. So we're very proud of Frank. Nevertheless, Frank has had some of his ideas about how his procedures should be conducted and we have had some of our ideas about it, and over the past few years, we've had a -- the ombudsman frame back go back and forth and finally we've achieved closure on it, and both parties are satisfied.

So with that in mind, I would read the resolution.

Whereas, the ombudsman submitted a draft ombudsman framework to the board for approval.

And whereas, the draft ombudsman framework was posted for public comment in 2004.

And whereas, the board's request that the governance committee -- whereas, at the board's request, the governance committee has suggested revisions to the framework and has had several discussions with the ombudsman about those revisions.

Whereas, the governance committee and the ombudsman have reached agreement on revised language to the ombudsman framework.

Whereas, the revised ombudsman framework documents the procedures and processes under which the ombudsman currently operates.

Whereas, the BGC -- in other words, the governance committee -- has recommended that the board approve the posting of the framework for further public comment.

It is resolved that the ombudsman framework as revised be posted for further public comment and considered at the next possible board meeting or be returned to the Board Governance Committee for additional consultation.

>>PETER DENGATE THRUSH: Thank you, Steve. Is there a seconder for this resolution? Thank you, Dennis.

Any discussion? Thomas.

>>THOMAS ROESSLER: As I mentioned in my previous remark, I've had a history, and I was actually quite amused to see a public comment period come up that dates from the time when I first dropped out of ICANN business.

That's been five years ago. I think the ombudsman is fulfilling an incredibly important function in the overall scheme of things. I also think that we need to learn -- we need to see what we have learned about this framework in the meantime, so I would urge you to take this comment period seriously and use it.

>>PETER DENGATE THRUSH: Thank you, Thomas. Any other contributions?

Seeing none, I'll put the resolution. All those in favor please raise their hands.

[Show of hands].

>>PETER DENGATE THRUSH: Any opposed? Abstentions? Carried. Thank you.

We come now to a discussion led by Dave Wodelet about an issue relating to the timing of director terms. Dave, have you got a microphone? Can I --

>>DAVE WODELET: Yes, I do.

>>PETER DENGATE THRUSH: Take it away. Thank you.

>>DAVE WODELET: Thank you, Mr. Chairman. Yeah. Let me just, first of all, give of you an overview of the board transition process. I've certainly been thinking a lot about board transition over the past few months, as my board term is coming to a close.

And as such, it's very timely to be working on a proposal to improve the board term transition process. The goal of this proposal is to

provide as smooth a transition as possible for both outgoing board members and new members joining the board.

The proposal focuses on two areas. One area is readjusting the starting and ending terms of board members to minimize the number of board members who change at each point of the board's three-year cycle. And the second is to ensure that all board members have at least one public meeting of overlap for that term transition.

Right now, the majority of board members -- 15 of the 21 -- have terms that end the last day of the annual general meeting.

Six of the 21 board members have terms which end six months after the last day of the annual general meeting, and these are the members from the supporting organizations.

The annual general meeting, plus six months, usually lands on quite an arbitrary date, and as such, there's usually no overlap between new and existing board members. For Demi and myself, that means May the 7th will be officially our last day as board members.

There are a number of ways we can handle this. One is to move everyone's term to the end of the annual general meeting. Or a second alternative is to keep the existing two transition periods and adjust terms so that it's more equal as the number -- as to the number of board members leaving or arriving on the board at any particular time.

The proposal that we've been working on will be going to the board review committee, which Roberto chairs, to evaluate the proposal in the context of the entire board review process, so that's basically the overview of the proposal, and I hope you'll be hearing a bit more about that later on, but because my term is coming to a close here fairly shortly, it likely won't be from me. Thank you, Mr. Chairman.

>>PETER DENGATE THRUSH: Thank you, Dave. I suppose the obvious point is that it does include a number of other people, including the board review, that the NomCom appointees take their seats at the end of the AGM, the SO appointees came in at this strange period in the middle of the year, so both of those groups are probably going to have to be consulted with, won't they?

>>DAVE WODELET: That's right, Mr. Chairman.

>>PETER DENGATE THRUSH: And I suppose the other issue from the board perspective is, is it better for the board to receive all of its new people in one -- at once, so that induction programs and things can be done, or is it better to have them coming in in staggered -- you know, different periods so that the workload can be managed?

>>DAVE WODELET: Well, there are certainly pluses and minuses to both those proposals. Having everyone come in at once makes it easier for a transition period as far as the staff and new training that goes on. It can all happen at once. But then that leaves quite a lapse in collective board knowledge, you know, turnover at one time, which is a problem as well.

>>PETER DENGATE THRUSH: Well, as you say, this is a -- going to be

referred now to the existing working group that is reviewing the board. Does anybody else want to make a comment that may help the board review? Steve Crocker and then Roberto and then Dennis.

>>STEVE CROCKER: First of all, Dave, I have to applaud your extraordinary amount of diligence in gathering all of this and as well as the craftsmanship in putting together an attractive chart like this. It's really -- it is really -- we ought to have a special place to display this sort of permanently.

Just to set the stage for a broader discussion -- and I don't have a strong position on any of this -- but the basic structure is three-year terms for board members and a replacement or a selection of -- staggering these terms is what I want to say.

So -- and a -- generally -- ignoring the liaisons for a minute, a limit of two terms.

So if everybody had only one term, we would be replacing one-third of the board every year. If everybody had a two-year term, we'd be replacing one-sixth of the board every year. And the actual facts are that they fall -- that we've experienced something between that.

So somewhere between 16 and 33% of the board is the amount of turnover that we are tending to see, on the average.

That's kind of the overall gross numbers, the arithmetic that we're going to have to deal with, unless we're going to change that. And then within that, we can fiddle with the overlaps and the phasings of all of that, but I think the basic dynamics are going to be driven by the length of the terms and the limit on the two terms.

>>PETER DENGATE THRUSH: Somebody might be able to correct me, but I think the Boston Consulting Group analysis showed that the average term was something like 2.7 years. In fact, it was actually less than 3 years. One of their recommendations is to enlarge -- is to increase the term because -- in part because of the complexity of the work, and the high turnover rate that a slightly longer term would give board members more after chance to come on board, learn the ropes, and be able to start making a contribution.

Roberto.

>>ROBERTO GAETANO: Yes. First of all, I would like to confirm that the board review working group is discussing about this issue. We have the recommendation from the consultant, but we'll be glad to accept any other input, so -- including this one.

I think that several of the proposals have been put forward. I -- for instance, Raimundo on several occasions has proposed to align everybody at the end, so at the AGM that has advantages and disadvantages in my opinion, at least.

What I find, also, odd is that the -- to finish a term on something that is not a public meeting is something that creates some odd situations, also, in the relationship that the board has with the community and with the visibility that the community has on the board,

just to discover that the following meeting, that somebody has disappeared. It is not a good thing.

So those issues are on the table. I cannot give a precise deadline for presenting of proposals but rest assured that this matter is being discussed.

>>PETER DENGATE THRUSH: Thanks, Roberto. Dennis?

>>DENNIS JENNINGS: This is a very timely piece of analysis and one that's been picked up by the Board Governance Committee because the Board Governance Committee's issues are in relation to things like training, self-assessment, population of the various committees, procedures for the appointment of the chair, and so on. And these inputs are very important to that work. So the BGC will also be looking at that and will be providing input into the structural improvements committee on the aspects that are appropriate for the BGC, the Board Governance Committee.

>>PETER DENGATE THRUSH: Thank you, Dennis. Steve Crocker and then -- sorry, Demi and then Steve Crocker.

>>DEMI GETSCHKO: Thank you. More or less along the same line as what Roberto was saying, and I am very comfortable to say that because I will not -- my term finishes before the Sydney meeting.

But I really think that we have to struggle to have the beginning and the ending of the terms synchronized with public meetings. Maybe we can arrange to have it in the middle of the year, and also in the general meeting at the end of the year. We can have two places where we can seat new members and we can finish the term of the old members.

>>PETER DENGATE THRUSH: Thank you, Demi. Steve Crocker and then Raimundo and then I'd like to put it to the vote. Steve.

>>STEVE CROCKER: Yes. For anybody's who is trying to follow all of this and understand the pieces of this puzzle, there's another factor that complicates all of this, which is the attempt to maintain geographic balance, where the decisions about how to select people are made in very different quarters. So each supporting organization selects its two members and then the NomCom selects its eight people, each of those spread over three-year cycles, of course. And part of the calculation that has to go into the -- I'm not sure I know the rules for the SOs but certainly the NomCom is bound by an obligation to make sure that there is a minimum of at least one representative from every region and a maximum of, if I recall correctly, no more than five from a given region.

So there's a very complex interplay, and as we start fiddling with these parts, it's also going to involve this additional factor.

>>PETER DENGATE THRUSH: Thanks. Steve. Raimundo.

>>RAIMUNDO BECA: Thanks, Peter.

I will explain the reasons why I have been proposing now for several years, I would say, the alignment of all the terms at the AGM.

The reason for that is that my understanding is that the -- because I was not in the board at that moment, but I was in the community -- that when the NomCom was created, then was created the nonalignment of the terms of the ASOs. Before the ASO, they were all at the end of the year, at the AGM, and at that moment the argument was made that that would help the -- to balance the representation of the regions, because the ASOs, they have to choose their directors with the [inaudible] to have double -- two directors from the same region, so the ASO, the GNSO, and the ccNSO, they have to send to the board from different regions.

But on the other hand, the NomCom could -- cannot elect more than five from the same region, and it could be theoretically -- it hasn't happened but it could have been that the NomCom elects -- chooses five and then the ASO three more. There can be eight from the same region. So it's much easier, but so the -- the reason to have the nonalignment has shown not to be very well, to be very useful. On the contrary, it has created another problem, which is the imbalancement, the unbalancement in the population of the board committees. The board committees are normally, and according to the bylaws, populated -- they are populated at the AGM. And in the moment of the ASO when the directors are appointed by the ASOs, when they arrive to the board, they are about six months without being in any committee, and then when the -- there comes the question of having -- of electing a chair, there has always been a problem to elect someone as a chair when there's no security that he will be present for the whole year because he ends his term and he's not sure he wants to be appointed for a new period, for a new term, or if he wants to be but he's not elected.

So many times people have volunteered to be chair of a board committee and the board has preferred someone that will be there for one year and not only for six months.

So I think that the -- finally, the -- what was the reason why it was created this alignment of the directors' terms hasn't worked correctly, so this is more reason in favor to come back to the alignment than to keep the present system.

>>PETER DENGATE THRUSH: Okay. Thank you for that. There is no resolution to vote on. I'm sorry if I misled anybody. We haven't got a resolution, but thank you, Dave, for the -- again, for the analysis. That's excellent. And I'm grateful that the discussion has been provoked and that it's taken that turn.

So this is a reference to the working group and as Dennis has commented, it's also a matter for at least the Board Governance Committee.

So let's move on to the next item, which is the president -- the President's Strategy Committee report. Jean-Jacques, you're a member of the committee. Can I ask you to take us through this item?

>>JEAN-JACQUES SUBRENAT: With pleasure, Peter. I'll be speaking in English, but in order to make things easier for the interpreter and the scribe, may I just point out in advance that I will be speaking to Point 14 in French. Thank you.

President's Strategy Committee report. Just a few things I'd like to draw your attention to. In beginning this part of the work of the president's strategy group, improving institutional confidence, obviously the two co-chairs were very keen to set this against the background of emerging reality, which is completely global, and therefore to look first at the global challenges.

And it is through that filter or through that perception that I think I can confidently say that we were looking under the guidance of the two co-chairs at the future of ICANN.

I simply want to underline -- and this is very important -- that it is not, at this stage, a board document. It is submitted to the board.

And finally, I would like to draw your attention to the fact, when I will be reading this resolution, that it does open a 60-day public comment period.

Raimundo, would you perhaps like to add something?

>>PETER DENGATE THRUSH: I'm sorry? You're going to read the resolution? I think that's probably easier to get that started and then we can have someone second it.

>>JEAN-JACQUES SUBRENAT: Yes. Thank you.

Whereas, the President's Strategy Committee PSC has worked on delivering a report on "improving institutional confidence."

Whereas, the report from the PSC was published on 27 February, 2009. It is resolved that the board thanks the PSC for its work and undertakes to review the report. It is resolved that the board receives the report and posts it for 60 days public comment, and during this time the staff will evaluate implementation of the proposals and report its findings to the board.

>>PETER DENGATE THRUSH: Thank you, Jean-Jacques. Raimundo, you had indicated you would second that. Are you prepared to do that?

>>RAIMUNDO BECA: I second. I second, and as I have the floor, let me add something.

Mis-fortunately, we had some problems in the posting of this document, and it appears as a document by ICANN or by the board, and it is not. And it should be clarified -- it has been clarified several times during the week, but I want that at least for the record -- okay. At least for the record, we could have here it clearly stated that this is not a document of the board or of ICANN.

In [inaudible] of that, during this week we had a very good session of discussion of the document where we have many of the leaders of -- in the different constituencies were present and we had an enormous and a very positive feedback. Thank you, Mr. Chairman.

>>PETER DENGATE THRUSH: Thank you, Raimundo. Any other comments? Dennis.

>>DENNIS JENNINGS: Just very briefly, Peter.

Just to add my word of thanks to the President's Strategy Committee for this report. I think it's a very important input, but highlight the fact that the board will review it and, indeed, it's time for the board to take a more determined focus on the post-JPA and the future of ICANN, and certainly that's what I intend to contribute to the board over the next couple of meetings.

>>PETER DENGATE THRUSH: That's excellent. Harald?

>>HARALD TVEIT ALVESTRAND: Having had several minutes to -- in which -- in between other meetings that I have used for reviewing this report, I would say that it's clearly the work of a lot of effort and that there are many suggestions in it that are a basis for further work.

However, it's -- it also makes very clear that the overarching strategy of ICANN is not -- for its further development is not developed in this report and I could not find it anywhere else either, so it's clear that the board has further work to do in the direction of strategy.

>>PETER DENGATE THRUSH: Yes. I think that's unarguable. The focus of this current report, speaking as one of the co-chairs, is in relation to the tasks that I, as chair of the board, gave it in relation to the midpoint review of the JPA. And there is more to the future of ICANN than that.

So we need to make sure that the strategic planning cycle that we're about to kick off includes all things, including the very special topic of the JPA.

I'd just asked Paul if he could remember how many recommendations there are in the report. I think it -- but it's considerable.

Any further interventions or contributions in relation to the PSC report? The vote is that it be received, that it be reviewed, and that staff begin investigating implementation issues and report back on those.

Same kind of way we treated the policy recommendations from the GNSO in relation to new gTLDs.

Paul.

>>PAUL TWOMEY: Thank you, Chairman. I think just also to clarify that the staff work to be brought back on looking at the feasibility of some of the implementation issues will also obviously be available for public viewing and consultation.

>>PETER DENGATE THRUSH: If there's no further contributions, I'll put the resolution. All those in favor please raise your hands.

[Show of hands]

>>PETER DENGATE THRUSH: Any opposed? Abstentions? Carried. Thank you.

Public participation plan for timely posting of materials, a topic that we've heard about and discussed for a long time. Jean-Jacques, this is something that's emanating from and relates to the public participation committee, so tell us what it means.

>>JEAN-JACQUES SUBRENAT: Thank you, Mr. Chairman.

Does everybody listen to the English version? Thank you.

Very briefly, during this international meeting of ICANN and right before the first at-large summit on several occasions we had the opportunity of presenting the different works that had been already undertaken, as well as future projects of the public participation committee. I have to say that all suggestions have been taken into account, as well as your criticisms, be them personal or online, and I have to say that very many of these issues had to do with the timely publication or posting of the different materials.

This is fundamental for the ICANN processes, and, therefore, this is what takes me now to read the proposal which I am going to read in English, obviously.

Where, the ICANN community has expressed frustration at the last posting of materials prior to meetings, including some cases of documents being published during the meeting itself.

I'm sorry about this. I had asked that this first "Whereas" read "Whereas, the ICANN community has expressed concern at the late posting," et cetera.

Whereas, meetings, discussions, workshops, et cetera, are most productive when participants have had sufficient time to review relevant material.

Whereas, the community feedback this week broadly supports the goal of having meeting material be available in advance of meetings, and specifically the GAC has requested the posting of materials at least 15 working days in advance of each ICANN meeting.

Whereas, the PPC has been discussing the importance and benefits of making meeting materials available well in advance of meetings.

Whereas, it will take a strong commitment from the ICANN community, including ACs, SOs, WGs, and others, to achieve the goals of advance availability of meeting material.

It is resolved that the board requests that the PPC develop a plan for ensuring that all major meeting material be available at least two calendar weeks in advance of meetings, starting with Sydney.

Thank you.

>>PETER DENGATE THRUSH: Thank you, Jean-Jacques. Is there a second after that resolution? Katim, thank you. Would anybody like to speak to it? Let me take the lead.

I think an important part of this resolution is the recognition that it's not just the staff, nor is it just the board, that this is what needs to be engaged. Much of the complaining -- and much of it justified -- might be directed at the staff or might be directed at the board. But the reality is this is going to have to be a whole corporate culture change. To get this to work, the whole organization has to accept that its documents need to be produced in time so that we can have this effective blackout for two weeks or three weeks before the meeting so people have got time to digest it before they get on the plane. So we all know what it's about. Anyone else want to comment or can we put it to the vote? Dennis and Bruce. Dennis and Wendy.

>>DENNIS JENNINGS: You used the phrase "corporate culture," but I would prefer to use the phrase our whole stakeholder environment has to recognize this is a requirement to make it work effectively for everybody.

>>PETER DENGATE THRUSH: I treat that as a very friendly amendment and adopt it.

Bruce and then Wendy.

>>BRUCE TONKIN: Thank you, Peter. I don't want to amend the motion but just to re-enforce your comment.

The other feedback I've received is that, when people come to these meetings, it's quite a confusing schedule. And they're not clear on topics that are just for discussion versus topics that are for decision. So I think the other discipline we need to do is, two weeks before an ICANN meeting, have a staff -- fairly succinct staff paper that identifies here are the major items for discussion in the different forums. So, you know, here's the major decision item in GNSO; here's the major decision item in ccNSO; and then the relevant papers that go with that so there's some context before people get here.

>>PETER DENGATE THRUSH: Excellent. I think the PPC heard that kind of suggestion as one of the other inputs, so that may be going on. Wendy?

>>WENDY SELTZER: Thanks, very much. And thank you to the public participation committee for its engagement both at this meeting and in its work to ensure that the diverse at-large community has access to ICANN's materials. Thank you very much.

>>PETER DENGATE THRUSH: Thank you, Wendy. I have Roberto and then Rita. Roberto?

>>ROBERTO GAETANO: Yes. I think that there's not really bad will. There's nobody that has the intention to post documents too late and so on. I think that, more than kind of a declaration of intent, this should be, as it says in the wording of the resolution, it has to be a commitment to put this principle on which we all agree in practice. And I hope that, in fact, the public participation committee would be the driving force behind this.

>>PETER DENGATE THRUSH: Thank you, Roberto. Rita?

>>RITA RODIN JOHNSTON: Very quickly. One of the things I've been trying to say throughout this whole meeting is everyone should come together and try to propose solutions. And the board takes very seriously the fact that you can't really propose solutions if you don't have documents you're trying to read to figure out what the problems are to solve. So, again, I hope everybody in the community sees this as a reflection of the board's serious commitment to have everybody have information to be able to talk to constituencies and get us all solutions. Thanks.

>>PETER DENGATE THRUSH: Let's put the resolution. All those in favor please raise their hands.

[show of hands]

Any opposed? Any abstentions? Carried.

The next item is a general one for -- if the board feels it needs to discuss any other matters that have arisen during the course of the Mexico meeting. I invite contributions, but remind you that we are running into lunch. I would rather keep moving and do the remaining items before lunch. So I do welcome contributions but ask you to keep them short as you can. Thank you. Bruce?

>>BRUCE TONKIN: Thank you, Peter. I just wanted to perhaps point out a couple of items that have also been discussed within the GNSO this week that I think can be treated similarly to some of the other topics in the board meeting with respect to getting groups to propose solutions.

One of those topics is around malicious or domain names that are used in criminal activities. We had some workshops on that topic. I think there's an opportunity for new gTLDs to consider maybe standardizing some of the approaches to perhaps a take-down approach for some of those domain names.

So I'd encourage those in the GNSO community to give some consideration to preparing a concrete proposal for the staff to consider before Sydney.

And then the second topic that I heard quite a bit about was for languages such as Chinese where one character can represent a whole word, the feeling that a number of people proposed was that the three-character limit that's presently for IDN gTLDs is too restrictive and I think it should be reasonable to have a lower number of characters, maybe two. Again, I think this is going to be difficult to do across all languages and scripts because of the complexity. But, perhaps, if a particular language and script community could come up with a coordinated solution to say, you know, our script is okay with one or two characters and this is why, that would again be very useful input before Sydney.

>>PETER DENGATE THRUSH: Is thank you, Bruce. Are there any other contributions? I think Ram. Yes, Ram. Sorry, Ramaraj. I need to be clear now that we've got two of you. And I notice you tend to sit side by side to make my job even harder.

>>RAJASEKHAR RAMARAJ: Especially when we can talk in tandem. So it helps.

>>PETER DENGATE THRUSH: That is going to tease the interpreters, but --

>>RAJASEKHAR RAMARAJ: I thought there had been a couple mentions made about the board review working group. And I thought I'd touch upon that. Take an opportunity to give some background and update as to where we are at in that process. Although it is not stipulated in the bylaws that there should be a board review, the board decided December of 2006 to undertake a review of the board similar with the reviews being undertaken in other ICANN structures. Boston Consulting Group were appointed as the independent reviewers. And in Cairo they presented their report. A workshop was held. Public comments were received at that meeting. And it was open for continuous community feedback. The board review working group has been meeting since then many times over the telephone and otherwise. And we've been discussing many of the recommendations contained in the report.

This, again, we brought it out at the public workshop yesterday. And I don't know how many of you were there. But it was a very interesting discussion. But what I thought is that we needed further comment. There were eight issues that were highlighted in the working group review.

I thought at least I'll draw your attention to three where we would need more inputs from you.

One is what is the right size, the appropriate size for the ICANN board?

Two: Should the board members be remunerated?

Three, there was a very interesting suggestion of is there a support from the community for a board elected by the community as a whole from a slate of candidates put forward from the community as a whole. A council of council.

So these were three out of the eight that we're still -- I'm saying please respond to all. But these three still left many areas for debate. So that's the update. It's still open for comment and looking forward to receiving more inputs from you. Thank you.

>>PETER DENGATE THRUSH: Thanks very much for that update Ramaraj. What's the closing date for that public comment period?

>>RAJASEKHAR RAMARAJ: I think it's 30 days.

>>PETER DENGATE THRUSH: Roughly, 30 days. Thank you. Katim.

>>KATIM TOURAY: Thanks, Peter. I'd just like the opportunity to mention what I believe are three key highlights of this meeting, which I think we should think very seriously as we move forward. And I would encourage us to really continue this period of the three highlights that I'm just about to talk about. One, is the fact that I think the meeting proved the value of constituencies having consultations amongst

themselves. I think this is amply demonstrated by the resounding success of the at-large summit that was held here. It was just incredibly successful. And I think other constituencies can take a queue from them.

Second also, the meeting demonstrated the value in various constituencies engaging in consultations between themselves.

And, here again, the demonstration of that, I believe, is the AC and supporting organizations summit that was held and which also was very successful and resulted in a lot of value and added value to the meeting.

Finally, I think also the meeting demonstrated the value of the community engaging the board constructively and all of us working together to see how we can work to resolve or to achieve solutions to very intractable problems. Here I'm talking, in particular, about the suggestion that we had for the IPC, intellectual property constitution -- constituency -- I beg your pardon -- which resulted in this resolution we just considered.

Also, finally, the meeting also marked a very significant step toward our efforts to begin to address -- not to begin to address, but to continue to address and very seriously address the concerns of the non-English speakers that increasingly are forming a very significant majority of the community here. I think, once again, I'd like to encourage everybody to continue along this as we move forward to Sydney. Thank you.

>>PETER DENGATE THRUSH: Thanks, Katim. Last one, Rita. Thank you. Sorry, Demi. You did ask. I'm sorry, Demi, Demi and then Rita.

>>DEMI GETSCHKO: Just to add also some impressions of the meeting. I'd like to stress there was an interesting meeting before yesterday afternoon on discussions about, for example, blurring the space between CCs and Gs. And there are many opinions on this. My personal opinion is that the blurring is between two letters and not two letters. Domain is not between CCs and Gs. Maybe we can revise this in the future because we're stuck to some old rules that may be not be appliable any more. And maybe some of the members of the -- that old boxes have run away from that first definition. And, instead of trying to keep all them inside the old boxes, maybe we can already find this with a kind of charter of kind of any other thing. This is one of the points.

Another point I want to stress, as this is my last meeting, open meeting here, is that I have to express some worries in the new gTLD process to try to keep ICANN as a steward of the root and not leaving ICANN to entering the business of selling names just like a registrar. Then I'm, of course, in favor of the Gs and the IDN CCs and so on to have more names on the root. But I understand that our work here, our obligation to the community here is to create richness in the environment and more options to the registrants more than the -- allowing names to go to the root after a due process just for paying the fees and so forth. I will stress that we have to pay some attention to where we're going, not to allow -- not to compete with our own registrars in the market. We are to foster and not to compete.

Thank you.

>>PETER DENGATE THRUSH: Thank you, Demi.

Raimundo, did you want to say something?

>>RAIMUNDO BECA: I would like to highlight the fact of the -- that I've seen many personal cases in this meeting, the -- the fact that people that have met for the first time the Internet community in the IGF, are we coming to come to ICANN meetings? I met several people in Hyderabad, but they almost didn't know what ICANN was. And have been coming now to these meetings. The people mainly from government, which are now GAC representatives or GAC presence. And also from the business community. And I think that this is a very good feedback.

>>PETER DENGATE THRUSH: Thanks, Raimundo.

[Applause]

Dennis, very quick one.

>>DENNIS JENNINGS: Just a very quick one, slightly different topic. I was very pleased with the responses to our improved accountability and transparency. The responses to the publication of the much more transparent budget and the reception of that I think was very positive. And also I think the very positive response to the open meeting with the public participation committee. A lot of people came despite the conflicts with other meetings. So I think those elements were also important. Thank you.

>>PETER DENGATE THRUSH: Okay. Rita. Thanks.

>>RITA RODIN JOHNSTON: Thank you, Peter. I wanted to make a statement about a comment that was made from the floor during the public forum yesterday about myself, my physical appearance, and my profession. As you can imagine, I was extremely disappointed by this statement. I thought it was inappropriate, unprofessional. And it made me very uncomfortable. I received an apology from the person that made it. And I appreciate that. But it's been amazing to me how many members of the community, both men and women, those I know and those I don't know, have come up to me to indicate how disappointed they are that that type of comment was made at the mic. So I wanted to state publicly and remind everyone that ICANN has a code of conduct. If you've never seen it, you can contact anyone in ICANN and they'll direct you to it. I think it's important to appreciate the fact that ICANN is a forum for us all to debate our ideas, sometimes very robustly. But I think that is never an excuse to act unprofessionally or disrespectfully.

There's only a few women of us up here on this stage.

There's more in staff and there's more in the community, although I'd love to see more women come to ICANN meetings.

I think it's fair to say that we all work very hard in connection with our duties at ICANN. And I hope, and I actually believe, that

most of the community respects us. But I can't help but think that such a comment would not be made to a man.

So I need to underscore that this type of conduct is taken very seriously by ICANN and will not be tolerated.

So I suggest that when people take the Mike at the floor, they speak publicly in meetings or in gatherings or even in the hallway, that they think about this and think about what they are saying. Because if they fail to do so, I think there's, unfortunately, going to be serious consequences.

Thank you.

>> Here here.

[Applause]

>>PETER DENGATE THRUSH: Thank you, Rita. I think that was nicely put on a sensitive topic.

Wendy, did you want to add something to that in.

>>WENDY SELTZER: I really have very little to add but just to thank Rita for bringing that out in public and to thank the community, most of which has been very good about following the code of conduct, and to encourage everyone else to treat people respectfully with arguments about policy and not ad hominems.

Thank you.

>>PETER DENGATE THRUSH: I would like to endorse, as Chair, all that Rita said as well.

All right. Thank you for that. Let's move to the next item on the agenda which is congratulations to the At-Large organizers for the hosting of a successful At-Large Summit.

And Wendy, could I ask you to take us through that, please.

>>WENDY SELTZER: Certainly. It is my great pleasure to do so.

I will note that one of the signs of success of a community is when it gets too large for one person to follow all of the activities that are taking place in it, and that was very much the case with the At-Large Summit, there were multiple concurrent topical tracks, regional meetings and sessions, and while I tried to attend much of it, there was much more that I could only follow afterwards, through conversations, of which I had many, and through the At-Large Summit declaration.

So I want to express my great thanks to the community of at-large structures, Regional At-large Organizations, at-large advisory committee, chair of the ALAC, Cheryl Langdon-Orr, co-chairs of the summit working group, Evan Leibovitch and Wolf Ludwig who worked very hard to prepare the summit, and to all of the individual members of the summit working group, of the at-large structures and regional

organizations, topical working groups. And I could go on, but I will move to the resolution here and perhaps come back to some of the subjects.

So we congratulate -- congratulations for the successful At-Large Summit.

Whereas, the ICANN bylaws, Article XI, Section 2, Part 4, provides a process that allows individual Internet users to participate meaningfully in the work of ICANN as the community known as at-large.

Whereas, more than 90 members representing individual Internet user organizations worldwide gathered in Mexico City to hold the At-Large Summit which illustrates the ever-growing involvement and participation of the worldwide Internet user community.

Whereas participants of the At-Large Summit participated in the ICANN meetings, and organized a total of 29 events on topics the at-large community identified as priorities and discussed and developed recommendations on issues of chief importance to individual Internet users worldwide.

Resolved, the ICANN board acknowledges receipt of the At-Large Summit declaration, URL, signed by the summit working group chairs, congratulates the local at-large community for these declarations and their successful sum Milt and welcomes the continued participation of the global individual Internet user community.

I would just like to read one sentence from the closing of the declaration, which I think sums up the mood going forward.

This summit is not just an event terminated with the closing ceremony in Mexico. For the majority of its participants, it is a starting point for further activities and challenges.

We welcome all of that activity.

>>PETER DENGATE THRUSH: Thank you, Wendy. Is there a seconder for that? Steve Goldstein. Thank you.

I think the best way of dealing with this resolution is simply to put the motion.

I am fairly sure it is going to be carried by acclamation, and I think that will speak louder than individual endorsement. So I am going to put that motion. All those in favor, please raise your hands.

[Applause]

(hands raised).

[Applause]

>>PETER DENGATE THRUSH: Indeed, thanks to all those responsible. An excellent start.

Coming to a new item on the agenda, I have asked for us to be kept

informed about the appointments and resignations of volunteers in the volunteer community. And the first that's come to our attention is the end of service as chair of the noncommercial users constituency of Milton Mueller, and I would ask Bruce, who worked with Milton as a long-time -- Bruce was chair of the GNSO. Bruce, could you help us with this resolution, please.

>>BRUCE TONKIN: Thank you, Peter.

Yeah, I am pleased to be able to thank Milton Mueller.

I was chair of the GNSO for a number of years, and Milton, while I think always having robust debate on ideas, I think certainly met the criteria that Rita just laid out in that he did his best to always engage politely.

Another comment I will make about Milton is that he has been putting a huge amount of work in trying to get the noncommercial stakeholders group be successful in the new GNSO structure. So I would like to thank him for that work.

So moving on to this formal resolution.

Whereas, ICANN wishes to acknowledge the considerable energy and skills which members of the stakeholder community bring to the ICANN process.

Whereas, in recognition of these contributions, ICANN wishes to acknowledge and thank members of the community when their terms of service end.

Whereas, Milton Mueller has served the noncommercial users constituency as chairman for four terms, from 2003 to 2004, 2005 to 2006, 2006 to 2007, and 2007 to 2008.

Whereas, Milton has concluded his service term as chairman of the noncommercial constituency.

It is resolved that the ICANN board resolves that Milton Mueller has earned the deep appreciation of the board for his term of service, and the board wishes Mr. Mueller well in all future endeavors.

>>PETER DENGATE THRUSH: Thank you, Bruce. I would like to second that one myself.

Is there any discussion about that or can we move to the vote?

Let's put that to the vote, then. All those in favor of that resolution, please say aye -- raise your hands.

(hands raised).

>>PETER DENGATE THRUSH: Thanks very much. Now, I indicated to Milton before the meeting that I was proposing to do this. He has apologized for not being here so we will arrange to have the text conveyed to him.

The next item is in relation -- the next two items relate to our two retiring S.O.-appointed board members, Demi Getschko, appointed by the ccNSO, and Dave Wodelet, appointed by the ASO.

And as we discussed, they are not actually finishing at this meeting. Because of the way their appointments are constructed, they actually end their service some date in the middle of May, I think.

>>DAVE WODELET: May 7.

>>PETER DENGATE THRUSH: May 7 which of course is completely inconvenient as far as meetings of the board are concerned and, more importantly, meetings with the community. So we are taking the opportunity, although their service isn't actually terminating yet to express in public our appreciation for their services.

And I would like to ask Paul Twomey if he would take us through the resolution thanking Demi Getschko.

Paul.

>>PAUL TWOMEY: Thank you, Peter.

And I would like to express just how pleased I am to be giving this resolution.

Before I go to the resolution, I programs would just like to make two observations, aspects that you may not be aware.

Many of you may consider aspects of ICANN's work as arcane, but what you may not know is Demi is literally the board's expert on all things Byzantine. Not only Byzantine understandings of the DNS and how to operate the ccTLD environment, but also Byzantine theology, architecture, philosophy, and the fifth century sermons of Sir John Chrysostom.

What you may not also know is Demi is one of the intellectual fonts for what we are now dealing with in terms of IDN ccTLDs. I remember a series of conversations that Demi started in middle of 2006 in the board context, in his own characteristically quiet way which I think have been the intellectual source of our working through how to deal with, in a thematic way, how to deal with the introduction of Internationalized Domain Names and how to deal with it as the TLD space expanded and potentially introduced more gTLDs.

I remember in particular a series of conversations with Demi during the RIPE NCC meeting, appropriately enough in the old Constantinople in Istanbul in April 2006 and a series of conversations around the board retreat in 2006 where Demi really informed the board about the needs of this.

With that in mind I would like to read the following resolution.

Whereas Demi Getschko was elected to the ICANN board by the Country Code Name Supporting Organization and started serving on the board in January 2005. He was elected to a second term in 2006.

He has served as the chairman of the conflict of interest and reconsideration committees, and is a member of the board governance, IANA and meetings committees and has provided excellent insight, leadership and expertise in these roles.

Whereas, Demi has served with great integrity and consistency to the core principles of ICANN. Whereas Demi will conclude his service as a director of the ICANN board in May 2009.

It is resolved, that the ICANN board resolves that Demi Getschko has earned the deep appreciation of the board for his term of service and the board wishes Mr. Getschko well in all future endeavors.

>>PETER DENGATE THRUSH: Thank you, Paul. I am going to second that one as well.

Demi, time for you to come and stand up and....

Demi, I have asked to second this because you and I were both appointed at the same time, and it's sad to see you go, but I do want to, first of all, give you the token that's custom around these occasions, just a tiny token of the huge respect and appreciation we all feel for your service. Sad for me to lose my ccTLD mate on the bore. But I know you will stay in touch, you are not leaving ICANN, you are still coming to the meetings and stay in touch.

[Applause]

>>DEMI GETSCHKO: It has been an honor to serve to such brilliant board.

Thank you.

(standing ovation).

>>STEVE GOLDSTEIN: Does this signify that we are accepting this with acclamation, Mr. Chairman?

>>DEMI GETSCHKO: Just to say thank you. It was an honor for me to be in this set of brilliant people here, and have spent this experience of life is really unforgettable. Thank you to all of you.

[Applause]

>>STEVE GOLDSTEIN: Chair, I trust that our applause signified that we accepted the resolution by acclamation.

>>PETER DENGATE THRUSH: Thank you very much. I accept that.

So, declare that carried by acclamation and we come to the other director in the same category, Dave Wodelet. And I will ask Steve Goldstein if you will take us through this resolution.

Thank you, Chair. And if you will indulge me a moment, I would like to relate a little bit of history. Because we -- while ICANN is celebrating its tenth anniversary this year, there is another 20th anniversary that I would like to mention.

In 1989, the National Science Foundation network, NSF NET, started its T1 service, 1.5 megabits per second backbone. In those days, it was huge, and in those days the NSF NET was sort of the avowed center of the Internet.

But in that same year, Canadians were implementing their CA NET at 64 kilobits per second. And the two networks interconnected at three points.

Now, I mention this because in December of '89, under the so-called Landweber Conferences, most of the major participants in academic Internet, which at that point was sort of most of what there was in Internet, plus a few up and coming commercial Internets, like UUnet, met in Sydney.

So in just a few months, we will be meeting in Sydney again, but 20 years ago we met in Sydney. I was a new recruit to the National Science Foundation at that time and had the good fortune of being allowed to represent NSF at that meeting and all the participants in that meeting fit on a yacht in Sydney harbor for dinner one night. There were 29 of us. Imagine the size then.

Now, at that meeting, John Kerly from the National Research Council of Canada, who was implementing the CA NET, asked me, just in case the CA NET broke, would we mind if they healed themselves through the NSF NET. And half jokingly I said to John, "Sure, John, but if the NSF NET breaks, may we heal ourselves through CA NET?"

So with a handshake, we began what a wonderful, warm collaboration between Canada and the United States as regard academic networking, and that collaboration continues to this day. And I might say that the generosity has been repaid perhaps a thousand fold because Canada has become one of the absolute leaders in advanced academic networking or research networking, and they have always extended a helping hand to the United States, which, unfortunately, has lagged a bit behind in some of the advances.

So when I came to the board, I had never met Dave Wodelet before, but in view of all the wonderful, warm collaborations and friendships I had developed with my Canadian colleagues, I expected no less from him and David did not disappoint.

It is therefore my privilege, my honor and my pleasure to read this resolution.

Whereas, Dave Wodelet was elected to the ICANN board by the Address Supporting Organization and started serving on 4 June 2006. He has served as a member of the conflicts of interest, finance, meetings and public participation committees, and has provided excellent insight, leadership and expertise in these roles.

Whereas Dave has served with great integrity and consistency to the core principles of ICANN.

Whereas Dave will conclude his service as a director of the ICANN board in May 2009.

It is resolved that the ICANN board resolves that Dave Wodelet has earned the deep appreciation of the board for his term of service, and the board wishes Mr. Wodelet well in all his future endeavors.

>>PETER DENGATE THRUSH: Thank you, is there a seconder for that resolution?

Jean-Jacques.

Dave, come to the front.

I want to join with all that Steve had to say and thank you for your contribution. You have been one of the dry wits of the board, always good humored, and just a nice light touch, sometimes, to get us through those difficult moments, which I as chair have deeply appreciated. And also you are you have been a very clear voice for the community who sent us to us.

Thank you for all of your help.

(standing ovation).

>>DAVE WODELET: Thank you.

Thank you very much.

Am I live? Yes, I am. I am already wired.

Just leave this here for a minute.

Could you get the slide deck up?

Actually, since this is my last meeting I thought I would do something special. Normally at these meetings you cover some of the things you have learned while being at the board, on the ICANN board and I thought I would do the same.

One thing I have learned is being on the board isn't easy. My first meeting was in Marrakech in 2006, and as you can see, we do get beat up a bit.

But Vint Cerf was the chairman at the time. I was very honored to have met him and to have known him, and he took it upon himself to show us the proper technique during these heated discussions where this wouldn't happen.

So as you can see, you know, notice the technique, crouched down low just before you go under the table when it gets really heated.

I want you to compare his technique with Peter's.

[Laughter]

>>DAVE WODELET: Notice Peter has a little different technique here. He keeps underneath the table so nothing surprises him from behind, but with face forward, you know, it's a little more dangerous.

So having said that, for any first-time people here, I should clarify, that's how I looked -- that picture before was, indeed, how I looked after my first day. What I didn't tell you is really that's how I looked about two days earlier as well.

I'm into mountain biking and that's a great way to see the mountains, as you can see. But you end up going down very steep and rough roads, and sometimes your bike stops but you don't, and that's how I ended up with the way I looked.

So on a little more serious note, I want to talk a bit about the board and the large time commitment that's there.

This has been a question that's come out a lot of times. Did I a poll of some of the people on the board, and Veni was a board member when I first arrived. He probably did the first analysis of the time he spent, and he came out to be somewhere around 50%.

Steve estimates his time is probably between 50% and two-thirds or about 66%, somewhere in that time frame.

And Raimundo and Steve Goldstein really treat this as a full-time job now that they are retired and essentially spend 100% time with the board.

I have taken this and was inspired by the estimates, but these are all anecdotal.

What I have done is actually looked at my time over a one-year period. And this is from May 2006 when I first started to June the following year.

So as you can see from that graph, in the early days I was spending about 80 to 90% of my time on board work. Okay. I am just talking about the top line, the red line right now. There's actually three lines on that graph, and I will explain to you what they are. And that's the amount of time spent, the percentage of time spent depending on what kind of person you are or your work life.

The red line is a normal work time where you work eight hours a day, you only work five days a week, you take holidays.

So that's what that is based upon.

The green line is classified as someone who is a bit of a workaholic. They work 12 hour days, they work 7 days a week, they don't take any holidays. So you can judge where you are in those two lines.

But the red line, kind of the normal workday, I was working between 80 and 90% of my time earlier on in the board on board stuff.

But having another job, a day job, I certainly couldn't sustain that and still keep my day job. So over time, I got that down to about 50% of my time spent on the board.

So that's normal, based on normal work time.

If you look at if you are a bit of a workaholic, you know, you are only spending 20% of the time on the board. That's because you consider 12 hour days normal.

If you want to consider the blue line, that the that's the bottom line, that's assuming you work 365 days a year and don't take any whom days or anything and in that case you are about 10% of your time. So the board doesn't take that much time. It all depends how you look at it.

So another thing I looked at on the board, or I learned from the board is that you may have to do some things that you thought you would never ever have to do.

Case in point.

So one could interpret this as it's important to interact with all different constituencies, no matter where they are. I can see by the laughter that you are not buying that. Unfortunately, my wife didn't buy it either.

But, you know, this isn't as bad as it looked. I have a really good explanation. After all, I am on the public participation committee. She is public; I am participating. All this great.

I assure you that this is a member of the ALAC, and as you can see, she's a-lacking in very little, except maybe her clothes.

This is something you can appreciate with. Being on the board is a great way to travel. You know, if you just want to see the insides of hotel rooms all over the world.

[Applause]

>>DAVE WODELET: It's also a great experiment in sleep deprivation to see how you react, being so time lagged.

Another thing I have learned at ICANN is there are some unique alliances that are created that could have never happened anywhere else.

Remember triple X? I know I sure do.

I mean, that was a situation where we had basically two polar groups, the very conservative right and the very liberal left coming together to debate this.

On the conservative right, they didn't want triple X because that would increase access to Internet porn. Just like putting up a billboard there saying, you know, it's all under dot XXX. Here you go.

And on the other side they didn't want access because it would decrease access to Internet porn. That would be like putting a bull's eye out there so people could filter based on a domain name, a dot XXX. You can see they were totally aligned on this even though it was a different reason. Certainly a match made in heaven. Where else could that happen besides ICANN?

So dare I say that made very interesting bed fellows, and dare I say that I guess that gave new meaning to the bottom-up process.

Anyway, to conclude, I would also like to say that being at ICANN and on the ICANN board has been the best way to meet an incredibly dedicated group of individuals, and I want to thank the members on the board and the members in the audience as well as the members in the larger ICANN and Internet community for making it a truly incredible experience.

Thank you very much.

[Applause]

>>PETER DENGATE THRUSH: Dave, excellent. Thank you for putting the effort into that, and that's a very memorable farewell.

Can I ask now, Roberto, to --

>>STEVE GOLDSTEIN: Chair, may we note that that resolution was also accepted by acclamation?

>>PETER DENGATE THRUSH: Thank you, Steve.

Mr. Secretary, please note that the resolution was adopted by acclamation.

Can we move to the traditional thanks to your staff, scribes and event teams for the enormous support that we receive and I'd ask Steve Crocker to take us through this one. Thanks, Steve.

>>STEVE CROCKER: Thank you, Mr. Chairman.

The board wishes to express its appreciation to the scribes, Laura Brewer, Teri Darrenougue, Jennifer Schuck, Charles Motter, Susan Wollenweber, Darlene Pickard and to the interpreters and to the entire ICANN staff for their efforts in facilitating the smooth operation of the meeting. The board also wishes to express its appreciation to VeriLan Events Services, Inc. for technical support, and PSAV, Imagine Eventos, and Messe Mexico for their support. Special thanks are given to Gerardo Velazquez R. and his team.

The board would also like to thank Rosa Maria Vaca, Executive Director, Monica Maldonado, Director of Sales, Eduardo Fournier, Director of F&B, Daniel Eduardo Cervantes Calzada, Capitan de Banquetes, and the event staff at the Sheraton Centro Historico for their support and for this beautiful facility to hold this event. Thank you.

[Applause]

>>PETER DENGATE THRUSH: Is there a seconder for that resolution? Thank you, Raimundo. I think we'll declare that one carried by acclamation, too.

Roberto, could I ask you to take us through a vote of thanks to our sponsors for this event?

>>ROBERTO GAETANO: I'll do that with pleasure.

The board extends its thanks to all sponsors of this meeting:

AXTEL, BBVA Bancomer, Telmex, Public Interest Registry, VeriSign, Inc., Afilias Limited, AusRegistry International, China Internet Network Information Center (CNNIC), Core Internet Council of Registrars, InternetX, IP MIRROR, Minds + Machines, dotMobi, NeuStar, Inc., RegistryASP, National Telecommunication Regulatory Agency (ANRT), EuRid, Iron Mountain Digital, NameAction, Inc., National Internet Development Agency of Korea (NIDA), Directi Internet Solutions Pvt. Ltd. d/b/a PublicDomainRegistry.com, and ICANNWiki.

The board also wishes to thank Domaine.info for providing photography and filming for this meeting.

>>PETER DENGATE THRUSH: Thank you. Roberto, is there a seconder for this resolution? Jean-Jacques.

Let's put that motion, and I suspect that also will be carried by acclamation.

All those in favor, please indicate.

[Applause]

>>PETER DENGATE THRUSH: We've been told that none of the representatives are actually here to receive presents so we will be dealing with that otherwise.

And finally, could I ask Raimundo to take us through thanks to the Mexican government and our local hosts for this meeting here in Mexico City.

>>RAIMUNDO BECA: I will speak in Spanish for obvious reasons, but as you prepare, I would say that this is not the first time I have to do that, because I am the only speaker in Spanish in this board, and so I have had the privilege of having this for all the time also and --

>>ROBERTO GAETANO: Your mother tongue is Spanish.

>>RAIMUNDO BECA: Yeah, okay. But also, I had to do that in French sometimes, so this is not the first time I have to have the privilege which is a very good one on -- to give thanks to the local hosts. In Spanish now: The board wishes to extend its thanks to the local host organizers, the Mexican Internet Association, AMIPCI, The Network Information Center-México (NIC-México) and ISOC (Internet Society) Mexico.

The board extends thanks to the new Vice Minister of Communications of Mexico, Lic. Gabriela Hernandez, and the coordinator of the Information Society and knowledge, León David Pérez Hernández, for their support and participation during the meeting.

The board would also like to express its greatest gratitude to Ing. Enrique Bustamante R., Director General at AMIPCI, Lic. Luis Ernesto

Valdez Diaz, Subdirector General at AMIPCI and all the AMIPCI staff for their enormous dedication and the hard work for this meeting to be possible.

Finally, the board acknowledges the support and participation of -- and in parentheses my personal friends -- Mr. Oscar Robles from NIC-Mexico, and Mr. Alejandro Pisanty from ISOC Mexico, who were not only actively involved in the organization of this meeting, but who have also made invaluable contributions throughout the history of the organization. Thank you very much.

>>PETER DENGATE THRUSH: Thank you, Raimundo. Demi is seconding the motion. I'll put the motion. Please indicate your assent.

[Applause]

>>PETER DENGATE THRUSH: Ladies and gentlemen of the board, of the community, that marks the end of the formal board meeting in Mexico City. My personal thanks to all of the board members. We've had a long, hard, and some difficult sessions. Congratulations to all of you on the way you've handled yourselves through that. Thank you to members of the community. Some extraordinary highlights which I'd just characterize very briefly by picking out four sets of three-letter acronyms: Think of what we've achieved at this meeting in relation to RAA or PSC or IRT, the implementation team we are forming to help solve the IP problem in relation to new gTLDs or think of IDN. A huge amount of work for which I thank you on behalf of the entire Internet community.

Now, observant members of the community will note that I have attempted a practice of opening sessions in the language of the host country. So I leave you now and go home to take up some special coaching so that I'll be able to do the same thing at the next meeting in Australia. I'm not looking forward to it.

[Laughter]

>>PETER DENGATE THRUSH: Coaches of our language are very hard to find and very expensive, but I'll make do. Ladies and gentlemen, thank you again. See you in Sydney!

[Applause]

VeriSign :

July 24, 2009

The Honorable Henry A. Waxman
Chairman
House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, DC 20515-6115

Dear Chairman Waxman:

Thank you for your follow-up questions from the Hearing on the Internet Corporation on Assigned Names and Numbers in June. Below are the responses to the questions you and the Committee sent.

1. As permitted under its contract with ICANN, VeriSign raised the prices it charged for the ".com" registry in 2007 and 2008. For what reason did VeriSign do so?

For over a decade VeriSign has managed the .com top level domain. We are proud of our history in securing, managing, upgrading and innovating the essential directory services that make possible safe, secure, and reliable access to the web sites, ecommerce, and email addresses for the world's 1.4 billion Internet users.

Like most companies, when making pricing decisions, VeriSign takes into account multiple micro and macro economic market dynamics. Particular to VeriSign, such considerations must include the current and future state of Internet usage, cyber attack frequency and size on our network, global cyberterrorism threats, and several other factors.

To meet this challenge, VeriSign proactively invests in network distribution, resiliency, monitoring, capacity and isolation/removal tools to combat the increasingly diverse attacks and threats to the Internet. For example, VeriSign networks are engineered to handle 4 trillion queries per day just to meet the surges in activity caused by cyber attacks. We continually rotate our architecture and expands our globally distributed sites based upon current, and expected attack patterns and surges in Internet usage. This approach ensured, for example, that .com queries continue to be answered in the

VeriSign

United States and in Asia Pacific despite a fiber cut which brought many other providers to a standstill in 2006. Also, we had uninterrupted service in Europe, Asia and the Middle East in January 2009 when an undersea cable in the Mediterranean was cut. This diversity ensures that users always have a ubiquitous and highly available experience when accessing online news and in communicating with one another.

Reliance on the Internet for commerce and communication is growing at levels that demand that infrastructure providers grow their networks at an exceptionally rapid pace. The growing importance and the escalating risk of an outage means we must invest and build out the networks beyond the publicly projected usage numbers to ensure that the critical infrastructures that are the backbone of the Internet system are protected.

Without this capacity from our continued investment, large portions of the Internet would not be able to withstand attacks and would quickly shut down. Investing in full system redundancy and distributed networks located all around the world to quickly monitor, isolate and defeat disruptive attacks to the Internet has become increasingly critical. In order to avoid the risk of a single point of failure, this challenge cannot be met with off-the-shelf software or by relying upon a single technology standard. Further, VeriSign invests in disaster recovery including primary, secondary and tertiary data centers that offer redundancy and resiliency for Internet end-users and over 90 million VeriSign customers who have chosen to operate sites using the .com and .net.

As the internet evolves, so to will the need to invest in the infrastructure which supports it. While the rate of growth of the number of businesses purchasing .com and .net names has slowed from the first quarter of 2008 to the first quarter of 2009, the query load continues to grow. The query load is driven by how many users access the Internet for usage of a website, email, web based application, or other internet based services. Whether from their home, work, or on-the-go through use of their iPhone, Blackberry, laptop or other mobile devices continues to rise at a rapid pace. As the usage continues to evolve so too will the threats to the system – more devices and more users creates more opportunities to insert attacks, for attackers to create compromised machines and for cyberterrorists to find ways to try to cripple the IP based world of commerce and communications which rely upon .com and .net.

2. Similarly, does VeriSign plan to raise this price again in 2009? Please provide an explanation.

VeriSign :

VeriSign is a publicly traded company. As such, pricing determinations are material market information. We cannot state pricing decisions in advance. We are very thoughtful in all of our pricing decisions. As outlined in the response to question 1 above, we carefully consider the micro and macro market conditions as well as the investment needs of the business including assessment of the growth in utilization and continued defense from nefarious behavior.

With the slow down in the economy, there has been a slight decline in the build out of new e-commerce sites. But usage by individual users and in international growth of e-commerce systems continues to grow. Along with this growth there is an increasing sophistication and frequency in attack patterns. VeriSign increasingly deals with fast flux and other types of attacks on its systems. Additionally, we are called upon to help our distributors who are under hostage types of DDOS attacks and to provide new ways of monitoring for these attacks, which can now be generated via SmartPhones. As the recent attacks on US government and Korean government websites demonstrates, the attacks are at every level of the infrastructure.

We work in a very complex ecosystem. The ecosystem through which we sell names involves the names being bundled with website creation packages, hosting tools and other products to offer a full suite of services to customers ranging from very small companies to extremely large companies. While we are one of many products available on the shelf of our distributors, our service is the underlying asset that assures customers that their applications have an assurance of uptime and availability.

We are truly honored to be able to manage .com and .net. We recognize the important role that .com and .net play in the global economy and in the protection of companies who build their businesses online.

Sincerely,

Ken Silva
Senior Vice President and Chief Technology Officer

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