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National Telecommunications and Information Administration
Docket No. 060519136-6136-01
The Continued Transition of the Technical Coordination and Management of the Internet Domain Name and Addressing System

1. The *DNS White Paper* articulated principles (i.e., stability; competition; private, bottom-up coordination; and representation) necessary for guiding the transition to private sector management of the Internet DNS. Are these principles still relevant? Should additional principles be considered in light of: the advance in Internet technology; the expanded global reach of the Internet; the experience gained over the eight years since the Department of Commerce issued the *DNS White Paper*; and the international dialogue, including the discussions related to Internet governance at the United Nations World Summit on the Information Society (WSIS)?

I was one of those who made comments on the DNS White Paper in 1997. Most of the points made in those comments continue to be valid, and have been confirmed by experience:

> 1. The issue of domain name regulation is related to the wider issue of public responsibility for the Internet and within this the role of international organizations. Maintenance of the fundamental openness of the Internet on the basis of universal access and fair competition requires that this essential public good has reasonable regulation to ensure a level playing field for all users. As a new, borderless entity, the Internet can neither be regulated effectively by national governments nor by self-governance of its many and diverse users.

Two principles clearly need further articulation. Openness of the Internet, which was not specified in the original White paper, is a critical principle for the operation of the Internet. ICANN should operate so as to ensure that its decisions do not compromise this principle. However, what openness implies as a principle needs further exploration at the international level. Clearly elements from human rights, like freedom of expression, need to be applied. So does access by countries that lack resources, as called for in the WSIS Tunis Agenda for Action.

The second principle is the internationalization of the Internet that was not included in the White Paper but has now been included in the Tunis Agenda adopted by the World Summit on the Information Society. However, the details

of what is implied by internationalization have yet to be worked out. As I said in my 1997 comment:

> 1. A central principle should be that the policy framework and regulatory mechanisms should reinforce the globalization of the world economy, accelerate interdependence among peoples and strengthen international public institutions in the interest of all of the world s people.
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> 2. Recognized in a cascading series of conventions, agreements and declarations in a wide variety of fields, and embodied in a growing number of international institutions to implement these agreements, the increased interdependence that characterized the end of the 20th century and will be the leitmotiv of the 21st. This has meant that the size and context of international public space has grown. This borderless world can have incalculable benefits to everyone, but may be particularly important to Americans, many of whose national ideals are reflected in the way international space has been defined, and whose economic well-being increasingly depends on development elsewhere and whose physical environment both affects and is affected by people outside its physical boundaries. The United States, therefore, has a special responsibility to encourage the development of international institutions that reflect our values. The Internet was a creation of US technology and, in its free and open structure, based on fair competition, reflects fundamental American principles. But it has passed into the international domain: it belongs to the whole world. It is imperative that we help create international institutions whose structures and processes are consistent with our values.

2. The *DNS White Paper* articulated a number of actions that should be taken in order for the U.S. Government to transition its Internet DNS technical coordination and management responsibilities to the private sector. These actions appear in the MOU as a series of core tasks and milestones. Has ICANN achieved sufficient progress in its tasks, as agreed in the MOU, for the transition to take place by September 30, 2006?

The DNS White Paper only referred to the setting up of ICANN. Clearly most of the milestones established then have been met. The difficulty with the transition has been that one of the milestones, "4) consult with the international community, including other interested governments as it makes decisions on the transfer" has been incomplete. While ICANN meetings have had wide participation from different stakeholders, the expected consultation has not really taken place and the issue of to whom ICANN should report is still unresolved, since it has become mired in disputes over sovereignty.

For the transition to take place successfully, an international agreement about oversight and reporting will need to be obtained.

3. Are these core tasks and milestones still relevant to facilitate this transition and meet the goals outlined in the *DNS White Paper* and the *U.S. Principles on the Internet's Domain Name and Addressing System*? Should new or revised tasks/methods be considered in order for the transition to occur? And on what time frame and by what method should a transition occur?

The transition has to be seen in the larger context of Internet governance. Many of the issues that existed at the outset of the DNS controversy still lurk, such as trademark and copyright issues, and ICANN has been pushed into policy discussions where it lacks legitimacy or competence. Over the short run, the transition could be made -- turning supervision over to the corporate authorities in California -- but a time frame should be set up for providing legitimate international oversight.

4. The *DNS White Paper* listed several key stakeholder groups whose meaningful participation is necessary for effective technical coordination and management of the Internet DNS. Are all of these groups involved effectively in the ICANN process? If not, how could their involvement be improved? Are there key stakeholder groups not listed in the *DNS White Paper*, such as those with expertise in the area of Internet security or infrastructure technologies, that could provide valuable input into the technical coordination and management of the Internet DNS? If so, how could their involvement be facilitated?

The main issue has to do with involving governments in the process. The existing method clearly does not work. Using an international means (such as a convention for which States Party would have oversight responsibility) would be a better option than self-selection by states, or designation of states by ICANN itself. However, in working out the international arrangements, innovations will have to be made that will assure the participation of non-State stakeholders.

5. The *DNS White Paper* listed principles and mechanisms for technical coordination and management of the Internet DNS to encourage meaningful participation and representation of key stakeholders. ICANN, in conjunction with many of these key stakeholders, has created various supporting organizations and committees to facilitate stakeholder participation in ICANN processes. Is participation in these organizations meeting the needs of key stakeholders and the Internet community? Are there ways to improve or expand participation in these organizations and committees?

No comments.

6. What methods and/or processes should be considered to encourage greater efficiency and responsiveness to governments and ccTLD managers in processing root management requests to address public policy and sovereignty concerns? Please keep in mind the need to preserve the security and stability of the Internet DNS and the goal of decisionmaking

at the local level. Are there new technology tools available that could improve this process, such as automation of request processing?

As noted in my comment on question 3, ICANN is part of a larger issue of Internet governance. As noted by the report of the Working Group on Internet Governance (WGIG), there are a large number of public policy questions that must be addressed if the Internet is to remain secure, stable and open. There are areas where decisions in some international regimes have implications for the Internet and vice-versa, but there is a lack of agreement on the rules to be applied. One option, which I have noted before, would be to reach an agreement on the principles and rules of Internet governance through negotiating a Framework Convention. An agreement on such a convention, following a exploration of needs, could be an outcome of the process that has begun through the Internet Governance Forum.

7. Many public and private organizations have various roles and responsibilities related to the Internet DNS, and more broadly, to Internet governance. How can information exchange, collaboration and enhanced cooperation among these organizations be achieved as called for by the WSIS?

For effective exchange of information, collaboration and enhanced cooperation there must be a central coordinating mechanism that can facilitate information exchange (both by providing a space for this and establishment of standards) and provide a place for reaching and recording agreements on cooperation arrangements among stakeholders. This is not something that can be provided either by individual governments or by non-state actors, since they lack either the credibility or the reach that is necessary. In other areas with similar issues, this is a function provided by international secretariats. At present, no such international institution has been agreed, although the Secretariat of the Internet Governance Forum, appropriated resourced, could provide that function. There are other existing institutions, like the ITU, that could also be considered, but these have problems of limited mandates and lack of credibility among some stakeholders. Should a Framework Convention be negotiated, its Secretariat could provide this function in the future.