

Address by

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To a Public Meeting for the Midterm review of the Joint Project Agreement
between NTIA and ICANN

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Introduction

I am very pleased to contribute to this public meeting to discuss the mid-term review of the Joint Project Agreement (JPA) between the Department and the Internet Corporation for Assigned Names and Numbers (ICANN). I am sorry I cannot be there in person but work commitments in the court have detained me in New Zealand. I want to thank the NTIA for the work that has gone into organizing this review, and for their cooperation in the work done to date. I look forward to working closely and cooperatively with Meredith Attwell-Baker and Suzanne Sene in reviewing the results of this exercise and forming some joint conclusions. I want to say thank you also for the opportunity to speak this afternoon.

In October 2007 at our Los Angeles meeting John Kneuer, the then Assistant Secretary for Communications and Information, United States Department of Commerce said that it was the ICANN Board that would determine whether ICANN was meeting its responsibilities under the JPA. After all – it was the Board who developed them.

The Notice of Inquiry for the comment period focused on those ten responsibilities developed by the ICANN Board and incorporated as an Appendix to the JPA, and asked commentators to rate ICANN's performance and suggest if ICANN could do more.

The Board believes that ICANN is meeting its responsibilities under the Agreement. More could and should always be done but the responsibilities are being met.

We think that the conditions have now been sufficiently met that the JPA can conclude during the months up to September 2009. The vast majority of the community responses support this conclusion.

Most commentators have focused on a bigger picture as well. We think that this is appropriate.

Today I want to provide a perspective on what we are hearing from contributors to this review process, and to outline a way ahead. As an

active partner in this process of review we have carefully read all of the submissions made.

This process of public input and review, followed by policy development in public, is of course, one which we are very familiar with; it's embedded in the ICANN bottom-up processes.

Almost exclusively, the comments have focused less on giving ICANN a rating, but rather they express the view that now is the time to have a debate about how to move to final transition – to an Internet naming and addressing system coordinated by a private sector led multi-stakeholder model of participation.

I think that after almost ten years of experience of this model the question before us is very stark: “Are we going to complete the White Paper’s vision of private sector management of the Internet’s system of unique identifiers?”

I believe the overwhelming view from virtually all participants is that transition is the goal and the interest is in settling how we get there.

If that’s the case then we need now to put in place a process and identify the necessary elements that stakeholders want to see to make this final step.

What do the comments tell us in broad terms?

I want to report on our analysis of the comments received in terms of what is being said in broad terms, and then look more closely at some specifics.

I think the broad themes are:

First, and encouragingly, there seems to be agreement that ICANN has improved markedly in areas to do with transparency and some major elements of accountability. The blog, the newsletters, the website changes, the detailed, on-time board minutes, the open budget planning processes, the frameworks for accountability and transparency approved by the Board and many other changes are all seen as positives.

The submissions also seem to comment favorably on improved operational efficiency and the better resourcing of compliance. There is recognition of major improvements in the IANA function.

Furthermore, commentators seem to appreciate the attempts at reforming the Registrar Accreditation Agreement. Recognition for this and other achievements is very promising.

Another major theme is that most of the submissions want to see the process of transition proceed. Within that there is a group that is interested in concluding the JPA after a debate has taken place. These include: Internet Governance Project; Internet Alliance; CENTR; The Government of Canada; International Chamber of Commerce; The United States Council for International Business; ISOC Australia; The Government of Latvia amongst others.

Even amongst those that don't want the JPA concluded, most want to see a public debate about how that transition might happen. Their concerns relate to issues of national security and risk of capture by international governments. They include: Broadcast Music Inc; Consumer Watch Reports; Coalition Against Domain Name Abuse; the Information and Technology Innovation Foundation; Internet Commerce Association; Mark Monitor; IAPLA. They represent in the main large Washington DC based organizations, but also individuals, well known ICANN participants and domain name industry participants.

Finally there is also an expressed interest in the need to include consideration of the IANA function in any discussion. There is a group of respondents who believe that any forward-looking discussion needs to address the IANA contract. That is, the role of the USG in operational matters to do with root zone management needs to be examined as to whether it should continue as it presently stands. These commentators include: Nominet; auDA; InternetNZ; Internet Architecture Board; ISOC; SIDN (country code operator for the Netherlands).

What this broad analysis tells me is the majority of people are still seeking the transition proposed in the White Paper and looking for a debate on how to get there.

The comments in more detail

There are 169 responses posted on the NTIA site.

Most of these responses are from members of the international Internet community who interact regularly with ICANN. Further, most of these call for planning to now begin the final transition to private sector management of the Internet's system of unique identifiers as identified in the 1997 White Paper, and repeated as policy by several Bush administration officials.

While the variety and depth of all the responses makes a simple summation impossible, I do think it is worthwhile to analyze the responses in some detail. In doing so I recognize that it is impossible to refer and quote from each submission, but I do want everyone to know that we have read and noted each submission carefully and appreciate

greatly the effort, thought and constructive approach embodied in each response.

Over 100 separate submissions clearly request the conclusion of the JPA or assume its conclusion within its term in September 2009. Amongst these are: The Kuwait Information Society; The Chairman and CEO of dotSUB a global Internet video translation service; The European Telecommunications Network Operators Association; LACTLD - the organization of Latin American and Caribbean ccTLDs; The Number Resource Organization; many ccTLD operators; The registry operator for dot Africa; ISOC Italy; The Minister of State for St Kitts and Nevis; The Governments of Bulgaria, Latvia, Finland, and Egypt.

Let me now break this down to groupings of interested stakeholders.

The **technical community** has strongly endorsed the need to conclude the JPA and move to completing the transition - including finalizing the IANA arrangements.

The Number Resource Organization, representing the five Regional Internet Registries, states that the JPA should be concluded and that the DOC and ICANN should work together to complete the transition to private sector coordination. It calls for ICANN to fully consult with its community in planning this transition and warns that the current mechanisms must not be replaced by accountability to any other government, group of governments or treaty organization; rather it calls for ICANN to be accountable to all its stakeholders.

The Internet Architecture Board focuses on the maintenance of the technical parameter registry and on previous communications with the DOC on the role of the relationship of the Internet Engineering Task Force with ICANN's IANA function. The Chair of the IAB notes that the IANA function is meeting service level agreements under a separate IETF/ICANN agreement: that separate agreement "is working satisfactorily and we do not believe that any changes in the agreement are necessary at this time". The main thrust of the IAB submission focuses, however, on what it considers an important condition to be incorporated in the final transition arrangements for the IANA function: a clarification of the boundaries of the IANA registry function and the recognition of the IETF as being the source of authority on technical parameter registry functions, not the DOC.

"We appreciate the current implementation of the relation between the IETF and ICANN with respect to the IANA function. However, to complete the private sector handoff and bring the JPA to successful closure, the rightful role of the IETF must be clearly articulated and addressed in any agreements. The DNS White Paper Project has given ICANN only the task

of coordinating technical protocol parameter assignment, and ICANN currently carries out assignment of those parameters only under the terms of a separate agreement between ICANN and the IETF. The IETF expects that ICANN will continue, as part of its coordination activity, to honor that agreement both in spirit and letter. However, the IETF retains the right to terminate that agreement and move its protocol assignment function elsewhere, without prejudice to its support of the ICANN implementation of the DNS White Paper private sector model.”

The Internet Society also reinforced this last point. ISOC praises progress made by ICANN since the commencement of the JPA and calls for both continued implementation by ICANN and for ICANN to develop a workable plan for its post JPA future. “We believe that having a clear, community-agreed organizational end point is critical to ICANN’s future success, and to the stability and security of the global Internet.” ISOC also makes some important points about balance among ICANN’s constituencies.

A wide range of **country-code top level domain** representatives have responded, including the regional organizations; Latin American and Caribbean ccTLD (LACTLD), Council of European National Top Level Domain Registries (CENTR) and Asia-Pacific Top Level Domain Association (APTLD), as well as ccTLD operators from Africa, Europe, Middle East, the Americas and Asia Pacific.

They also call for a multi-stakeholder dialogue within the ICANN process to arrive at a shared vision of what a post-JPA ICANN would entail, as well as how or when transition would be triggered (voices inputting include the .eg registry, CBINET Internet Burundi the .bi registry, InternetNZ the .nz registry, the .ru registry, CENTR, AUDA the .au registry, Nominet the .uk registry, Kenic the .ke registry, SIDN the .nl registry, JPRS the .jp registry).

Country-code representatives also consider, like the technical community, that the evolution of the IANA function is to be a key part of the transition planning. Denic’s (.de registry) response focuses on the IANA operations. InternetNZ states, “Allowing the expiry and non-replacement of the JPA is not the only step required in achieving the privatization of the DNS. Also required is consideration of what should occur with the IANA-DoC relationship and the relationship between ICANN-IANA and the DoC and Verisign in dealing with the root servers.” The .au, .uk, .nl, .jp Registries make similar points.

As Nominet says “the DoC involvement in this operational process potentially adds delay, makes greater automation difficult, takes away visibility of the full root zone management service levels, and limits enhancement such as DNSsec. Significantly, we believe that this role

strengthens the negative perception of other stakeholders regarding the US government's role within ICANN. Going forward we believe that operational checks of this kind should be fully integrated fully into the ICANN –IANA functionality as part of the internal system check and balances.”

A number of **governments** made public responses to the Notice of Inquiry (NoI), including the governments of Sweden, Japan, Latvia, Egypt, Canada, Singapore, the European Union, Bulgaria, and Tunisia. Further, during ICANN's own consultations during the New Delhi meeting, representatives of governments of Italy indicated that they supported the position of ISOC Italy. The representatives of France, Latvia, Finland and Brazil also made comments. All these responses are generally supportive of the ICANN model.

They also recognize the importance of government involvement on the issues relating to public policy within the ICANN context. Several governments note the need for continued evolution of the ICANN model. The Italian government representative in particular noted the ISOC Italy submission that some minor adjustment of the Governmental Advisory Committee's role may be necessary as part of a transition model.

But interestingly all these government inputs reinforce the message of the private sector and technical communities that no one stakeholder should be allowed to gain dominance in the ICANN environment.

They also recognized that ICANN can continue to improve, but as the Egyptian government states “as much as we believe that progress has been achieved in those areas as well as many others, we envisage that the Internet community would always expect more from ICANN. That is due to the uniqueness of ICANN's function and dynamism and never-ending development and innovations in the field of Internet domains and numbers. Nevertheless, it is important to stress the fact that the “need for more” should not be a motive for further extensions of the JPA, nor for the initiation of another similar agreement. We are concerned that decisions that go in such directions would be interpreted as an intention not to complete the transition for the domain name system from the US Government to the international Internet community.”

There was a wide range of responses from **businesses and business associations**.

These responses tended to fall into two broad sub-sets.

The first were broadly-based international business groupings such as the International Chamber of Commerce, US Council for International Business, the European Telecommunications Network Operators

Association, the Information Technology Association of America and the World Information Technology and Services Alliance. While presenting a range of very useful suggestions for continued improvement by ICANN, this group is broadly supportive of ICANN's progress and called, like other groups, for transition to private sector management of the DNS, and proposed items for such a model.

WITSA writes: "The best model for ICANN as it transitions to full private sector management continues to be based on bottom-up participation, collaboration and cooperation with other global multistakeholders and draws on the advice, participation and support of governments through their advisory role in the Government (sic) Advisory Committee (GAC). We believe that the future arrangement for ICANN must ensure that there is no reduction but an expansion of appropriate roles for the participation of civil society and business/industry players. This will ensure that future governance will be led by the private sector and be efficient and responsive to societal needs and technological changes, while ensuring at the same time that governments will continue to play an advisory and consultative role."

The USCIB statement says:

"Although USCIB does not support conclusion of the JPA at this time, USCIB supports the launching of discussions within the ICANN community and between ICANN and NTIA on how to facilitate a sound and stable transition to a fully independent, private sector led ICANN. Such a transition must ensure that ICANN has the requisite structures and procedures in place to meet the ongoing demands and ensure that it can fulfill its mandate. In this regard, priorities include:

- Maintaining ICANN's credibility by preserving and enhancing the private sector led bottom-up consensus policy development model that has made ICANN successful; and
- Ensuring the continued security and stability of the Internet's names and numbering system. "

A second sub-set responses, that are mostly US based and reflect intellectual property interests, focused on their concern about the voice for business in the Generic Names Supporting Organization in the context of its proposed reform, and specific concerns about ICANN increasing and deepening its compliance work, especially as it relates to WHOIS compliance for registrars and their resellers. (Some members of this sub-set include the American Intellectual Property Law Association, Broadcast Music Inc, eBay, the American Society of Composers, Authors and Publishers, Time Warner, the Software and Information Industry

Association, the Intercontinental Hotel Group, the Entertainment Software Alliance, Netchoice and TechNet.)

This group focused on specific operational goals – which I welcome, because as the Board of ICANN stated in its submission, ICANN can always improve. I will ensure that their suggestions are fed into the operational plan for this coming financial year. As some of them are concerned about perceived concentration of ICANN’s funding, I will also be interested in hearing from them ideas about diversifying ICANN’s sources of revenue – even specific funding for boosting compliance work.

Many of this sub-set expressed concerns about the completion of the JPA in terms of not yet having a plan of what would come next, and in particular a plan which ensured that ICANN’s leadership would not be challenged by governments nor controlled by parties under contract with ICANN. (As the BITS/Financial Round Table statement said: “We believe it is important for ICANN to develop governance processes that ensure that the views of organizations that rely on the Internet, but that do not have a contractual relationship with ICANN, are fully considered.”)

In many ways I hear the latter concerns of this group as being similar to other members of the community who are calling for a detailed plan as to how transition would work. For instance, the Software and Information Industry Alliance states: “At this mid-point, we urge the USG to initiate discussions with ICANN on what should be the elements and structure of its on-going partnership with ICANN, taking into account ICANN’s implementation of its commitments in the JPA and principles laid out in the ‘DNS White Paper’.”

Representatives of the **Registry/Registrar constituency** have also made submissions. GoDaddy, Network solutions and PIR recognize the progress ICANN has made, while believing more needs to be done. GoDaddy is critical of several operational aspects and supports the renewal of the JPA upon its expiry. However Network Solutions looks forward to working with ICANN and NTIA to develop the JPA transition plan. Verisign expresses confidence that the USG will act in interest of the resiliency and reliability of the DNS. Neustar supports transition, so long as the goals of the MOU and JPA are not undermined.

“Neustar recognizes the progress made by ICANN in recent months and expects that ICANN will continue to take further concrete steps over the next 18 months to advance and solidify those gains as the JPA approaches its termination date. NeuStar recommends that ICANN, the ICANN community, and the U.S. Department of Commerce begin work to develop a joint transition plan that outlines a path to independence. The final transition plan must ensure that ICANN continues its maturation into

an organization that resists internal and external pressures to move away from the critical model of independent, private sector management.”

There are close to 70 submissions from **civil society and Internet user voices**.

Overwhelmingly these submissions supported the conclusion of the JPA.

Some submissions also focused on improving the voice of civil society and at-large users in ICANN’s decision-making, particularly at the Board level. I welcome submissions from people such as Jacqueline Morris, the At-Large Advisory Committee and Consumer Reports Web Watch, because they point out the user community representation issues that I will convey to the ALAC review and Board review being undertaken this year.

Another 64 people took up the tool many of them had asked for to convey simply and in English (often not their native tongue) letters supporting ICANN’s submission. Most are serious players in the Internet and ICANN world and include:

Nii Quaynor, an internationally known scientist and engineer who has played an important role in the introduction and development of the Internet throughout Africa and winner of the Postel Service Award from the IETF;

Oscar Robles Garay – general director for NIC México, the organization that manages the administration of the .MX country code top-level domain (ccTLD);

Prof. Ming-Cheng Liang – Executive Director of TWNIC;

Sulaiman Alansary – Head of the United Arab Emirates (UAE) Chapter of the Internet Society;

Wolfgang Kleinwachter – Professor for International Communication Policy and Regulation at the University of Aarhus / Denmark;

Hartmut Glasser – Assistant Professor at the University of São Paulo and Executive Coordinator of the Brazilian Internet Steering Committee (CGI.br).

Another civil society voice – the Centre for Democracy and Technology – whilst arguing the JPA should not be concluded yet also states like other respondents that the mid-term review be used to jumpstart an international dialogue on ICANN’s long-term independence from government interference. The CDT requests ICANN and DOC to address this issue with urgency and to consult the Internet community to develop mechanisms that will ensure accountability and representativeness and

protection of the DNS. Further, the CDT urges the US Government to reaffirm that it will end its contractual arrangement with ICANN and to work for mechanisms “that will ensure ICANN’s independence”.

What needs to be improved, what are we doing about it and what has ICANN learned from this process?

Obviously I will not report here on every detail captured by this process. But I think it is important to say that we are hearing the concerns and have started a process of distilling those so that we can address them.

If we are to progress the debate about transition, ICANN needs to identify the areas of change we require, and listen to the community on the things that we are doing right, and where the organization and the model can improve. We need to test our hearing. Then we need to act on what we hear.

Today I am starting that process.

In doing so it is important to build on the processes already put in place by the ICANN community to ensure that the concerns raised are addressed efficiently and effectively.

Firstly, the ICANN community has developed a very open and bottom-up process for strategic, operational and budget planning. I hear the inputs that are focused on topics such as compliance, WHOIS and WHOIS accuracy and better engagement with stakeholders. I want to ensure that they are addressed NOW, in this year’s operational planning process. For those people who say there is still work to be done, here is how that work will be done. Further I exhort the voices that made these points to participate in this open planning process to ensure that their concerns are part of the mix of community issues to which resources are dedicated. That is the place to raise these issues. Participation in the crafting of the strategic and operational plan is crucial.

Secondly, ensuring effective voices of business, consumer and at-large has always been part of the ICANN multi-stakeholder approach. So has Board accountability, which is reflected in the publication of the compilation *Frameworks and Principles for ICANN’s Transparency and Accountability*. I will monitor closely this year’s Bylaw-required reviews of the GNSO, the At-Large Advisory Committee, the Nominating Committee and the Board itself to ensure that the further concerns raised in the submissions about these issues are fully considered. As Chair, I will ensure that the consideration and outcomes of these reviews is integrated in such a way to address the concerns raised by some of the respondents to the Nol. Further, I have made it a personal goal in the

coming financial year to augment ICANN's meeting processes to ensure dedicated workshop interaction with business. I also expect the proposed GNSO reforms to make it easier for business to participate in working groups of interest along the lines of standards organizations. As Chair I will be personally monitoring this.

I also want to address a more general point. Some respondents expressed frustration that they find it hard for their constituency to express their voice in various debates. If that is a belief then ICANN needs to address it. But I don't want anyone to misunderstand the nature of this model.

One of the features of the multi-stakeholder model is that you often get conflicting positions that take time to work through. I think we see this in the GNSO improvements debate and we saw it on the so-called OPOC proposal in the Whois discussion. Often an enormous amount of energy time and resources is involved in arguing your position - those cases are no exception. This is coordination of a public resource by all stakeholders, often with divergent interests. It is a unique model of governance and it will always take effort to make it work.

While these avenues for response are already available to us, we do need to consider how to address the widespread call for a road map for transition to full private sector management of the Internet system of unique identifiers.

In this call, many respondents have raised key framework questions to be addressed. They include, inter alia, how to ensure:

1. Freedom from capture or dominance of ICANN by governments, intergovernmental organizations, or any other group of stakeholders, including private or corporate interests (including those with whom ICANN has contracts).
2. Effective and efficient operations of the IANA functions by ICANN.
3. Accountability of the ICANN model as a whole to its community, including affected parties.
4. Continued security and stability of the Internet's unique identifiers.

So what is the process to have the debate about these issues?

The submission from the Government of Canada is, I believe, informative when it says:

“While Canada is not in a position to declare that the JPA should be the final formal tie between the NTIA and ICANN, the progress made toward increased accountability and transparency within ICANN suggests that there is value in beginning multi stakeholder

discussions on what ICANN could or should “transition to”.

With this in mind, the NTIA should initiate discussions with ICANN, in the context of the current JPA, on issues associated with the next steps in ICANN’s transition to privatization. The ICANN President’s Strategy Committee could be identified to help facilitate such discussions and to provide support, although broader outreach and more open processes would be helpful”.

I think this is a useful suggestion on the way forward.

ICANNs President’s Strategy Committee has been discussing improvements to the ICANN model, the JPA review and especially accountability issues, and so the logic of engaging this group is compelling.

As one of its Co-Chairs, I am asking the President’s Strategy Committee to outline a plan for developing this transition framework. They will meet in April and make a first presentation involving the community, starting a process for further engagement with the community at the ICANN meeting in Paris in June. This process will be guided by the input ICANN has received so far from its own consultations, and the analysis of the comments surveyed in this Review.

It will be a consultative process; ICANN needs to move forward secure in the support of the entire community to which it is accountable. The concerns of that community that we have heard expressed need to be addressed in planning our future. The community wants an ICANN that is protected against capture, that functions well as the multi-stakeholder coordinator of Internet resources, and that manages the IANA function well.

I shall be reviewing with the CEO the resources ICANN needs to invest in this project.

Let me make one point of clarification. Among the respondents there were a few concerns expressed that ICANN will leave the United States and seek broad immunities from legal process by third parties or contracting parties. Let me be loud and clear on this. That will not happen. The US for historic and practical reasons will remain ICANN’s headquarters. Consistent with the continuing stability and security of the Root Zone operations, we are dedicated to being a non-profit organization operating under law.

Conclusion

I characterized the question before us at the outset of this statement as “Are we going to complete the White Paper’s vision of private sector management of the Internet’s system of unique identifiers?”

I believe that the community is clearly indicating that it wants to proceed and complete that vision.

The ICANN Board and all those who have invested time and energy in the original promise made in 1998, want to see not just the JPA concluded, but also the entire transition discussed and implemented. It is also clear that many commentators believe that this must include a consideration of what should change in terms of the USG’s historic involvement in the IANA function and whether that remains necessary or desirable.

Almost ten years ago the United States Government recognized the power of the Internet to promote enterprise, promote human interaction and information exchange. That power comes largely from the Internet’s naming and addressing system. The fact that individuals can reach each other uniquely means that there are potentially as many forms of innovation and expression as there are people on the planet.

It’s probably one of the most valuable resources we have. It’s a resource that is virtually inexhaustible, but it does need protection from capture and abuse.

The US government has been and remains a staunch advocate for an Internet that is based on values of freedom, enterprise and, crucially, coordination – not control. Now there are final steps to be taken to make this a reality and to celebrate an enlightened US policy under two administrations to transition to private sector management of the DNS.

We all now need to work together over the 18 months remaining in the JPA to finalize the model for the long term ahead. I look forward to this challenge. I look forward to working with you all to make it a reality.

Thank you