



International Chamber of Commerce

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Policy and Business Practices

8 June 2009

ICC response to

DEPARTMENT OF COMMERCE, National Telecommunications and Information Administration (NTIA) [Docket No. 090420688-9689-01] Assessment of the Transition of the Technical Coordination and Management of the Internet's Domain Name and Addressing System

Dear Acting Assistant Secretary Gomez,

Members of ICC's Commission on E-Business, IT and Telecoms (EBITT) and its Task Force on Internet and Telecoms Infrastructure and Services (ITIS) are pleased to submit this response to the NTIA Notice of Inquiry (NOI) on the assessment of the transition of the technical coordination and management of the Internet's domain name and addressing system. ICC provided input to the previous NOI on the mid-term review of the Joint Project Agreement (JPA) between the Internet Corporation for Assigned Names and Numbers (ICANN) and the US Department of Commerce (dated 6 February 2008).

ICC's EBITT Commission is composed of hundreds of companies and business associations from all sectors including, business users, service providers, hardware and software developers, communications operators, mobile operators, Internet Service Providers (ISPs) and registry/registrars. With national committees and groups in 130 countries, ICC's members span the globe and are involved in all of ICANN's business related constituencies. Given the composition of the ICC's membership from all sectors and geographic regions, ICC is uniquely placed to provide a truly global business perspective at this important juncture.

ICC has consistently supported and continues to support ICANN's private sector-led multistakeholder model. This model is essential to a well-functioning and global Internet community and is vital for the furtherance of ICC's goals of promoting competition and opening markets. ICC members are also members of ICANN's Generic Names Supporting Organization's (GNSO) constituencies, or participants in ICANN meetings and deliberations. Virtually all ICC members are directly or indirectly affected by ICANN's work, and the security, stability and consistent functioning of the domain name system is of high priority to them.

We also believe that ICANN's technical coordination role is integral to the acceleration of Internet penetration around the world, and the growth of the Information Society so vital for socio-economic development. ICC believes a strong, independent, private sector led multistakeholder ICANN can do much to contribute to making the Internet's addressing and number resources available to the next billion people around the world.

International Chamber of Commerce

38 Cours Albert 1er, 75008 Paris, France
Tel +33 (0)1 49 53 28 28 Fax +33 (0)1 49 53 28 59
E-mail icc@iccwbo.org Website www.iccwbo.org

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ICC recently provided detailed input to the ICANN Improving Institutional Confidence consultation, and incorporates by reference the relevant principles and comments contained therein <http://www.iccwbo.org/uploadedFiles/ICC/policy/e-business/Statements/ICC%20input%20ICANN%20instit%20conf%2004%2005%2009.pdf>.

ICC believes that part of building institutional confidence is for ICANN to remain focused on its core technical coordination and management responsibilities, as the steward of a global resource.

We believe the core principles (stability, competition, private, bottom-up coordination and representation) remain relevant. ICC cannot underscore enough the importance of building confidence in the organization at this time, and enhanced accountability to the Internet community is essential to the next phase of ICANN's evolution. Accountability is a fundamental attribute that every organization needs in order to build confidence among interested parties that it is operating properly. In the next phase, ICANN must be accountable to its stakeholders to demonstrate clearly that it is operating consistently with its core principles.

At this time, there are four key areas that ICANN should address and implement:

1. Safeguard against capture, of all types
2. Accountability and transparency
3. Contract compliance
4. Streamlining priorities and processes to increase meaningful participation

ICC members believe that addressing these four areas, immediately, will strengthen ICANN as an organization, and its place in the Internet governance landscape. With this in mind, we believe that the recommendations set forth below must be achieved prior to the termination of the JPA. It is important to note that ICC has raised these issues previously and hopes that ICANN will take immediate steps to address these outstanding issues critical to its success and transition.

1. Safeguard against capture

There have been detailed recommendations from business, other stakeholders and ICC about how to address the risks of capture.

External capture

1. Capture includes both capture from internal interest (s), as well as external capture by governments and/or outside organizations.
2. A strong barrier against capture is needed to have full transparency and to create sound accountability to the ICANN community. As the opportunity for the whole community to be well represented and empowered to participate in ICANN's decision-making through transparent and accountable procedures are put in place, the risk of capture will be significantly lowered, and even the perception of capture will be avoided.

3. ICANN must develop mechanisms to ensure that the organization will not be subject to capture by sovereign states or other international and/or intergovernmental organizations.

Internal capture

1. **Why it matters?** Capture of any kind is dangerous because it could lead to a single interest, set of interests, or constituency dominating the continued development of the Domain Name System (DNS), and the related technical coordination functions ICANN is responsible for, and undermine the critical balanced nature of its structures and decision-making processes.
2. Freedom from capture should ensure that broader business interests are an integral part of all decision-making and policy development processes within ICANN, including voting structures in the same way as other constituencies are part of that process
3. Building structures and decision-making processes, including voting mechanisms, that stakeholders can count on being consistently and appropriately balanced is a fundamental element to address freedom from capture.
4. This should include a deepening and strengthening of ICANN's relationships with business from all sectors. Reductions in the engagement of the business community would reduce inputs from one of the core partners in the development of the Internet whose expertise is invaluable.
5. Business input will need to come from the constituencies within ICANN, and also from broader business that is not directly involved in the constituencies.
6. ICANN should ensure consensus exists among all stakeholder/constituency groups. Discussions today are very stakeholder oriented instead of topic oriented. This makes it difficult for an entity to follow discussions on one specific topic as the discussion is split among the stakeholder groups. Ensuring topic based discussions exist minimizes the risk that one stakeholder group dominates and steers the ICANN process in one specific direction, and not the opposite.

ICANN should ensure that it continues to reach out to the global stakeholder groups that it serves with its vital task of managing and coordinating the domain name system. Doing so will:

- a. Strengthen its legitimacy; and
- b. Build its recognized stature as it becomes an independent organization.

ICANN should develop mechanisms that ensure sound accountability to the community which safeguard against external capture by governments or governmental organizations and strengthen the diverse participation of a range of stakeholders, including, in particular, deepening the involvement of broader business interests in decision-making structures.

ICC brings the perspective of business not just involved directly in the DNS, or information technologies, but a cross-sectoral membership that includes users, service



providers and application developers. We also bring the views of business as domain name holders, and their interest in being able to participate in decision making on, for example, persistence of the domain name they have registered. If a registry goes away, for instance, it is in the interest of the domain name holder that the database and the DNS operations are rapidly taken up in an efficient and sound manner by another entity so that the TLD can continue to live, with a minimal amount of down time.

Recommendation

Revision of the bylaws to reflect these safeguards should be considered as an effective way to build these safeguards into the organization's fabric and structures. It is only through formalization of such processes and safeguards that they will be effective.

2. Accountability and transparency

Accountability and transparency can be improved through certain changes. It is important for the ICANN community to understand at any given time what ICANN is doing. In addition, the community has to understand what the next steps are in any given decision-making process. ICC members recognize ICANN's efforts in this regard. Further improvements to provide clear and accessible information on decision-making processes, evidence of how community comments /concerns were addressed, sensitivity to 'information overload' and the need for appropriate timeframes to facilitate participation and input should be integrated into the bylaws and then adhered to.

The community has to have easy and timely access to the decisions of the Board, with the appropriate justification, and the work plan and strategy of the Board and ICANN staff. ICC members applaud the steps ICANN has taken to date, and urge that these efforts continue. Having said that, the development and implementation of accountability mechanisms independent of ICANN staff and its Board of Directors is essential. **ICC members recommend** that the incremental steps that have been made should be integrated into bylaw changes.

There have been several recommendations from business, including ICC, and other stakeholders about additional accountability and transparency mechanisms that can be built into the structures and processes, which could be effectively addressed through revisions of the bylaws.

3. Contract compliance

ICANN's self-regulatory model is founded on contractual arrangements with the providers of some domain name services (registries and accredited registrars). In other cases memoranda of understanding (MOUs) between ICANN and peers fulfil similar needs. Effective and timely enforcement of those arrangements is essential to ICANN's legitimacy and credibility. ICC is pleased that ICANN is increasing the budget dedicated specifically to contract compliance. However, it is critical that budgetary allocations are matched by the necessary commitment by ICANN staff and its Board of Directors to make contract compliance a priority.



4. Streamlining priorities and processes to increase meaningful participation

There have been concerns expressed by many stakeholders that there are too many reform processes, and substantive policy issues being addressed at the same time. Many of the structural reform issues would benefit from being considered in a more holistic manner, and both the process and substantive issues would benefit from broader and more diverse input from stakeholders if the number of consultations going on at any given time were streamlined. ICC members believe that at this important juncture, ICANN should strongly consider prioritizing the essential issues that affect the three points above, and then addressing the other issues. Consultation on its workplan and prioritization of the elements of that plan would help, and complement wider transparency on the decision making process.

Role of governments

ICC fully recognizes and appreciates the important role of governments in the multistakeholder environment, and applauds the improvements that have been made in the Governmental Advisory Committee (GAC) and participation in ICANN processes. ICC acknowledges the discussions taking place amongst governments about improving participation by governments especially in public policy issues, supports the GAC and the role of governments in ICANN in its current format, and encourages constructive dialogue to improve their participation.

ICC members believe that ultimately ICANN's accountability should be to the multistakeholder community and the new and enhanced mechanisms to achieve this should be incorporated into its bylaws. This strengthens the organization from within. The immediate goal should be to increase confidence in the organization by taking action on the elements outlined above, and keeping this goal in mind as all leadership, substantive and reform decisions are taken in the next few months.

Signed

Gordon Moir, Chair ICC Task Force on Internet and Telecoms Infrastructure and Services, General Counsel, BT

David Appasamy, Vice Chair ICC Task Force on Internet and Telecoms Infrastructure and Services, Chief Communications Officer, Sify Technologies Ltd.