

**Before the
Department of Commerce
National Telecommunications and Information Administration
Washington, D.C. 20230**

In the Matter of)	
)	
The Continued Transition of the Technical)	Docket No. 071023616-7617-01
Coordination and Management of the Internet's)	
Domain Name and Addressing System: Midterm)	
Review of the Joint Project Agreement)	
)	

**COMMENTS OF
THE INFORMATION TECHNOLOGY AND INNOVATION FOUNDATION**

I. Introduction

The Information Technology and Innovation Foundation (ITIF) welcomes the opportunity to comment on the critical issues raised in the National Telecommunications and Information Administration's Request for Comments, Docket No. 071023616-7617-01. The ITIF is a non-profit, non-partisan think tank committed to articulating and advancing a pro-productivity, pro-innovation and pro-technology public policy agenda. Consistent with this mission, ITIF believes that public policy should support a strong framework to ensure the security and stability of the Internet, the foundation of the digital economy. To support that framework, ITIF recommends that the U.S. government continue its historic role in providing oversight to the Internet's domain name and addressing system.

Established in 1998, the Internet Corporation for Assigned Names and Numbers (ICANN) is a not-for-profit corporation tasked by the U.S. Department of Commerce with managing the Domain Name System (DNS) on the Internet and establishing the policies for the accreditation of domain name registrars. The Department of Commerce created ICANN to move the administration of the DNS to the private sector in an effort to increase competition and encourage

international participation in its management.

In 2006, the Department of Commerce's National Telecommunications and Information Administration and ICANN signed the Joint Project Agreement (JPA), the most recent agreement which outlined the responsibilities of ICANN of maintaining a secure and stable DNS. In addition, the JPA reaffirmed the Department of Commerce's commitment to the goal of transitioning the technical coordination of the DNS to the private sector in a manner that promotes stability and security, competition, bottom-up coordination, and representation. As part of this commitment, the Department of Commerce agreed to monitor the performance of ICANN in relation to the JPA.

As part of the midterm review of the JPA, ICANN has submitted a statement to NTIA in which it boldly claims that "the JPA is no longer necessary. Concluding it is the next step in the transition of the coordination of the Domain Name System (DNS) to the private sector."¹ While ICANN cites many accomplishments, none of these provide sufficient reason for NTIA to terminate the JPA with ICANN. Instead the Department of Commerce should continue to support the management of the Internet domain name system by the private sector, and develop a framework for the long-term viability of ICANN. Until that framework is available, the Department of Commerce must continue to maintain its historic role and relationship with ICANN.

II. The Role of the U.S. Government in Internet Governance

While it is outside the scope of this filing to discuss the various possible forms of Internet governance, it is important to emphasize that the U.S. government has had and continues to play an important role in maintaining the security, stability, and openness of the Internet. Currently, the JPA provides a backstop to ensure that ICANN satisfies its responsibilities in effectively managing the Internet's domain name and addressing system. This provides the necessary assurance to the millions of companies that invest in and use the Internet for business that the

Internet will continue be governed in a fair, open and transparent manner. Given that private companies have been responsible for the deployment of the existing Internet infrastructure, the U.S. government should continue to support an Internet governance structure that provides these companies a voice for their concerns and interests.

It is perfectly legitimate for the Department of Commerce to monitor and oversee ICANN. The U.S. government provides oversight to other private sector, non-governmental organizations charged with creating public policy. Self-regulatory organizations such as the Financial Accounting Standards Board (FASB) and the former National Association of Securities Dealers, Inc. (NASD) have succeeded in developing effective policies and procedures to self-regulate their industries. However, both of these organizations, while operating independently, gain their legitimacy and strength from the oversight provided by the U.S. government. For example, both of these organizations operate under the regulatory authority of the Securities and Exchange Commission.

Without the JPA providing an effective backstop to ICANN's original operating principles, there would be no mechanism in place to stop foreign governments from interfering with ICANN's operations. For example, Internet users and businesses worry that countries such as Russia or China may manipulate ICANN to censor online content. Currently, as a result of the JPA, the U.S. government acts as a deterrent since it has publicly committed to ensuring that ICANN operates openly and transparently. It is unreasonable, however, to expect all foreign governments to continue to respect ICANN's operating principles in the absence of the U.S. government's oversight and protection of core values, such as transparency and openness.

While the midterm review provides an opportunity to assess the degree to which ICANN has met its responsibilities under the JPA, it should not be construed as a basis for terminating the agreement. The accomplishments ICANN cites in its filing with NTIA are a direct result of the

JPA, and ICANN should not claim these accomplishments justify terminating it.² ICANN cannot predict its future ability to function if it intends to operate under a different framework. ICANN's line of reasoning makes no more sense than a man arguing that because he has successfully jumped from an airplane ten times with a parachute, he thinks he is ready to jump without one. Many of ICANN's accomplishments as an organization have not been made in spite of the JPA, but rather because of it.

Some people may object to the U.S. government continuing its relationship with ICANN on the basis that no single government should have this level of influence. However, this oversight relationship is necessary for successful Internet governance. It would be inappropriate and short-sighted to completely un-tether ICANN from U.S. guidance. For example, even Wikipedia, one of the most successful large-scale, Internet-based collaborative projects, ultimately has succeeded not by allowing full democracy among Internet users, but by having a backstop committed to certain guiding principals – first with the founder Jimmy Wales and then later with a Board of Trustees.³

Others may not oppose the governance structure, but object to the United States fulfilling the role as ICANN's bodyguard. However, since the U.S. government was principally responsible for establishing and financing the initial networks that led to the creation of the Internet, it has a historical basis for overseeing ICANN. In addition, the U.S. government has made clear that it will work to ensure that ICANN remains committed to security, stability, and openness.

Moreover, the United States has shown a commitment to free speech and the rule of law, and can help ensure that other countries less committed to these principals will not usurp control of ICANN. Finally, given the importance of a secure and stable Internet to the digital economy, the U.S. government has an obligation to provide a legal structure for businesses to appeal disagreements with ICANN's policies. Since the U.S. government has shown a commitment to the rule of law, transparency and fair adjudication, it is reasonable to allow the U.S. government

to continue this role.

III. Conclusion

Since the current partnership appears to be working successfully, rather than abandon the JPA, which has proven to be a successful backstop, the NTIA should focus now on improving operations within ICANN's existing structure. Only after taking the time to carefully develop a plan on how ICANN could successfully operate in a post-JPA world should NTIA amend any existing agreements.

Respectfully Submitted,

Dr. Robert D. Atkinson

President

Information Technology and Innovation Foundation

202-449-1351

1. Peter Dengate Thrush, Chairman of the Board of Directors, ICANN, Letter to Suzanne R. Sene, NTIA, 9 January 2008 <www.ntia.doc.gov/ntiahome/domainname/jpacomments2007/jpacomment_004.pdf>

2. Ibid.

3. "Power structure." from Wikimedia. Accessed on February 12, 2008. <meta.wikimedia.org/wiki/Power_structure>