

**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”**

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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 its 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 choose to use it.

ⁱ <http://www.icann.org/en/general/bylaws.htm#l>

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#l>

^v <http://www.icann.org/en/general/bylaws.htm#l>