

June 8, 2009

Mrs. Suzanne R. Sene
Office of International Affairs
National Telecommunications and Information Administration
1401 Constitution Ave, NW, Room 4701
Washington, DC 20230

Re: Assessment of the Transition of the Technical Coordination and Management of the Internet's Domain Name and Addressing System (Docket No. 090420688-9689-01)

Dear Ms. Sene,

TechNet is a bipartisan political network of chief executive officers and senior executives of leading U.S. technology companies. Founded in 1997, TechNet's members represent the top innovators in information technology, e-commerce, biotechnology, venture capital and investment banking.

TechNet's mission is to serve as the voice and advocate of the innovation economy by uniting CEOs and other senior executives with leading policymakers in a bipartisan effort to sustain and advance America's global leadership in technology and innovation.

We thank you for initiating this notice of inquiry and for giving Internet stakeholders from the business community and elsewhere the opportunity to share their experiences and concerns with ICANN and offer recommendations for ensuring its continued evolution and stability.

In February 2008, TechNet submitted comments to NTIA's midterm review of the Joint Project Agreement between the Internet Corporation for Assigned Names and Numbers (ICANN). Then as now, our foremost concern was ensuring the stability, security and effective management of the Internet's global addressing system.

TechNet members have been involved in every step of the Internet's development. We build the applications and tools that maximize the Internet's potential and expand its global reach. Even as the Internet has relied on our members' innovations to grow and prosper, our members have relied on a stable, secure Internet infrastructure for their own growth and development. We offer these comments with the aim of upholding and extending the stability of the Domain Name System (DNS) on which all Internet infrastructure depends.

In our 2008 comments, we called for the continuation of the JPA, on the grounds that it continued to play a critical role, both in ensuring ICANN's stability and in promoting its continued evolution.

We noted the significant strides ICANN had made in establishing itself as a credible, effective manager of DNS, but also cited several key areas for improvement. In particular, we urged that ICANN address broad concerns related to:

- Accountability;
- Transparency;
- Security; and
- The threat of capture by sovereign governments or cartels.

Addressing those issues was, in our view, a minimum requirement for ICANN to meet before taking the important, but potentially destabilizing step of transitioning out of its existing relationship with the United States Government.

And while we are pleased to report that we've witnessed important progress in some of these areas, we are troubled that others remain a source of doubt and concern, even as the JPA slides toward expiration in September.

On the positive side, ICANN continues to make significant strides in the area of transparency. The ICANN Web site has improved markedly over the past two years, and contains a rich repository of information about the organization's history, internal operation and current policy development processes.

We continue to see areas for improvement on transparency, particularly as it relates to public participation in ICANN's policy development processes. It remains challenging for individual stakeholders to know how and whether their recommendations have an impact on ICANN policy. Overall, however, ICANN's progress on transparency has been commendable and we are hopeful that the few remaining issues will be resolved through ICANN's internal processes.

In the area of security, ICANN has also made strides, focusing increased attention on important issues such as the implementation of DNSSEC. Much more work remains, but here too, we are encouraged that ICANN is on the right path.

Unfortunately on two key matters -- improving institutional accountability and safeguarding the organization against external government interference in a post-JPA environment -- ICANN has shown little improvement in the year since the midterm review was completed.

On accountability and the related matter of redress, there remains no effective method for ICANN stakeholders to appeal adverse ICANN decisions. Although ICANN has proposed several accountability mechanisms, all of them face inward, and would make ICANN accountable only to itself. Although a proposal that would allow stakeholders to request a review of decisions made by the ICANN board of directors is welcome, the body in charge of conducting that review would be the board of directors itself. On a related point, for the vast majority of our companies, there is no mechanism for redress in the event that an ICANN decision adversely affects their business.

Companies that hold contracts with ICANN have the option to sue the organization in the California courts, but the vast majority of technology companies have no such contract. And yet, ICANN decisions have the potential to drastically affect all of our companies' businesses.

One needs look no further than ICANN's current effort to create potentially thousands of new Internet domains for an example of an ICANN decision that could have dramatic impact on industry. Depending on how they are implemented, new Internet domains could translate into billions of dollars in new costs to businesses seeking to protect their intellectual property and marks. A poor implementation could seriously damage larger companies and potentially cripple smaller ones. Under ICANN's proposals, those companies would have no way to challenge such an implementation, outside of a direct appeal to ICANN itself.

Under the JPA/Memoranda of Understanding, the U.S. Government has provided some measure of accountability for ICANN through regular reviews and public comment periods such as this one.

Nobody involved in the ICANN process believes that this should be the ultimate solution to the accountability problem, but failing a meaningful alternative, it remains extremely important.

The issue of capture has also been unfortunately neglected in ICANN's internal efforts to respond to the concerns raised by stakeholders. Although ICANN has taken significant steps to address the potential for internal capture by one of its stakeholder groups or constituencies, it has offered no proposals for resisting external capture by governments or governmental cartels.

For the better part of the past decade, foreign governments and multi-governmental agencies have sought to impose more direct control over the ICANN process. During the World Summit on the Information Society, a vocal coalition of nations called for greater intergovernmental oversight of ICANN. That the U.S. Government was able to rebuff those efforts was a function of its unique relationship with the organization. Since WSIS, sovereign nations and intergovernmental agencies like the United Nations' International Telecommunications Union (ITU) have continued their calls to exert greater governmental control over the Internet through ICANN.

It is a testament to the Commerce Department that it has always supported the bottom-up private-sector-led model embodied by ICANN. Other governments clearly do not share that support. Mechanisms must be established to ensure that an ICANN cut loose from U.S. protection and oversight would not be subject to capture.

For our companies and their thousands of employees, a stable, secure and effectively managed Internet addressing system is indispensable. As the DNS goes, so goes the Internet, which is the lifeblood of our innovation economy.

Technology companies have been involved in ICANN and its bottom-up, nongovernmental management model since its inception and continue to strongly support the organization. We applaud the work ICANN has done to improve institutional confidence and look forward to assisting in ICANN's continued evolution in every way possible.

The JPA has been -- and continues to be -- an important tool in spurring improvements to ICANN's accountability, responsiveness and transparency. While we are pleased with the progress that has been made thus far, we believe that the work of the JPA is not yet completed. We do not believe it would be responsible for ICANN to transition out of its relationship with the U.S. Government until it addresses the pressing concerns related to capture and accountability. Addressing those concerns could mean the difference between a stable, secure transition to full private sector management, and a potentially destabilizing shift.

We recommend that the JPA be retooled to focus on these outstanding concerns and be renewed for another year to protect and support ICANN while those issues are addressed.

Sincerely,

Jim Hawley
Acting President and CEO