Although, physically, the Internet is a collection of public and private interests, the resource embodied in the collective hardware, software, standards, protocols and practices has become a global thoroughfare on which public and private activities are becoming increasingly dependent. Without broad adherence to protocols and systems, the Internet, which literally means the interconnection of networks, would cease to exist. The Internet is so valuable because governments, businesses, organizations, and individuals largely voluntarily conform to standards and norms respected as legitimate.

ICANN plays an important role in establishing standards, ensuring coordination, and creating legitimacy. Internet suppliers and users all around the globe rely on ICANN to act in the interest of the whole, rather than under the pressure of a few of the most powerful and best funded lobbyists.

Since its inception, the ICANN Board and ICANN participants have devoted enormous resources and effort toward creating a truly international, bottom-up, multi-stakeholder instrument of the Internet community. Through the process, the ICANN Board has been admirable in its willingness to seek continual inside and outside review and undertake innovation. But the process of creating a structure for fair and balanced participation representing all of the present and future beneficiaries of the Internet is not finished.

The ICANN Monthly Magazine for July 2008, Policy Update, begins:

ICANN makes decisions that directly affect all those that use the Internet, whether governments, businesses or individual Net users.

... Our decision-making processes are open to all and we welcome all those equally passionate about how the Internet evolves.[1]

One of the efforts aimed at better accomplishing these stated goals is the reorganization of the Generic Names Supporting Organization (GNSO). The Board report states:

This effort is part of ICANN's own ongoing commitment to evolve and improve, and follows extensive independent review efforts and extensive public consultation.

The GNSO is the primary engine in the ICANN community for fashioning, recommending changes, and making modifications to generic top-level domain policies. At its core, the objective of the GNSO review process has been to identify ways to improve the inclusiveness and representativeness of the GNSO's work while increasing its effectiveness and efficiency.

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[1] Internet Corporation for Assigned Names and Numbers (ICANN), Policy Update: Issue 5, July 2008, http://icann.org/topics/policy/update-jul08.htm.

The multi-year GNSO review process has been guided by several key objectives, including:

1. maximizing the ability for all interested stakeholders to participate in the GNSO's processes;
2. ensuring recommendations can continue to be developed on gTLD "consensus policies" for Board review, and that the subject matter of "consensus policies" is clearly defined;
3. ensuring policy development processes are based on thoroughly-researched, well-scoped objectives, and are run in a predictable manner that yields results that can be implemented effectively; and
4. improving communications and administrative support for GNSO objectives.[2]

The ICANN community has been working to implement the reorganization for many months, but it is not finished. Even when the Board finally approves charters for new GNSO stakeholder groups and constituencies, some time will be needed to determine if the changes are effective in meeting the stated objectives.

The changes in the GNSO are critical to creating a structure that can function as a multi-stakeholder participatory model. One essential ingredient in representing the Internet community is the recognition of the trust to act on behalf of the millions of individuals who are, ultimately, the customers who make the Internet economically valuable and whose use of the Internet is part of the grand aspirations for global literacy, understanding, and prosperity.

The Internet as a collective resource can be seen as a global "commons," dependent on the Domain Name System (DNS) and the numbering system. In the sense of a commons, the DNS is remarkably similar to other global resources, such as Antarctica, outer space, and the high seas.[3] Although cyberspace is not physically located, its shares with these other resources an "international, sovereignless quality."[4] In their respective treaties, Antarctica, outer space, and the high seas were each characterized as a *res communis*, or a common thing, and part of "the common heritage of mankind."[5]

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[2] ICANN, Welcome to the GNSO Improvements Information Page, http://gnso.icann.org/en/improvements/ (last visited June 8, 2009).

[3] *See* Darrel C. Menthe, *Jurisdiction in Cyberspace: A Theory of International Spaces*, 4 MICH. TELECOMM. & TECH. L. REV. 69, 101 (1999) ("Antarctica, outer space, the high seas, and cyberspace are four international spaces that share the unusual characteristic, for jurisdictional purposes, of the lack of any territorial jurisdiction.").

[4] *Id.*

[5] *Id.*, at 86; *see also* Catherine P. Heaven, Note, *A Proposal for Removing Road Blocks from the Information Superhighway by Using an Integrated International Approach to Internet Jurisdiction*, 10 MINN. J. GLOBAL TRADE 373, 390-91 (2001) ("The theory behind global commons and Common Heritage Mankind (CHM) is res communes: all nations should benefit from the resources that are recovered from areas in which all nations have an interest.") (citing Joan Eltman, *A Peace Zone on the High Seas: Managing the Commons for Equitable Use*, 5 INT'L LEGAL PERSP. 47, 64 (1993)).

Instead of leaving the Internet subject to unrestricted, self-interested exploitation, depletion, pollution, or illegal activity, its governance must be based on a respect of common rights, responsibilities, and interests of present and future generations. The interests of the people must be recognized and respected, especially those without the education and economic or political clout to command control against commercial interests and lawbreakers. A structure to legitimately include the voices of all Internet users in the processes at ICANN has not yet been reached, and may never be possible without the involvement and oversight of those organizations entrusted to represent the body politic in every country and region.

Until ICANN has achieved a structure that ensures all interests are represented and balanced, the "people" deserve the oversight and assistance of the U.S. government in assuring ICANN continues toward its objectives.

Thank you for your consideration and concern regarding the important issue of ICANN role in Internet governance.

Very Truly Yours,

GNSO CyberSafety Constituency (Proposed)

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