Individual Comment Regarding Expiration of the Joint Project Agreement with the Internet Corporation for Assigned Names and Numbers Set to Expire September 30, 2009

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My name is Wolfgang Kleinwächter. I am a Professor for Internet Policy and Regulation at the Department for Media and Information Studies of the University of Aarhus in Denmark. I became involved in the making of ICANN in 1997. Since then I have followed ICANNs development as an independent critical academic observer and participated in all public ICANN meetings (missing just one in February 2008 in New Dehli). During these 12 years I became also directly involved in some of ICANNs activities, as in the ICANN election in 2000 when I was invited to join the Membership Information Task Force (MITF) and between 2005 and 2008 when I served in ICANNs Nomination Committee (NomCom) , two years as a voting member and one year as the Associated Chair. In February 2009 I chaired the "Accountability & Transparency Working Group" of ICANNs 1st World At Large Summit (ATLAS) in Mexico City.

With the best of my knowledge from more than one decade of political and academic analysis of Internet Governance my recommendation is that it would be in the best interest of the global Internet community if the JPA expires on September 30, 2009.

The making of ICANN in 1998 was a courageous and innovative step into an unchartered territory of global governance in the information age. ICANNs design offered a new form of policy coordination for the management of a global critical resource. ICANNs approach to "Internet Governance" – a terminology difficult to translate into other languages – stood for a mechanism where policy development and decision making would be organized globally in an open, transparent and inclusive way bottom up by the affected and concerned parties themselves – that is the provider and users of Internet services – with governments in an advisory capacity. The special role of the US government – defined in the Memorandum of Understanding (MoU) between the Department of Commerce (DOC) and ICANN from November, 25, 1998 - was justified temporarily with the need to help a safe transition until ICANN has "the capability and resources to assume the important responsibilities related to the technical management of the DNS" and is able to implement policies based on the four principles outlined in the White Paper from June 1998.

With this big vision to become a pioneer in developing a new global multistakeholder governance model ICANN started small and moved fast. However, the Clinton administration was obviously too optimistic with its original expectation to build such a new innovative policy development body within two years as foreseen by the MoU. Consequently the MoU was enlarged several times and substituted by the Joint Project Agreement (JPA) in 2006 which now terminates on September 30, 2009.

In 2002 the UN World Summit of the Information Society (WSIS) started. In the WSIS process the ICANN model was challenged by a number of governments which have not been involved in the making of ICANN in the 1990s. They rejected the idea of Internet self-governance and private sector leadership and called for governmental leadership in Internet Governance. The controversy about leadership in Internet Governance overshadowed the first phase of the WSIS and led to the establishment of the UN Working Group on Internet Governance (WGIG). In the meantime ICANN continued to evolve and started an internal reform process.

The WGIG as an UN body was composed not only by representatives of UN Member states but also with experts from the private sector, civil society and the technical and academic community. WGIG proposed an Internet Governance definition which allowed a broad interpretation of Internet Governance far beyond the management of domain names and IP addresses. It also proposed that the Internet should not be governed by a single unit. The guiding principle for Internet Governance should be multistakeholderism, where the various governmental and non-governmental stakeholders cooperate in their respective roles. In this context ICANN with its limited technical oriented mandate, was recognized as an innovative platform for a new way in global policy development and management.

In Tunis in November 2005 the Heads of States of UN members confirmed the WGIG proposal and agreed on a number of general principles, which included, inter alia, the principle of equal roles and responsibilities for governmental involvement in Internet Governance. Paragraph 68 of the Tunis Agenda stated: "We recognize that all governments should have an equal role and responsibility for international Internet governance and for ensuring the stability, security and continuity of the Internet."

When the US government and ICANN ended the MoU and signed the Joint Project Agreement (JPA) in October 2006, the global Internet community welcomed this as a step into the right direction by reducing governmental involvement into ICANNs day to day operation and to bring - step by step - the role of the US government in line with Paragraph 68 of the Tunis Agenda.

Since the signing of the JPA ICANN has made substantial progress in all areas, described in Annex A of the JPA. One key element of this Annex is transparency and accountability. With regard to transparency it can be said that ICANN is one of the most transparent international corporation even if sometimes full transparency of the "last mile" in the policy development process (PDP) could be better. With regard to accountability ICANN has developed and is in the process of developing a diversified accountability mechanism which consists on a number of interlinked and supplementary internal and external elements and which include, inter alia

- A reconsideration policy
- The Public Forum
- Reporting back mechanisms to the various constituencies
- The Ombudsman
- Ongoing and permanent external review of all ICANN bodies
- Operating under Californian law
- Creation of a second legal seat of the corporation under a non US jurisdiction
- Planning of an external tribunal to challenge board decisions
- Interaction among the various Supporting Organizations and Advisory Committees
- Interaction with the Governmental Advisory Committee under ICANNs Bylaws (in particular Article XI, Section 2, para. 1j & 1k)

More proposals for an improved accountability mechanism are included in the recommendations of the Presidential Strategic Committee (PSC) from May 2009 as well as the outcome of the 1st World Summit of Internet Users/At Large (ATLAS), organized by ICANN in Mexico City in March 2009.

However, while a lot has been achieved, more has to be done. With new issues new challenges arrive. The Internet, since its inception, never stands still and so do the mechanisms for the

governance of the critical Internet resources which has do be improved permanently and adjusted to new developments. Waiting until a 100 percent clearance of all issues would mean to postpone the expiration of the JPA for the next 10 or more years. Nothing is and will be perfect. But the real question today is whether ICANN is perfect enough to do its job adequately by guaranteeing the stability and security, promoting competition, implementing bottom up policy development process and representing the global Internet community.

Since 1998 the number of Internet users worldwide has grown from less than 500 million to more than 1.6 billion. ICANN has contributed to the diversification of the root server system with now more than 100 root servers (anycast mirrors) around the world. It has helped to further diversify the IP address allocation system and it stimulated and was able to accommodate an incredible growth in the domain name market without any serious problems for registrants. When ICANN was established there were less than 20 million domain names and the costs for a gTLD registration was about 35.00 US$. Today there are nearly 200 million registered domain names and costs went down to less than 10.00 US$. Summarizing 11 years of Internet development one can conclude that in principle ICANN has today "the capability and resources to assume the important responsibilities related to the technical management of the DNS".

If the expiration of the JPA would be further postponed there is no guarantee that in 2010 or 2011 the situation would look much better. ICANN deserves the trust that it will be able to do its job according to its mission, core values and bylaws also without a JPA. And by the way an expiration of the JPA would not lead to a disappearance of the US government from ICANN processes. The US government would continue to be an active member in the Governmental Advisory Committee (GAC). And it remains a party of the IANA contract which is not the subject of the JPA.

In contrary, a continuation of the JPA could provoke counterproductive and unintended side effects - in particular outside the US - from splitting the root and the emergence of alternative naming and numbering systems until the establishment of intergovernmental Internet Governance bodies which could lead to ideologization, politization and burocratization of technical processes with negative economic implications for innovation and creativity.

Taking into consideration the pros and cons of an expiration of the JPA the US government should continue where the Clinton administration was stopped to finish its business and take the same approach with courage and wisdom to open the door for needed innovation by taking into account and respecting legitimate interests both of their national constituencies as well as the legitimate interest of governmental and non-governmental constituencies around the globe.

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