
# Internet Domain Names: Background and Policy Issues

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# Summary

Navigating the Internet requires using addresses and corresponding names that identify the location of individual computers. The Domain Name System (DNS) is the distributed set of databases residing in computers around the world that contain address numbers mapped to corresponding domain names, making it possible to send and receive messages and to access information from computers anywhere on the Internet.

The DNS is managed and operated by a not-for-profit public benefit corporation called the Internet Corporation for Assigned Names and Numbers (ICANN). Because the Internet evolved from a network infrastructure created by the Department of Defense, the U.S. government originally owned and operated (primarily through private contractors) the key components of network architecture that enable the domain name system to function. A 1998 Memorandum of Understanding (MOU) between ICANN and the Department of Commerce (DOC) initiated a process intended to transition technical DNS coordination and management functions to a private sector not-for-profit entity. While the DOC currently plays no role in the internal governance or day-to-day operations of the DNS, ICANN remains accountable to the U.S. government through a Joint Project Agreement (JPA) with the DOC.

Many of the technical, operational, and management decisions regarding the DNS can have significant impacts on Internet-related policy issues such as intellectual property, privacy, e-commerce, and cybersecurity. The ICANN-DOC Joint Project Agreement is due to expire on September 30, 2009. Congress and the Administration are assessing the appropriate federal role with respect to ICANN and the DNS, and examining to what extent ICANN is presently positioned to ensure Internet stability and security, competition, private and bottom-up policymaking and coordination, and fair representation of the Internet community. A related issue is whether the U.S. government's unique authority over the DNS root zone should continue indefinitely. Foreign governments have argued that it is inappropriate for the U.S. government to have exclusive authority over the worldwide DNS, and that technical coordination and management of the DNS should be accountable to international governmental entities. On the other hand, many U.S. officials argue that it is critical for the U.S. government to maintain authority over the DNS in order to guarantee the stability and security of the Internet.

The expiration of the JPA and the continuing U.S. authority over the DNS root zone remain two issues of keen interest to the 111th Congress, the Administration, foreign governments, and other Internet stakeholders worldwide. How these issues are addressed will likely have profound impacts on the continuing evolution of ICANN, the DNS, and the Internet.

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# Background and History

The Internet is often described as a "network of networks" because it is not a single physical entity but, in fact, hundreds of thousands of interconnected networks linking many millions of computers around the world. Computers connected to the Internet are identified by a unique Internet Protocol (IP) number that designates their specific location, thereby making it possible to send and receive messages and to access information from computers anywhere on the Internet. Domain names were created to provide users with a simple location name, rather than requiring them to use a long list of numbers. For example, the IP number for the location of the THOMAS legislative system at the Library of Congress is 140.147.248.9; the corresponding domain name is thomas.loc.gov. Top Level Domains (TLDs) appear at the end of an address and are either a given country code, such as .jp or .uk, or are generic designations (gTLDs), such as .com, .org, .net, .edu, or .gov. The Domain Name System (DNS) is the distributed set of databases residing in computers around the world that contain the address numbers, mapped to corresponding domain names. Those computers, called root servers, must be coordinated to ensure connectivity across the Internet.

The Internet originated with research funding provided by the Department of Defense Advanced Research Projects Agency (DARPA) to establish a military network. As its use expanded, a civilian segment evolved with support from the National Science Foundation (NSF) and other science agencies. While there were (and are) no formal statutory authorities or international agreements governing the management and operation of the Internet and the DNS, several entities played key roles in the DNS. For example, the Internet Assigned Numbers Authority (IANA), which was operated at the Information Sciences Institute/University of Southern California under contract with the Department of Defense, made technical decisions concerning root servers, determined qualifications for applicants to manage country code TLDs, assigned unique protocol parameters, and managed the IP address space, including delegating blocks of addresses to registries around the world to assign to users in their geographic area.

NSF was responsible for registration of nonmilitary domain names, and in 1992 put out a solicitation for managing network services, including domain name registration. In 1993, NSF signed a five-year cooperative agreement with a consortium of companies called InterNic. Under this agreement, Network Solutions Inc. (NSI), a Herndon, Virginia engineering and management consulting firm, became the sole Internet domain name registration service for registering the .com, .net., and .org. gTLDs.

After the imposition of registration fees in 1995, criticism of NSI's sole control over registration of the gTLDs grew. In addition, there was an increase in trademark disputes arising out of the enormous growth of registrations in the .com domain. There also was concern that the role played by IANA lacked a legal foundation and required more permanence to ensure the stability of the Internet and the domain name system. These concerns prompted actions both in the United States and internationally.

An International Ad Hoc Committee (IAHC), a coalition of individuals representing various constituencies, released a proposal for the administration and management of gTLDs on February 4, 1997. The proposal recommended that seven new gTLDs be created and that additional registrars be selected to compete with each other in the granting of registration services for all new second level domain names. To assess whether the IAHC proposal should be supported by

the U.S. government, the executive branch created an interagency group to address the domain name issue and assigned lead responsibility to the National Telecommunications and Information Administration (NTIA) of the Department of Commerce (DOC). On June 5, 1998, DOC issued a final statement of policy, "Management of Internet Names and Addresses." Called the White Paper, the statement indicated that the U.S. government was prepared to recognize and enter into agreement with "a new not-for-profit corporation formed by private sector Internet stakeholders to administer policy for the Internet name and address system."[1] In deciding upon an entity with which to enter such an agreement, the U.S. government would assess whether the new system ensured stability, competition, private and bottom-up coordination, and fair representation of the Internet community as a whole.

The White Paper endorsed a process whereby the divergent interests of the Internet community would come together and decide how Internet names and addresses would be managed and administered. Accordingly, Internet constituencies from around the world held a series of meetings during the summer of 1998 to discuss how the New Corporation might be constituted and structured. Meanwhile, IANA, in collaboration with NSI, released a proposed set of bylaws and articles of incorporation. The proposed new corporation was called the Internet Corporation for Assigned Names and Numbers (ICANN). After five iterations, the final version of ICANN's bylaws and articles of incorporation were submitted to the Department of Commerce on October 2, 1998. On November 25, 1998, DOC and ICANN signed an official Memorandum of Understanding (MOU), whereby DOC and ICANN agreed to jointly design, develop, and test the mechanisms, methods, and procedures necessary to transition management responsibility for DNS functions—including IANA—to a private-sector not-for-profit entity.

On September 17, 2003, ICANN and the Department of Commerce agreed to extend their MOU until September 30, 2006. The MOU specified transition tasks which ICANN agreed to address. On June 30, 2005, Michael Gallagher, then-Assistant Secretary of Commerce for Communications and Information and Administrator of NTIA, stated the U.S. government's principles on the Internet's domain name system. Specifically, NTIA stated that the U.S. government intends to preserve the security and stability of the DNS, that the United States would continue to authorize changes or modifications to the root zone, that governments have legitimate interests in the management of their country code top level domains, that ICANN is the appropriate technical manager of the DNS, and that dialogue related to Internet governance should continue in relevant multiple fora.[2]

On September 29, 2006, DOC announced a new Joint Project Agreement (JPA) with ICANN which continues the transition to the private sector of the coordination of technical functions relating to management of the DNS. The JPA extends through September 30, 2009, and focuses on institutionalizing transparency and accountability mechanisms within ICANN.

# ICANN Basics

ICANN is a not-for-profit public benefit corporation headquartered in Marina del Rey, California, and incorporated under the laws of the state of California. ICANN is organized under the

[1] Management of Internet Names and Addresses, National Telecommunications and Information Administration, Department of Commerce, *Federal Register*, Vol. 63, No. 111, June 10, 1998, 31741.

[2] See http://www.ntia.doc.gov/ntiahome/domainname/USDNSprinciples_06302005.pdf.

California Nonprofit Public Benefit Law for charitable and public purposes, and as such, is subject to legal oversight by the California attorney general. ICANN has been granted tax-exempt status by the federal government and the state of California.[3]

ICANN's organizational structure consists of a Board of Directors (BOD) advised by a network of supporting organizations and advisory committees that represent various Internet constituencies and interests (see Figure 1). Policies are developed and issues are researched by these subgroups, who in turn advise the Board of Directors, which is responsible for making all final policy and operational decisions. The Board of Directors consists of 15 international and geographically diverse members, composed of one president, eight members selected by a Nominating Committee, two selected by the Generic Names Supporting Organization, two selected by the Address Supporting Organization, and two selected by the Country-Code Names Supporting Organization. Additionally, there are six non-voting liaisons representing other advisory committees.

The explosive growth of the Internet and domain name registration, along with increasing responsibilities in managing and operating the DNS, has led to marked growth of the ICANN budget, from revenues of about $6 million and a staff of 14 in 2000, to revenues of $60 million and a staff of 110 in 2009. ICANN is funded primarily through fees paid to ICANN by registrars and registry operators. Registrars are companies (e.g. GoDaddy, Google, Network Solutions) with which consumers register domain names.[4] Registry operators are companies and organizations who operate and administer the master database of all domain names registered in each top level domain (for example VeriSign, Inc. operates .com and .net, Public Interest Registry operates .org, and Neustar, Inc. operates .biz.).[5] In 2009, ICANN is receiving 92% of its total revenues from registry and registrar fees (41% from registry fees, 51% from registrar fees).[6]

# Issues in the 111th Congress

Congressional Committees (primarily the Senate Committee on Commerce, Science and Transportation and the House Committee on Energy and Commerce) maintain oversight on how the Department of Commerce manages and oversees ICANN's activities and policies. Other Committees, such as the House and Senate Judiciary Committees, maintain an interest in other issues affected by ICANN, such as intellectual property and privacy. Specific issues of Congressional interest include ICANN's relationship with the U.S. government and the international community, the proposal to add new generic top level domains, and privacy. The **Appendix** shows a complete listing of Congressional committee hearings on ICANN and the domain name system dating back to 1997.

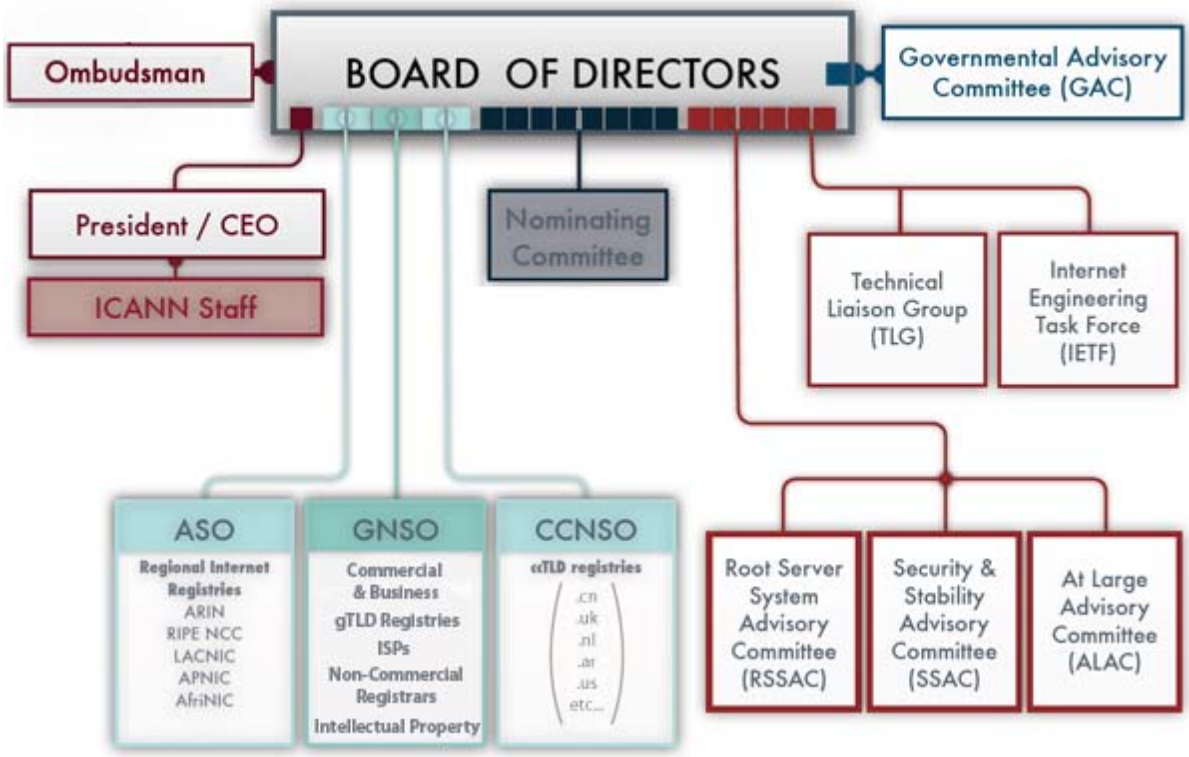
[3] ICANN, *2008 Annual Report*, December 31, 2008, p. 24, available at http://www.icann.org/en/annualreport/annual-report-2008-en.pdf.

[4] A list of ICANN-accredited registrars is available at http://www.icann.org/en/registries/agreements.htm.

[5] A list of current agreements between ICANN and registry operators is available at http://www.icann.org/en/registries/agreements.htm.

[6] ICANN, Draft FY10 Operating Plan and Budget, May 17, 2009, p. 47, available at http://www.icann.org/en/financials/proposed-opplan-budget-v1-fy10-17may09-en.pdf.

**Figure 1. Organizational Structure of ICANN**




**Source:** ICANN (http://www.icann.org/en/structure/)

## ICANN's Relationship with the U.S. Government

The Department of Commerce (DOC) has no statutory authority over ICANN or the DNS. However, because the Internet evolved from a network infrastructure created by the Department of Defense, the U.S. government originally owned and operated (primarily through private contractors such as the University of Southern California, SRI International, and Network Solutions Inc.) the key components of network architecture that enable the domain name system to function. The 1998 Memorandum of Understanding between ICANN and the Department of Commerce initiated a process intended to transition technical DNS coordination and management functions to a private sector not-for-profit entity. While the DOC plays no role in the internal governance or day-to-day operations of ICANN, the U.S. government, through the DOC, retains a level of authority over the DNS via three separate contractual agreements. These are:

- the Joint Project Agreement/Memorandum of Understanding between DOC and ICANN, due to expire on September 30, 2009;
- the contract between IANA/ICANN and DOC to perform various technical functions such as allocating IP address blocks, editing the root zone file, and coordinating the assignment of unique protocol numbers; and
- the cooperative agreement between DOC and VeriSign to manage and maintain the official DNS root zone file.

## Joint Project Agreement

The current Joint Project Agreement (JPA) between DOC and ICANN, an extension of the revised and amended MOU dating back to 1998, is scheduled to expire on September 30, 2009.[7] Under the JPA, ICANN agreed to "continue in its commitment to the private sector management of the Internet DNS, by promoting the security and stability of the global Internet, while maintaining, and promoting competition through its multi-stakeholder model."[8] Among the responsibilities ICANN agreed to be guided by are: ensuring the security and stability of the Internet; promoting transparency in its operation and decisions; promoting responsive and effective accountability mechanisms to ensure bottom-up participatory policy development processes; ensuring that competition, consumer interests, and Internet DNS stability and security issues are considered in TLD management decisions; facilitating effective consideration of advice from governments through the Government Advisory Council; and exhibiting corporate responsibility and an administrative structure that promotes good governance.

The JPA directed DOC to conduct a "mid-term review" of ICANN's continuing transition to the private sector. On October 30, 2007, DOC asked for public comments on ICANN's progress towards becoming a more stable organization with greater transparency and accountability in its procedures and decision making. On February 28, 2008, DOC/NTIA held a public meeting to hear the views of Internet stakeholders.[9] The ICANN Board stated that ICANN had met its responsibilities under the JPA, that the JPA should conclude during the months leading up to September 2009, and that DOC oversight and authority over ICANN under the JPA should be ended at that time.

Various Internet stakeholders disagreed as to whether DOC should maintain control over ICANN after the current JPA expires. Many U.S. industry and public interest groups argued that ICANN was not yet sufficiently transparent and accountable, that U.S. government oversight and authority (e.g. DOC acting as a "steward" or "backstop" to ICANN) was necessary to prevent undue control of the DNS by international or foreign governmental bodies, and that continued DOC oversight was needed until full privatization is warranted. On the other hand, many international entities and groups from countries outside the United States argued that ICANN had sufficiently met conditions for privatization, and that continued U.S. government control over an international organization was not appropriate. In the 110th Congress, Senator Snowe introduced S.Res. 564 which stated the sense of the Senate that although ICANN had made progress in achieving the goals of accountability and transparency as directed by the JPA, more progress was needed.[10]

On April 24, 2009, NTIA issued a Notice of Inquiry (NOI) seeking public comment on the upcoming expiration of the JPA between DOC and ICANN.[11] According to NTIA, the mid-term

[7] Joint Project Agreement between the U.S. Department of Commerce and the Internet Corporation for Assigned Names and Numbers, September 29, 2006, available at http://www.ntia.doc.gov/ntiahome/domainname/agreements/jpa/ICANNJPA_09292006.htm.

[8] Affirmation of Responsibilities for ICANN's Private Sector Management, approved by the ICANN Board of Directors September 25, 2006, available at http://www.ntia.doc.gov/ntiahome/domainname/agreements/jpa/ICANNBoardResolution_09252006.htm.

[9] See http://www.ntia.doc.gov/ntiahome/domainname/jpamidtermreview.html.

[10] In the 110th Congress, S.Res. 564 was referred to the Committee on Commerce, Science, and Transportation. It did not advance to the Senate floor.

[11] Department of Commerce, National Telecommunications and Information Administration, "Assessment of the (continued...)

review showed that while some progress had been made, there remained key areas where further work was required to increase institutional confidence in ICANN. These areas included long-term stability, accountability, responsiveness, continued private sector leadership, stakeholder participation, increased contract compliance, and enhanced competition. Given that ICANN has stated publicly that, from its point of view, the JPA will conclude on September 30, 2009, NTIA asked for public comments regarding the progress of transition of the technical coordination and management of the DNS to the private sector, as well as the model of private sector leadership and bottom-up policy development which ICANN represents. Specifically, the NOI asked whether sufficient progress has been achieved for the transition to take place by September 30, 2009, and if not, what should be done.

On June 4, 2009, the House Committee on Energy and Commerce, Subcommittee on Communications, Technology, and the Internet, held a hearing examining the expiration of the JPA and other issues. Most Members of the Committee expressed the view that the JPA (or a similar agreement between DOC and ICANN) should be extended.

## DOC Agreements with IANA and VeriSign

A contract between DOC and ICANN, which currently extends through September 30, 2011, authorizes the Internet Assigned Numbers Authority (IANA) to perform various technical functions such as allocating IP address blocks, editing the root zone file, and coordinating the assignment of unique protocol numbers. Additionally, a cooperative agreement between DOC and VeriSign (operator of the .com and .net registries) authorizes VeriSign to manage and maintain the official root zone file that is contained in the Internet's root servers that underlie the functioning of the DNS.[12]

By virtue of these legal agreements, the DOC has policy authority over the root zone file,[13] meaning that the U.S. government can approve or deny any changes or modifications made to the root zone file (changes, for example, such as adding a new top level domain). The June 30, 2005 U.S. government principles on the Internet's domain name system stated the intention to "preserve the security and stability" of the DNS, and asserted that "the United States is committed to taking no action that would have the potential to adversely impact the effective and efficient operation of the DNS and will therefore maintain its historic role in authorizing changes or modifications to the authoritative root zone file."[14]

The JPA is separate and distinct from the DOC legal agreements with ICANN and VeriSign. As such, the expiration of the JPA would not directly affect U.S. government authority over the DNS

(...continued)

Transition of the Technical Coordination and Management of the Internet's Domain Name and Addressing System," 74 *Federal Register* 18688, April 24, 2009.

[12] "The root zone file defines the DNS. For all practical purposes, a top level domain (and, therefore, all of its lower-level domains) is in the DNS if and only if it is listed in the root zone file. Therefore, presence in the root determines which DNS domains are available on the Internet." National Research Council, Committee on Internet Navigation and the Domain Name System: Technical Alternatives and Policy Implications, Signposts on Cyberspace: The Domain Name System and Internet Navigation, National Academy Press, Washington DC, 2005, p. 97.

[13] Milton Mueller, *Political Oversight of ICANN: A Briefing for the WSIS Summit*, Internet Governance Project, November 1, 2005, p. 4.

[14] See http://www.ntia.doc.gov/ntiahome/domainname/USDNSprinciples_06302005.pdf.

root zone file. Although ICANN has not advocated ending U.S. government authority over the root zone file, foreign governmental bodies have argued that it is inappropriate for the U.S. government to maintain exclusive authority over the DNS. ICANN and the International Community

Because cyberspace and the Internet transcend national boundaries, and because the successful functioning of the DNS relies on participating entities worldwide, ICANN is by definition an international organization. Both the ICANN Board of Directors and the various constituency groups who influence and shape ICANN policy decisions are composed of members from all over the world. However, many in the international community, including foreign governments, have argued that it is inappropriate for the U.S. government to maintain its legacy authority and control over ICANN and the DNS, and have suggested that management of the DNS should be accountable to a higher intergovernmental body.

The United Nations (U.N.), at the December 2003 World Summit on the Information Society (WSIS), debated and agreed to study the issue of how to achieve greater international involvement in the governance of the Internet and the domain name system in particular. The study was conducted by the U.N.'s Working Group on Internet Governance (WGIG). On July 14, 2005, the WGIG released its report, stating that no single government should have a preeminent role in relation to international Internet governance. The report called for further internationalization of Internet governance, and proposed the creation of a new global forum for Internet stakeholders. Four possible models were put forth, including two involving the creation of new Internet governance bodies linked to the U.N. Under three of the four models, ICANN would either be supplanted or made accountable to a higher intergovernmental body. The report's conclusions were scheduled to be considered during the second phase of the WSIS held in Tunis in November 2005. U.S. officials stated their opposition to transferring control and administration of the domain name system from ICANN to any international body. Similarly, the 109th Congress expressed its support for maintaining U.S. control over ICANN (H.Con.Res. 268 and S.Res. 323).[15]

The European Union (EU) initially supported the U.S. position. However, during September 2005 preparatory meetings, the EU seemingly shifted its support towards an approach which favored an enhanced international role in governing the Internet. Conflict at the WSIS Tunis Summit over control of the domain name system was averted by the announcement, on November 15, 2005, of an Internet governance agreement between the United States, the EU, and over 100 other nations. Under this agreement, ICANN and the United States remained in control of the domain name system. A new international group under the auspices of the U.N. was formed—the Internet Governance Forum—which provides an ongoing forum for all stakeholders (both governments and nongovernmental groups) to discuss and debate Internet policy issues. The Internet Governance Forum does not have binding authority. It is slated to run through 2010, at which point the U.N. will consider whether to continue the body.

With the JPA between ICANN and DOC scheduled to expire on September 30, 2009, the international community is again suggesting various mechanisms for ensuring ICANN's accountability on an international level. On May 4, 2009, Viviane Reding, European Commissioner for Information Society and Media, released a statement stating that a "moment of

[15] In the 109th Congress, H.Con.Res. 268 was passed unanimously by the House on November 16, 2005. S.Res. 323 was passed in the Senate by Unanimous Consent on November 18, 2005.

truth will come on 30 September this year, when the current agreement between ICANN and the US Government expires," and that "in the long run, it is not defendable that the government department of only one country has oversight of an internet function which is used by hundreds of millions of people in countries all over the world."[16] Commissioner Reding proposed a fully privatized and fully independent ICANN that would be advised on selected issues by a "G-12 for Internet Governance," an informal group of twelve government representatives from around the world. Additionally, judicial review of ICANN decisions, if requested by aggrieved parties, would be provided by a small independent international tribunal.[17]

## Adding New Generic Top Level Domains (gTLDs)

Top Level Domains (TLDs) are the suffixes that appear at the end of an address (after the "dot"). TLDs can be either a country code such as .us, .uk, or .jp, or a generic TLD (gTLD) such as .com, .org, or .gov. Prior to ICANN's establishment, there were eight gTLDs (.com, .org, .net, .gov, .mil, .edu, .int., and .arpa). In 2000 and 2004, ICANN held application rounds for new gTLDs; there are currently 21 gTLDs. Some are reserved or restricted to particular types of organizations (e.g. .museum, .gov, .travel) and others are open for registration by anyone (.com, .org, .info).[18] Applicants for new gTLDs are typically commercial and non-profit organizations who seek to become ICANN-recognized registries that will establish and operate name servers for their TLD registry, as well as implement a domain name registration process for that particular TLD.

With the growth of the Internet and the accompanying growth in demand for domain names, debate has focused on whether and how to further expand the number of gTLDs. In October 2007, the Generic Names Supporting Organization (GNSO) approved a recommendation to initiate a process that could yield an indefinite number of new generic top-level domains. Although previous gTLD application rounds in 2000 and 2004 were competitions designed to award a limited number of gTLDs, the new process is intended to award gTLDs to any applicant that meets ICANN's set criteria and that withstands any objections (if any) raised by outside parties. The result could be an unlimited number of new gTLDs, depending on the volume of applications.

The ICANN Board of Directors approved the GNSO recommendations in June 2008, and in October 2008, ICANN published a draft applicant guide book, available for public comment, which detailed how new gTLDs would be made available to applying prospective registries. Among the major criticisms raised in the public comments were the magnitude of ICANN's suggested gTLD application and registry fees, and concerns over the impact of multiple new gTLDs on trademark holders who, many argued, would be compelled to assume high costs of addressing the possible proliferation of cybersquatters inhabiting an unlimited number of new gTLDs.

ICANN released a revised applicant guide book ("Second Draft Applicant Guidebook") in February 2009. The Second Draft Applicant Guidebook maintains the gTLD evaluation fee at

[16] Commissioner Reding's Weekly Videomessage Theme: "The Future of Internet Governance: Towards an Accountable ICANN," May 4, 2009, available at http://ec.europa.eu/commission_barroso/reding/video/text/message_20090504.pdf.

[17] Because ICANN is currently incorporated in the State of California, legal challenges to ICANN decisions are adjudicated in California state courts.

[18] The 21 current gTLDs are listed at http://www.iana.org/domains/root/db/#.

$185,000, but reduces the yearly registry fee from (at a minimum) $75,000 to $25,000 plus $0.25 per transaction year for registries with more than 50,000 registrations. ICANN identified four particularly controversial and/or complex issues that "need more examination and discussion before they can be changed in a future draft guidebook."[19] These are: security and stability, malicious conduct, trademark protection, and the need for a demand/economic analysis that examines whether additional gTLDs will result in increased competition and consumer choice.

ICANN is currently studying and collecting further information and analysis on these issues. Regarding trademark protection, the ICANN board, on March 6, 2009, authorized the GNSO's Intellectual Property Constituency to form an Implementation Recommendation Team (IRT) to provide possible solutions to trademark issues raised by the implementation of new gTLDs.[20] ICANN has said that there will be a third draft version of the applicant guidebook, and that the new gTLD application round is anticipated to open in the first quarter of 2010.

## ICANN and Cybersecurity

The security and stability of the Internet has always been a preeminent goal of DNS operation and management. One issue of recent concern is an intrinsic vulnerability in the DNS which allows malicious parties to distribute false DNS information. Under this scenario, Internet users could be unknowingly re-directed to fraudulent and deceptive websites established to collect passwords and sensitive account information.

A technology called DNS Security Extensions (DNSSEC) has been developed to mitigate those vulnerabilities. DNSSEC assures the validity of transmitted DNS addresses by digitally "signing" DNS data via electronic signature. "Signing the root" (deploying DNSSEC on the root zone) is a necessary first and critical step towards protecting against malicious attacks on the DNS.[21] On October 9, 2009, NTIA issued a Notice of Inquiry (NOI) seeking public comment on the deployment of DNSSEC into the Internet's DNS infrastructure, including the authoritative root zone.[22] On June 3, 2009, NTIA and the National Institute of Standards and Technology (NIST) announced they will work with ICANN and VeriSign to develop an interim approach for deploying DNSSEC in the root zone by the end of 2009.[23]

Meanwhile, section 8 of S. 773, the Cybersecurity Act of 2009, would require that any renewals or modifications made to DOC contracts regarding the operation of IANA be subject to review by a Cybersecurity Advisory Panel. S. 773 would also require NTIA to "develop a strategy to implement a secure domain name addressing system."

[19] ICANN, *New gTLD Draft Applicant Guidebook: Analysis of Public Comment*, February 18, 2009, p. 3, available at http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf.

[20] See http://www.icann.org/en/announcements/announcement-26mar09-en.htm.

[21] Internet Corporation for Assigned Names and Numbers, "DNSSEC – What Is It and Why Is It Important?" October 9, 2008, available at http://icann.org/en/announcements/dnssec-qaa-09oct08-en.htm.

[22] Department of Commerce, National Telecommunications and Information Administration, "Enhancing the Security and Stability of the Internet's Domain Name and Addressing System," 73 *Federal Register* 59608, October 9, 2008.

[23] Department of Commerce, National Institute of Standards and Technology, *NIST News Release*, "Commerce Department to Work With ICANN and VeriSign to Enhance the Security and Stability of the Internet's Domain Name and Addressing System," June 3, 2009.

## Privacy and the WHOIS Database

Any person or entity who registers a domain name is required to provide contact information (phone number, address, email) which is entered into a public online database (the "WHOIS" database). The scope and accessibility of WHOIS database information has been an issue of contention. Privacy advocates have argued that access to such information should be limited, while many businesses, intellectual property interests, law enforcement agencies, and the U.S. government have argued that complete and accurate WHOIS information should continue to be publicly accessible. Over the past several years, ICANN has debated this issue through its Generic Names Supporting Organization (GNSO), which is developing policy recommendations on what data should be publicly available through the WHOIS database. On April 12, 2006, the GNSO approved an official "working definition" for the purpose of the public display of WHOIS information. The GNSO supported a narrow technical definition favored by privacy advocates, registries, registrars, and non-commercial user constituencies, rather then a more expansive definition favored by intellectual property interests, business constituencies, Internet service providers, law enforcement agencies, and the Department of Commerce (through its participation in ICANN's Governmental Advisory Committee). At ICANN's June 2006 meeting, opponents of limiting access to WHOIS data continued urging ICANN to reconsider the working definition. On October 31, 2007, the GNSO voted to defer a decision on WHOIS database privacy and recommended more studies. The GNSO also rejected a proposal to allow Internet users the option of listing third party contact information rather than their own private data. It will now be up to the ICANN Board to decide whether or how to proceed.[24]

# Concluding Observations

Many of the technical, operational, and management decisions regarding the DNS can have significant impacts on Internet-related policy issues such as intellectual property, privacy, e-commerce, and cybersecurity. As such, decisions made by ICANN affect Internet stakeholders around the world. In transferring management of the DNS to the private sector, the key policy question has always been how to best ensure achievement of the White Paper principles: Internet stability and security, competition, private and bottom-up policymaking and coordination, and fair representation of the Internet community. What is the best process to ensure these goals, and how should various stakeholders—companies, institutions, individuals, governments—fit into this process?

ICANN has established governance processes which are intended to give access to Internet stakeholders into important decisions. With the impending expiration of the ICANN-DOC Joint Project Agreement on September 30, 2009, Congress and the Administration are examining whether those processes are sufficient to give the full range of Internet stakeholders meaningful input into ICANN decisions, and whether ICANN is sufficiently accountable to those Internet stakeholders. [25]

[24] See ICANN "Whois Services" page, available at http://www.icann.org/topics/whois-services/.

[25] ICANN has established internal accountability mechanisms (an Ombudsman, a Reconsideration Committee, and an independent review process) which are intended to address complaints and disputes over ICANN decisions. See http://www.icann.org/en/general/accountability_review.html.

A related issue is whether the U.S. government's unique authority over the DNS root zone should continue indefinitely. Foreign governments have argued that it is inappropriate for the U.S. government to have exclusive authority over the worldwide DNS, and that technical coordination and management of the DNS should be accountable to international governmental entities. On the other hand, many U.S. officials argue that it is critical for the U.S. government to maintain authority over the DNS in order to guarantee the stability and security of the Internet.

The impending expiration of the JPA and the continuing U.S. authority over the DNS root zone are two issues of keen interest to the Administration, Congress, foreign governments, and other Internet stakeholders worldwide. How these issues are addressed will likely have profound impacts on the continuing evolution of ICANN, the DNS, and the Internet.

# Appendix. Congressional Hearings on the Domain Name System

| Date | Congressional Committee | Topic |
|---|---|---|
| June 4, 2009 | House Energy and Commerce | "Oversight of the Internet Corporation for Assigned Names and Numbers (ICANN)" |
| September 21, 2006 | House Energy and Commerce | "ICANN Internet Governance: Is It Working?" |
| September 20, 2006 | Senate Commerce, Science and Transportation | "Internet Governance: the Future of ICANN" |
| July 18, 2006 | House Financial Services | "ICANN and the WHOIS Database: Providing Access to Protect Consumers from Phishing" |
| June 7, 2006 | House Small Business | "Contracting the Internet: Does ICANN Create a Barrier to Small Business?" |
| September 30, 2004 | Senate Commerce, Science and Transportation | "ICANN Oversight and Security of Internet Root Servers and the Domain Name System (DNS)" |
| May 6, 2004 | House Energy and Commerce | "The 'Dot Kids' Internet Domain: Protecting Children Online" |
| July 31, 2003 | Senate Commerce, Science and Transportation | "Internet Corporation for Assigned Names and Numbers (ICANN)" |
| September 4, 2003 | House Judiciary | "Internet Domain Name Fraud – the U.S. Government's Role in Ensuring Public Access to Accurate WHOIS Data" |
| September 12, 2002 | Senate Commerce, Science and Transportation | "Dot Kids Implementation and Efficiency Act of 2002" |
| June 12, 2002 | Senate Commerce, Science and Transportation | "Hearing on ICANN Governance" |
| May 22, 2002 | House Judiciary | "The Accuracy and Integrity of the WHOIS Database" |
| November 1, 2001 | House Energy and Commerce | "Dot Kids Name Act of 2001" |
| July 12, 2001 | House Judiciary | "The Whois Database: Privacy and Intellectual Property Issues" |
| March 22, 2001 | House Judiciary | "ICANN, New gTLDs, and the Protection of Intellectual Property" |
| February 14, 2001 | Senate Commerce, Science and Transportation | "Hearing on ICANN Governance" |
| February 8, 2001 | House Energy and Commerce | "Is ICANN's New Generation of Internet Domain Name Selection Process Thwarting Competition?" |
| July 28, 1999 | House Judiciary | "Internet Domain Names and Intellectual Property Rights" |
| July 22, 1999 | Senate Judiciary | "Cybersquatting and Internet Consumer Protection" |

| Date | Congressional Committee | Topic |
|---|---|---|
| July 22, 1999 | House Energy and Commerce | "Domain Name System Privatization: Is ICANN Out of Control?" |
| October 7, 1998 | House Science | "Transferring the Domain Name System to the Private Sector: Private Sector Implementation of the Administration's Internet 'White Paper'" |
| June 10, 1998 | House Commerce | "Electronic Commerce: The Future of the Domain Name System" |
| March 31, 1998 | House Science | "Domain Name System: Where Do We Go From Here?" |
| February 21, 1998 | House Judiciary | "Internet Domain Name Trademark Protection" |
| November 5, 1997 | House Judiciary | "Internet Domain Name Trademark Protection" |
| September 30, 1997 | House Science | "Domain Name System (Part 2)" |
| September 25, 1997 | House Science | "Domain Name System (Part 1)" |

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