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ABSTRACT

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INTERNET GOVERNANCE

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- *ICANN needs a strong form of government to insulate it from being taken over by the various participating parochial and special interests. ICANN needs to adopt a strong commitment to civil liberties and Internet freedom.*
- *CCIA opposes in the strongest terms any attempt to limit anonymity for purely political speech. We urge caution to requests by other interest groups that reduce anonymity.*
- *The WHOIS database requires submission of accurate data, but operators should also shield that data from public view, as requested, and subject it to due process provisions governing law-enforcement activities.*

Background and Key Players: The Internet address system, or domain name system, serves as the principal starting point for nearly every Internet transaction. The Internet Corporation for Assigned Names and Numbers (ICANN) is growing rapidly and taking on new issues. It must deal with new character sets outside those used by most Western languages. ICANN must also weigh ever-new threats from system hackers and address questions of privacy. Governments with their own agendas may try to deny access or control the network. So far, the non-governmental ICANN has resisted such movement.

The domain name system (DNS) was for years run by a handful of government-funded computer scientists. The National Telecommunications and Information Administration (NTIA), which operates under the U.S. Commerce Department, moved to privatize DNS in 1997. The NTIA originally conceived of a domain name system that would preserve the best characteristics of the Internet of the time. Like the Internet itself, the DNS was to be stable, competitive, privately owned and operated, and coordinated through “bottom-up” management; it was expected to represent owners, users and society at large.

ICANN took steps in September 2009 to provide increased multinational input for Internet governance. These are among the biggest changes since ICANN was created in 1998.

Basic Principles and Goals for the DNS: The Magaziner White Paper (June 1998) on domain name privatization laid out principles for DNS management, saying DNS should:

- Be operated by the private sector
- Introduce competition in separate markets for registrars and registries
- “Lay out a process” for making the root more reliable, or “robust”, and securing it against

intruders and other attacks

- Begin the process of transferring operation and management to the private sector

CCIA's Position: ICANN has done a reasonable job managing the DNS, but improvement is needed ahead of a full break with the U.S. Commerce Department that was originally scheduled for September 2009. ICANN did not entirely separate from the Commerce Department as scheduled, but instead developed an agreement in September that provided more input from other stakeholders around the world and gave ICANN more independence.

CCIA argued vigorously in 2006 that ICANN needed to involve more parties in its deliberations. Our comments to the U.S. Department of Commerce urged the Department to condition further disengagement from ICANN to allow progress in this area.

Since then, ICANN has improved its communications. The organization launched a Web site in 2006 that was easy to navigate. The ICANN Board, once lambasted as entirely closed, now webcasts its proceedings and typically releases transcripts shortly after meetings.

Current Issues:

New Domains/Non-Latin Character Domain Names

In January, ICANN paved the way for an entire domain name to appear in Cyrillic for use in Russia and Arabic for use in Egypt, Saudi Arabia and the United Arab Emirates. In March, ICANN approved suffixes in Chinese for use in Hong Kong; Sinhalese and Tamil for use in Sri Lanka; Thai for use in Thailand; and Arabic for use in Qatar, Tunisia and the Palestinian territories.

Another big change coming up in 2010 is ICANN plans to add domain suffixes, such as dot-airport or dot-food.

CCIA's Position: CCIA welcomes this move to include more Internet users who may not read or write Latin or German based languages.

WHOIS

The DNS' WHOIS database catalogues the person who has the responsibility of responding to technical inquiries regarding a given domain name, yet many people, including law enforcement officials, use the database in order to investigate copyright infringement and criminal acts such as phishing and hacking. These secondary uses were never part of the Internet's original conception but are obviously useful. Thus, the thinking goes, all WHOIS registrations must be accurate in order to reduce illegal activity.

The desire for immediately accessible data conflicts with respect for anonymous political speech in the U.S., and indiscriminate distribution of such data would likely run afoul of data protection laws in Europe and elsewhere.

CCIA's Position: CCIA supports increased accuracy within the WHOIS database. At the same time, we believe that proxy services have an important role to play in preserving the privacy and personal safety of human rights workers, political activists and ordinary individuals. Some

substantial legal standard, such as a subpoena, should be required for access to data when rights holders and law enforcement wish to pursue wrongdoers.

CCIA strongly opposes any initiative that could unmask people engaged in strictly political speech or otherwise invade the privacy of law-abiding people. The long-term value of an open and free Internet cannot be overemphasized.

Domain Registration Anonymity

This spring, law enforcement officials in the U.S. and the U.K. lobbied ICANN for stronger rules on registrars for generic top-level domains such as .com. They want ICANN to require its vetted registrars to check that the information used to register domains isn't fraudulent. Under the proposal ICANN would either administer the proxy registration of addresses itself, or oversee proxy registration so that registrants can be traced if law enforcement or others provide the right legal documentation to do so. It's now up to the Generic Names Supporting Organization (GNSO) to evaluate this proposal from the FBI and their British counterparts. GNSO is expected to issue a report this summer and vote on the proposal that would need the approval of ICANN's board of directors.

CCIA's Position: Much of the success of the Internet has been the low cost barriers to entry. All involved in this proposal acknowledge this will increase costs and that criminals would simply find a way to thwart the extra checkpoint. We strongly question the value of this change with regards to the cost to Internet freedom by giving up the anonymity that helps free speech and political expression flourish.

The Appropriate Role of Governments in ICANN

Governments around the world have taken note of ICANN activities. The United Nations World Summit on Information Society and Internet Governance Forum were in many ways a response to ICANN, which some maintain runs the Internet. China and Saudi Arabia, among others, appear to be "splitting the root," operating parallel networks based on their own DNS servers. They do this to keep out foreign influences and control information within their borders.

ICANN has been under control of the U.S. Commerce Department, but ICANN has moved toward more independence with the September 2006 Joint Project Agreement. The JPA was replaced with the Affirmation of Commitments Agreement (AOC) signed in September 2009. The AOC transfers oversight functions from the U.S. to ICANN's Government Advisory Committee, which is now operated jointly under global oversight. The AOC set up four accountability review teams that operate on a set schedule, and establishes three-year review cycles in 4 ongoing areas of concern: 1) accountability/transparency/public interest 2) security/stability 3) competition/consumer trust and consumer choice 4) WHOIS database.

The AOC headed off calls from countries like China, which were threatening to build their own Internet if ICANN did not gain more independence from the United States.

Meanwhile, House Energy and Commerce Chairman Henry Waxman and the Chair of the Internet Subcommittee Rick Boucher along with eight other committee members sent a joint letter on August 4, 2009 to Commerce Sec. Gary Locke urging that the relationship between the U.S. and ICANN be strengthened and made permanent.

CCIA's Position: The turning over of some, but not all, U.S. oversight functions seems like a good compromise. Developments that threaten to Balkanize the Internet continue to be a concern. Dissatisfaction with ICANN only increases pressure to look for alternatives to private sector leadership. CCIA recommends that ICANN continue to engage other governments and bring them into the discussion while simultaneously rejecting control by them. The U.S. government should remove itself from supervising policy matters that do not deal directly with the stability and security of the root.

Some critics complained that ICANN had failed to insulate itself from interests that continue to reject anonymity in the WHOIS database. Others objected to what they saw as an insufficient attention to business interests. Still others complained that other, less-free countries could take control of ICANN via their positions on the Governmental Advisory Committee. Most parties across the spectrum seemed united in one thing: ICANN still lacks sufficient institutional governance to avoid capture by various interests, both commercial and governmental. Addressing these challenges will take not just time, but a more aggressive and explicit commitment to civil liberties and economic freedom. ICANN has expanded its staff lately with some key hires. We see these moves as extremely positive and a strong way to bolster their growing operation and responsibilities.

ICANN should choose a stronger form of governance, and one that by definition will displease oppressive governments hostile to Internet freedom. The Technology Policy Institute released a report in March 2009 asking that the tie to the JPA be retained until ICANN can get a system in place which is governed more by its direct users – registrars and registries.

CCIA supports the goal of increased private sector management of ICANN, and we would want to ensure it has a strong enough form of government to stand up to parochial interests of various special interests. CCIA looks forward to seeing how ICANN implements the terms of the new operating agreement and hopes that more multinational governance accomplishes these goals.