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ABSTRACT

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INTERNET GOVERNANCE

May 2008

- *ICANN's execution of a narrow range of functions is working reasonably well. ICANN's duties, however, must not be expanded lest the organization turn into a generalized regulator of the Internet.*
- *CCLA opposes in the strongest terms any attempt to limit anonymity for purely political speech.*
- *ICANN has dramatically improved its communication with members of the Internet community, exceeding the expectations of many.*
- *The WHOIS database requires submission of accurate data, but operators should also shield that data, when requested, from public eyes subject to due process governing law-enforcement activities.*

Background and Key Players: The Internet's addressing system, or domain name system, serves as the principal starting point for nearly every Internet transaction. Governments with their own agendas may recommend denying access to it or otherwise controlling the network. Over the years, the non-governmental Internet Corporation for Assigned Names and Numbers (ICANN) has resisted such micromanagement.

Yet, even as it remains independent, ICANN must take on new issues. Among other things, it must deal with new character sets outside those used by English and most Western languages. ICANN must also weigh ever-new threats from system hackers and address questions of privacy.

The domain name system (DNS) was for years run by a handful of government-funded computer scientists who made decisions based on what they and their colleagues thought was best for the Internet. The rapid commercialization of the communications technology brought on conflicts, most notably those related to trademarks and the rights of others to use those marks as domain names. Although these decisions were carried out as part of a government contract, the Internet was becoming increasingly commercialized. The National Telecommunications and Information Administration moved to privatize the Domain Name System 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.

Basic Principles and Goals for the DNS: The Magaziner White Paper (June 1998) on domain name privatization laid out a number of guiding principles for DNS management, each of which has proven useful, practical and reliable. As it was conceived, the 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 before the transition can be completed.

ICANN under private sector leadership has successfully introduced new registries as well as numerous registrars. The end result has been a vigorous market in which the cost of registering a domain name is trivial. In this sense, the transition has been highly successful. ICANN has also convened and consulted with root-server operators to assure that the DNS system remains reasonably secure against foreseeable attacks. This is a simple and effective approach that avoids duplication of effort.

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. Our wishes have largely been granted.

ICANN has shown signs of renewal. The organization launched a Web site in 2006 that was not only easy to navigate but easily understood by the ICANN novice. Further improvements in 2007 and 2008 raised the bar. This marks a dramatic departure from the previous Web site which was exceedingly difficult to navigate. Policy mavens and neophytes alike still have trouble locating everything they need on the site, but the process is much smoother than before.

The ICANN Board, once lambasted as entirely closed, now webcasts the entirety of its proceedings and typically releases transcripts within a few days of its meetings.

These latest actions follow a recent restructuring that has yielded an organization that is, if nothing else, comprehensible.

Current Issues:

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 runs square into various problems, among them the United States' respect for anonymous political speech. Others note that 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. In addition, it is unchallenged that scammers, spammers and stalkers have exploited the WHOIS database. It follows, then, that proxy services have an indispensable role to perform in protecting individuals. Indeed, we believe that proxy services *must* deliver on their promises and withhold personal data except as specified under contract. Further, some substantial legal standard should be required for access to data when rights holders and law enforcement wish to pursue wrongdoers.

Even the Digital Millennium Copyright Act – a statute that caters to rightsholders' demands for expedited responses to allegations of infringement – demonstrates a careful balancing of the various interests of rightsholders, intermediaries and consumers.

CCIA strongly opposes any initiative that could result in the unmasking of 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.

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,” or operating parallel networks based on their own DNS servers. They do this in part to keep out foreign influences and control the flow of information within their borders.

CCIA's Position: Any dissatisfaction with ICANN only increases pressure to look for alternatives to private sector leadership. CCIA recommends that ICANN further engage other governments, bringing 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. With time, governments should come to understand just how far from the normal role of government these questions are.

Most of the world seems to agree with this position. Earlier this year, ICANN suggested abandoning the Joint Project Agreement under which it reports to the U.S. Department of Commerce. The proposal was roundly rejected.

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 institutions and governance sufficient to avoid capture by various interests, be they commercial or governmental. Addressing these challenges will take not just time but a more aggressive and explicit commitment to civil liberties and economic freedom.

The very term “Internet governance” should give us pause. The present, limited structure of laws regulating the Internet has paid large dividends by retarding burdensome regulations and foreclosing meddling by regimes with little or no respect for basic freedoms. ICANN should choose a stronger form of governance, and one that by definition will displease oppressive governments hostile to Internet freedom.

New Domains

Competition in the registrar market was one of the prime objectives of the transition to private sector management. ICANN achieved such competition early on, and quickly moved to introduce new top-level domains to compete with .com, .net and .org. New top-level domains were supposed to solve several problems. Some thought that they would give alternatives for people who wanted second-level domains that were already taken in .com, .net and .org. Others thought that the new domains would ease the market dominance of .com. Still others thought that the new domains could serve as useful differentiators for classes of endeavor, such as certain businesses, not-for-profit organizations and avocations.

The end result of these new domains is mixed – registration prices have plunged thanks to a proliferation of registrars, but none of the new registries have shown great success in the face of the continuing preference for .com and, to a lesser degree, .net and .org.

Internationalized domain names (IDNs) or those that use character sets other than the standard Roman alphabet have also been slow in coming. This slowness has exacerbated temptations to split the root, and has added to the impetus behind new Chinese and Saudi domain name systems.

CCIA’s Position: CCIA, which was a member of the IDN working group that recently concluded its work, encourages a redoubling of efforts with regards to IDNs as well as experimentation with other new domains in hopes of greater marketplace acceptance. Given the hundreds of scripts and lettering systems in use today, we expect that the IDN system may be many years in the making.

Anti-phishing bill in the U.S. Senate

As of this writing, the Senate is considering S. 2661, the Anti-Phishing Consumer Protection Act (APCPA) of 2008.

CCIA’s Position: The bill reasonably prohibits the use of false information to solicit identifying data from a computer, an act key to the practice of “phishing,” or creation of a Web site, email message or other form of Internet communication designed to make the user transfer money or other things of value to what appears to be a trusted source.

Unfortunately, the bill also forbids use of brand names in domain names and the use of another’s domain name in emails, Web sites and web ads. The bill unfortunately does little to protect important noncommercial uses important to free expression.

Other language would let almost anyone force domain name registrars to reveal a registrant’s personally identifying information by simply sending an email *alleging* that that person had violated the APCPA. As with too many bills covering intellectual property, this trademark legislation overreaches.

Current Status

CCIA commends ICANN for the important work it has done. Although its process remains somewhat ponderous, it showed sudden and dramatic improvement during 2006 and 2007 and into 2008.

The next few years should bring greater transparency to an organization that is, by its very nature, somewhat arcane. ICANN is properly removed from questions of policy that do not touch on its core mission of preserving the stability and security of the root as well as competition in the DNS marketplace. Continuing down this path will require real commitment to explaining to other governments why the private sector must guide this body. The U.S. government, together with ICANN, should give more weight to individual rights of free expression. ICANN and the U.S. Government must assure that ICANN's mission remains strictly limited and does not become even more politicized than it already is.