ICANN, New TLDs, and the UDRP

Boalt Hall Speaker Series
Berkeley, California
20 November 2000

Louis Touton
Vice President and General Counsel
ICANN: The Basic Idea

ICANN =
An Experiment in Technical Self-Management by the global Internet community
ICANN: The Basic Bargain

ICANN =
Internationalization of Policy Functions for DNS and IP Addressing systems
+ Private Sector (non-governmental) Management
What does ICANN do?

Coordinates policies relating to the unique assignment of:

- Internet domain names
- Numerical IP Address
- Protocol Port and Parameter Numbers

Coordinates the DNS Root Server System
- through Root Server System Advisory Committee
Says *The Economist*: 

- “ICANN is in many ways a completely new institutional animal.”
- “It is a hybrid between an online community and a real-world governance structure, an untested combination.”
- “It is also a new type of international organisation: an industry trying to regulate part of itself, across the globe, with little or no input from national governments.”

*(10 June 2000)*
Domain names & IP addresses

- **Domain names** are the familiar, easy-to-remember names for computers on the Internet
  - e.g., amazon.com, icann.org, nic.or.kr

- Domain names correlate to **Internet Protocol numbers** (IP numbers) (e.g., 98.37.241.130) that serve as routing addresses on the Internet

- The **domain name system** (DNS) translates domain names into IP numbers needed for routing packets of information over the Internet
Categories of Internet Domains

- Generic Top Level Domains (gTLDs)
  - .com, .net, .org, .gov, .mil, .edu, .int
  - .com, .net, .org open for registration by all; others restricted in various ways

- Country Code Top Level Domains (ccTLDs)
  - .kr, .uk, .fr, .us, .mx, .ca, .de, etc.
  - Registration requirements vary by domain (many require domicile within the territory or other connection with the territory)
  - Derived from ISO 3166-1 list

- Infrastructure Top Level Domain
  - .arpa
Most Internet DNS and IP Address coordination functions performed by, or on behalf of, the US government:

- **Defense Advanced Research Projects Agency (DARPA)**
  - Stanford Research Institute (SRI)
  - Information Sciences Institute (ISI) of University of Southern California

- **National Science Foundation (NSF)**
  - IBM, MCI, and Merit
  - AT&T, General Atomics, Network Solutions, Inc. (NSI)

- **National Aeronautics and Space Administration (NASA)**

- **US Department of Energy**
IANA

- “Internet Assigned Numbers Authority”
- A set of technical management functions (root management; IP address bloc allocations) previously performed by the Information Sciences Institute (ISI) at the University of Southern California, under a contract with the U.S. Government
- Includes protocol parameter and port number assignment functions defined by the Internet Engineering Task Force (IETF)
- Now a part of ICANN
Need for Change

- **Globalization** of Internet
- **Commercialization** of Internet
- Need for **accountability**
- Need for more **formalized management structure**
- Dissatisfaction with **lack of competition**
- Trademark/domain name **conflicts**
White Paper Principles

White Paper: new policy/management structure must promote 4 goals:

- Stability
- Competition
- Private, bottom-up coordination
- Representation
White Paper Implementation

- Internet community to form non-profit corporation meeting White Paper’s 4 criteria
- US Government (through Commerce Department) to transition centralized coordination functions
- Amendment of Network Solutions agreement to require competitive registrars in .com/.net/.org registries
- Request to WIPO to study & recommend solutions for trademark/domain-name conflicts
Status of Transition from USG

- 25 November 1998 - ICANN recognized in MoU
- June 1999 - Cooperative agreement among ICANN, US Government, root server operators
- 10 November 1999
  - ICANN and Network Solutions sign gTLD registry and registrar agreements
  - DoC transfers root authority over gTLDs to ICANN
- 9 February 2000
  - Contract with US Government to complete transfer of IANA functions
- September 2000
  - MoU narrowed to reflect completed tasks; agreements extended for up to one year
Policy Objectives for Year 2000

- New Top-Level Domains
- ccTLD registry agreements
- IP Address registry agreements
- Root server operator agreements
Structure of ICANN
ICANN Board of Directors

At Large Directors:
• Karl Auerbach (USA)
• Ivan Moura Campos (Brazil)
• Frank Fitzsimmons (USA)
• Masanobu Katoh (Japan)
• Hans Kraaijenbrink (Netherlands)
• Andy Mueller-Maguhn (Germany)
• Jun Murai (Japan)
• Nii Quaynor (Ghana)
• Linda S. Wilson (USA)

ASO Directors:
• Rob Blokzijl (Netherlands)
• Ken Fockler (Canada)
• Sang-Hyun Kyong (Korea)

DNSO Directors:
• Amadeu Abril i Abril (Spain)
• Jonathan Cohen (Canada)
• Alejandro Pisanty (Mexico)

PSO Directors:
• Helmut Schink (Germany)
• Vint Cerf (USA) (Chairman)
• Phil Davidson (U.K.)
At Large Membership

• Open to any individual with verifiable name, email address, physical address
• Free to join and to vote
• At Large members cast votes for 5 ICANN Directors in October, 2000 (election by geographic region)
• Paths to ballot: Nominations committee + member-nomination
• 6-month study period to follow
• Membership Implementation Task Force
• See http://members.icann.org
Why At-Large Directors?

• Accountability
• Transparency
• Representation
  – Geographic
  – Sectoral
• Diversity of views
• Distributed architecture of selection
ICANN Staff

New Model: Lightweight
(minimal staff = minimal bureaucracy)

Current Staff:
- President and CEO (Mike Roberts)
- Vice President/General Counsel (Louis Touton)
- Chief Policy Officer/CFO (Andrew McLaughlin)
- Registrar Liaison (Dan Halloran)
- IANA staff (Joyce Reynolds, Michelle Schipper, Bill Huang, Lauren Graham)
- Office Manager (Diane Schroeder)
- Network Administrator (Jim Villaruz)
- Technical Advisor (Suzanne Woolf)
ICANN = Cybergovernment?

A: NO!

• ICANN has no inherent coercive power, only the ability to enter into contractual relationships through a process of consensus & consent
• ICANN is not a substitute for the powers of governments (i.e. courts and laws)
Does ICANN regulate?

• **No**: ICANN coordinates.

• **But**: technical coordination of unique values sometimes requires accounting for non-technical policy interests:
  – Data privacy protection
    • (WHOIS database)
  – Intellectual property/trademark law
    • (UDRP)
  – Competition law
    • (Registrar accreditation for .com, .net, .org)
What ICANN doesn’t do

• Network security
• Spam
• Web Sites’ Data Privacy Practices
• Censorship & speech restrictions
• Internet Content
  – Pornography
  – Hate speech
  – Copyright violations
  – Deceptive business practices / consumer protection
• Multi-jurisdictional commercial disputes
• Definition of technical standards
  – Network surveillance and traceability
• Internet gambling
What ICANN is NOT

• Technical Standard-Setting Body
• Internet Police Force
• Consumer Protection Agency
• Economic Development Agency
• Legislature or Court
Lessons from the Experiment?

- Private-sector self-management is possible, if narrowly chartered
- Global consensus on policy is difficult to define; even harder to achieve
  - Consensus is a tradition in the technical community in which ICANN is rooted, because one can test solutions & refer to objective data
  - Consensus on policy questions can be elusive, because it depends upon subjective values
New TLDs: the Process

- White Paper: ICANN to “oversee policy for determining the circumstances under which new TLDs are added to the root system”
- 30 April 1999: WIPO Report recommends conditions for new TLDs; referred to ICANN DNSO
- March/April/May 2000: Working Groups B & C report
New TLDs: the Process

- April/May 2000: DNSO Names Council makes recommendations under which new TLDs would be introduced in “measured and responsible manner”:
  - “a limited number of new top-level domains [should] be introduced initially and . . . the future introduction of additional top-level domains [should] be done only after careful evaluation of the initial introduction”
  - “several types of domains should be considered in the initial introduction”
  - promote competition in the domain-name registration business at the registry and registrar levels
  - roll-out must not jeopardize the stability of the Internet
New TLDs: the Process

• 16 July 2000: ICANN Board adopts DNSO recommendations; directs ICANN staff to implement
• 15 August 2000: Application materials and selection criteria published
• 2 October 2000: 44 complete applications received (100+ TLDs)
• Public comment & neutral evaluation team
• 15 November 2000: Public comment forum
New TLDs: the Results

- Seven new TLD proposals selected:
  - .aero – for use of air transportation industry
  - .biz – for use by businesses generally
  - .coop – for use by cooperatives
  - .info – for unrestricted use
  - .museum – for use by museums
  - .name – for personal web sites and other personal uses
  - .pro – for uses by accountants, doctors, and lawyers
New TLDs: Next Steps

• Negotiations with selected applicants
  – Goal to complete by 31 December 2000
• Implementation beginning 2Q 2001
UDRP

- Began operation 1 December 2000
- Administration handled by 4 dispute-resolution service providers
- Over 100 panelists hear and decide cases
- 2234 proceedings filed
- 1486 decisions
- 222 settlements
UDRP Review

• To be conducted by DNSO
• Some possible topics:
  – Additional guidance to panelists
  – Choice of law
  – Provider/panelist selection
  – Adjustment of time periods, other procedural revisions
  – Multilingual domain names
• Start-up of New TLDs
• Whois enhancements
• Second WIPO Domain-Name Process
  – personal names
  – International Nonproprietary Names (INNs) for Pharmaceutical Substances
  – names of international intergovernmental organizations (such as the United Nations)
  – geographical indications, indications of source or geographical terms
  – tradenames
Other Technology-Law Topics

Although ICANN is not responsible for social values, its policies take into account laws relating to:

- Competitive access/non-proprietary technology
- Online privacy
- Free expression on the Internet
- Secure digital commerce
For Further Information:

Louis Touton
<touton@icann.org>

http://www.icann.org