

EXHIBIT H

**TO DEFENDANT ICANN'S REQUEST FOR
JUDICIAL NOTICE ISO MOTION TO DISMISS
CFIT'S AMENDED COMPLAINT**



Amendment 6 to ICANN/DOC Memorandum of Understanding

(Approved 16 September 2003)

(Entered 17 September 2003)

Memorandum of Understanding Between the U.S. Department of Commerce and the Internet Corporation for Assigned Names and Numbers

Amendment 6

WHEREAS, the U.S. Government supports the policy of privatizing the technical management of the Internet and its underlying domain name system (DNS) now performed by or on behalf of the U.S. Government or by third parties under arrangements or agreements with the U.S. Government;

WHEREAS, the U.S. Government effects such privatization by entering into agreement with and seeking international support for a not-for-profit corporation formed by private sector Internet stakeholders to administer DNS policy;

WHEREAS, on November 25, 1998, the U.S. Department of Commerce (Department) on behalf of the U.S. Government entered into a Memorandum of Understanding (Agreement) with the Internet Corporation for Assigned Names and Numbers (ICANN), a private sector, not-for-profit corporation, for the purpose of the joint development of the mechanisms, methods, and procedures necessary to effect the transition of DNS management to the private sector;

WHEREAS, the Agreement contemplated that the Parties would collaborate on the DNS Project, in which the Parties would jointly design, develop, and test the mechanisms, methods, and procedures to carry out the following DNS management functions:

- a. Establishment of policy for and direction of the allocation of IP number blocks;
- b. Oversight of the operation of the authoritative root server system;
- c. Oversight of the policy for determining the circumstances under which new top level domains would be added to the root system;
- d. Coordination of the assignment of other Internet technical parameters as needed to maintain universal connectivity on the Internet; and

e. Other activities necessary to coordinate the specified DNS management functions, as agreed by the Parties;

WHEREAS, work to be performed under the Agreement was intended to demonstrate that management responsibility for the DNS could be performed by ICANN;

WHEREAS, the Agreement has been amended five times to refine the work to be performed and to extend the term of the Agreement, such term currently to expire on September 30, 2003;

WHEREAS, ICANN has made significant progress over the past year towards achieving the tasks set forth in Amendment 5 of the MOU, including refining its mission and restructuring its supporting groups and advisory committees; implementing new constituency driven policy-development processes; establishing a country code Names Supporting Organization; establishing an at-large advisory committee and regional at-large organizations; creating liaisons between the Governmental Advisory Committee (GAC) and all ICANN supporting organizations and advisory committees; establishing a new procedure for board nominations; and restructuring staff under the leadership of a new Chief Executive Officer (CEO) to respond to ICANN's technical policy, DNS management, and financial responsibilities;

NOW THEREFORE, in recognition of ICANN's progress in achieving the tasks and goals set forth in the Agreement and of its on-going work on reforming its structure and operations as described in the *Eighth Status Report to the Department*, dated August 1, 2003, the Parties hereby agree as follows:

I. The Department reaffirms its policy goal of privatizing the technical management of the DNS in a manner that promotes stability and security, competition, coordination, and representation. Consistent with this objective and in furtherance of the DNS Project, the Parties agree to strike V.B. in its entirety and to substitute the following:

B. Department. The Department reaffirms its policy goal of privatizing the technical management of the DNS in a manner that promotes stability and security, competition, coordination, and representation. Consistent with this objective and in furtherance of the DNS Project, the Parties agree to strike V.B. in its entirety and to substitute the following:

1. Provide expertise and advice on DNS management functions.
2. Provide expertise and advice on methods and administrative procedures for conducting open, public proceedings concerning policies and procedures that address the technical management of the DNS.
3. Identify with ICANN the necessary software, databases, know-how, other equipment, and intellectual property necessary to design, to develop, and to test methods and procedures of the

DNS Project.

4. Participate, as necessary, in the design, development, and testing of the methods and procedures of the DNS Project to ensure continuity, including coordination between ICANN and VeriSign, Inc.

5. Collaborate with ICANN on operational procedures for the root name server system, including formalization of relationships under which root name servers throughout the world are operated and continuing to promote best practices used by the root system operators.

6. Continue to consult with the managers of root name servers operated by the U.S. Government and with other responsible United States Government agencies with respect to operational and security matters of such root name servers and recommendations for improvements in those matters.

7. Work collaboratively within ICANN's GAC to encourage the creation of stable agreements between ICANN and the organizations and entities operating country code Top Level Domains (ccTLDs).

8. Work collaboratively within ICANN to encourage the creation of stable agreements between ICANN and the Regional Internet Registries (RIRs).

9. Consult with the international community on aspects of the DNS Project.

10. Provide general oversight of activities conducted pursuant to this Agreement.

11. Maintain oversight of the technical management of the DNS functions currently performed either directly by, or subject to agreements with, the U.S. Government, until such time as further agreement(s) are arranged as necessary for ICANN to undertake management of specific DNS technical management functions.

12. Consult with foreign governments to promote increased and more effective governmental participation in the GAC.

13. In conjunction with ICANN's efforts to develop a corporate contingency plan as described in Section II.C.11 of this Amendment, work collaboratively with ICANN to ensure that such plan reflects the international nature of the DNS.

14. Building on ICANN's recent efforts to reexamine its mission, structure, and processes for their efficacy and appropriateness in light of the needs of the evolving DNS, collaborate with ICANN to ensure that its corporate organizational documents optimally support the policy goal of privatization of the technical management of the DNS.

II. ICANN reaffirms its commitment to maintaining security and stability in the technical management of the DNS, and to perform as an organization founded on the principles of competition, bottom up coordination, and representation. Consistent with these objectives and in furtherance of the DNS Project, the Parties agree to strike V.C. in its entirety from Amendment 5 to the MOU and to substitute the following:

C. ICANN. ICANN agrees to perform the following activities and provide the following resources in support of the DNS Project, in conformity with the ICANN Board-approved mission and core values and in furtherance of its ongoing reform efforts:

1. Continue to provide expertise and advice on private sector functions related to technical management of the DNS.
2. Work collaboratively on a global and local level to pursue formal legal agreements with the RIRs, and to achieve stable relationships that allow them to continue their technical work, while incorporating their policy-making activities into the ICANN process.
3. Continue to develop, to test, and to implement processes and procedures to improve transparency, efficiency, and timeliness in the consideration and adoption of policies related to technical management of the DNS. In conjunction with its efforts in this regard, ICANN shall take into account the need to accommodate innovation in the provision of DNS services.
4. Continue to develop, to test, and to implement accountability mechanisms to address claims by members of the Internet community that they have been adversely affected by decisions in conflict with ICANN's by-laws, contractual obligations, or otherwise treated unfairly in the context of ICANN processes.
5. Collaborate with the Department on operational procedures for the root name server system, including formalization of relationships under which root name servers throughout the world are operated and continuing to promote best practices used by the root system operators.
6. Continue to consult with the managers of root name servers and other appropriate experts with respect to operational and security matters relating to the secure and stable operation of the domain name and numbering system in order to develop and implement

recommendations for improvements in those matters, including ICANN's operation of the authoritative root, under appropriate terms and conditions.

7. Continue its efforts to achieve stable agreements with ccTLD operators that address, among other things, issues affecting the stable and secure operation of the DNS, including: delegation and redelegation of ccTLDs; allocation of global and local policy-formulation responsibility; and the relationship between a ccTLD operator and its relevant government or public authority. Such efforts shall include activities to encourage greater dialogue between ccTLD operators and their respective governmental authority.

8. Continue the process of implementing new top level domains (TLDs), which process shall include consideration and evaluation of:

a. The potential impact of new TLDs on the Internet root server system and Internet stability;

b. The creation and implementation of selection criteria for new and existing TLD registries, including public explanation of the process, selection criteria, and the rationale for selection decisions;

c. Potential consumer benefits/costs associated with establishing a competitive environment for TLD registries; and,

d. Recommendations from expert advisory panels, bodies, agencies, or organizations regarding economic, competition, trademark, and intellectual property issues.

Define and implement a predictable strategy for selecting new TLDs using straightforward, transparent, and objective procedures that preserve the stability of the Internet (strategy development to be completed by September 30, 2004 and implementation to commence by December 31, 2004).

9. Continue to develop, to test, and to implement appropriate mechanisms that foster informed participation in ICANN by the global Internet community, such as providing educational services and fostering information sharing for constituents and promoting best practices among industry segments.

10. Continue to assess the operation of WHOIS databases and to implement measures to secure improved accuracy of WHOIS data. In this regard,

a. ICANN shall publish a report no later than March 31, 2004, and annually thereafter, providing statistical and narrative information on community experiences with the InterNIC WHOIS Data Problem Reports system. The report shall include statistics on the number of WHOIS data inaccuracies reported to date, the number of unique domain names with reported inaccuracies, and registrar handling of the submitted reports. The narrative information shall include an evaluation of the impact of the WHOIS Data Problem Reports system on improved accuracy of WHOIS data.

b. ICANN shall publish a report no later than November 30, 2004, and annually thereafter, providing statistical and narrative information on the implementation of the ICANN WHOIS Data Reminder Policy. The report shall include statistics on registrar compliance with the policy and information obtained regarding results of the implementation of the WHOIS Data Reminder Policy. The narrative information shall include implementation status, information on problems encountered, and an evaluation of the impact of the WHOIS Data Reminder Policy on improved accuracy of WHOIS data.

11. By June 30, 2004, ICANN shall develop a contingency plan to ensure continuity of operations in the event the corporation incurs a severe disruption of operations, or the threat thereof, by reason of its bankruptcy, corporate dissolution, a natural disaster, or other financial, physical or operational event. In conjunction with its efforts in this regard, ICANN shall work collaboratively with the Department to ensure that such plan reflects the international nature of the DNS.

12. Collaborate on other activities as appropriate to fulfill the purpose of this Agreement, as agreed by the Parties.

13. Building on ICANN's recent efforts to reexamine its mission, structure, and processes for their efficacy and appropriateness in light of the needs of the evolving DNS, collaborate with the Department to ensure that ICANN's corporate organizational documents optimally support the policy goal of privatization of the technical management of the DNS (collaboration to be completed by March 31, 2004).

14. By December 31, 2003, develop a strategic plan that sets forth ICANN's goals for securing long-term sustainability of its critical domain name and numbering system management responsibilities, including the necessary corporate structure and financial and personnel resources to meet such responsibilities. Such plan should address, among other areas, the following items,

and should include measurable objectives and milestones for achievement of such objectives:

- a. Conduct a review of corporate administrative structure and personnel requirements, including executive compensation and management succession plan (implementation of any recommendations resulting from review to be completed by March 31, 2004);
- b. Conduct a review of internal mechanisms that promote and ensure Board of Directors, executive management, and staff corporate responsibility (implementation of any recommendations resulting from review to be completed by March 31, 2004);
- c. Develop and implement a financial strategy that explores options for securing more predictable and sustainable sources of revenue (strategy development to be completed by June 30, 2004 and implementation to commence by December 31, 2004);
- d. Review and augment its corporate compliance program, including its system for auditing material contracts for compliance by all parties to such agreements (implementation of any recommendations resulting from review to be completed by June 30, 2004);
- e. Develop a collaborative program with private and intergovernmental parties to conduct outreach to governments and local Internet communities in targeted regions, including key constituencies (commence program operation by December 31, 2004);
- f. Develop and implement an appropriate and effective strategy for multi-lingual communications (commence strategy implementation by December 31, 2004); and
- g. Conduct review of system-wide efforts to automate operational processes (implementation of any recommendations resulting from review to be completed by June 30, 2005).

15. Provide a status report to the Department on its progress towards the completion of its tasks under this Agreement, including implementation of ICANN's strategic plan, on or before five (5) business days following the end of each six-month period that this Agreement is in effect.

III. Strike Section VII of the Agreement and replace it, in its entirety, with:

A. In furtherance of the objective of this Agreement, to support the completion of the transition of DNS management to the private sector, the Department and ICANN will hold regular meetings between senior Departmental officials and ICANN senior management and leadership to assess progress.

B. This Agreement will become effective upon signature of ICANN and the Department. This Agreement will terminate on September 30, 2006. This Agreement may not be amended except upon the mutual written agreement of the Parties. Either Party may terminate this Agreement by providing one hundred twenty (120) days written notice to the other Party. If this Agreement is terminated, each Party shall be solely responsible for the payment of any expenses it has incurred. This Agreement is subject to the availability of funds.

IV. Except as specifically modified by this Amendment 6, the terms and conditions of the Agreement, as previously amended, remain unchanged.

FOR THE NATIONAL
TELECOMMUNICATIONS AND
INFORMATION ADMINISTRATION:

FOR INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS:

/s/

Name: Michael D. Gallagher
Title: Acting Assistant Secretary for
Communications and Information
Date: September 16, 2003

/s/

Name: Paul Twomey
Title: President and CEO
Date: September 16, 2003

Comments concerning the layout, construction and functionality of this site
should be sent to webmaster@icann.org.

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