

**ICANN AT A CROSSROADS:
A PROPOSAL FOR BETTER GOVERNANCE AND PERFORMANCE
EXECUTIVE SUMMARY**

Thomas M. Lenard and Lawrence J. White

March, 2009

**ICANN AT A CROSSROADS:
A PROPOSAL FOR BETTER GOVERNANCE AND PERFORMANCE**

By

Thomas M. Lenard and Lawrence J. White*

EXECUTIVE SUMMARY

The Internet Corporation for Assigned Names and Numbers (ICANN)—the non-profit company that is at the center of the Internet—has operated under a Memorandum of Understanding (MOU) with the U.S. Department of Commerce (DOC) since 1998. The MOU was replaced in September 2006 by the Joint Project Agreement (JPA) between ICANN and the DOC, which expires in August 2009. At that time, a decision needs to be made about ICANN’s future. Should the JPA tie with the U.S. Government be retained? Or should the link be wholly severed, as ICANN advocates? And, in either case, what governance structure would best promote Internet efficiency and innovation?

This paper evaluates the structure and governance of ICANN to help inform the upcoming decision. In particular, it reviews ICANN’s structure and functions, and also the structures of a number of other organizations that perform a roughly comparable range of private-sector and quasi-governmental coordination and standard-setting functions, to explore what might be applicable to ICANN.

We find that although ICANN has control over extremely important aspects of the Internet, it is largely accountable to no one. No organization with ICANN’s level of responsibility operates with the independence that ICANN enjoys, even under the current arrangement of nominal oversight by the U.S. Department of Commerce. ICANN’s proposal for complete privatization and termination of the DOC’s oversight would make the accountability problem worse.

Virtually all of the organizations that we reviewed are governed by their direct users, and we believe that this would be a good model for ICANN as well; it would also be consistent with the reduced regulatory role that we envision for ICANN. Governance by its direct users—the registries and the registrars—would provide the external accountability that could allow for eventually ending ICANN’s ties with the U.S. Government. However, we recommend that the new structure be permitted to operate for a while, to allow time for evaluation, before severing those ties.

* Thomas M. Lenard is President and Senior Fellow at the Technology Policy Institute. Lawrence J. White is Professor of Economics at the NYU Stern School of Business. The authors thank John Asker, Arlene Holen, and Scott Wallsten for very helpful comments and James Riso for very able research assistance.

We also address the issue of ICANN's status as a *de facto* regulator. ICANN's recent proposal to expand the number of generic top-level domains (gTLDs) highlights a distinct choice between alternative regulatory approaches: On the one hand, ICANN could proceed under the assumption that the market for gTLDs is not (and perhaps cannot be) at least workably competitive (as the U.S. Government apparently believes). ICANN would then assume greater public-utility type regulatory responsibilities. Alternatively, ICANN could allow relatively free entry into the domain space, in order to bring the benefits of a competitive gTLD market to consumers. We favor the latter approach, which is consistent with our proposal concerning governance reform. For free entry to work well, however, ICANN needs a less costly mechanism for protecting the intellectual property associated with domain names in order to address the problems of defensive registrations and cybersquatting.

Our specific recommendations are as follows:

- The JPA should be extended beyond its current expiration date. In the absence of changes in governance along the lines that we recommend, the JPA is particularly important. If our recommended changes are adopted, they should be permitted to become established before allowing the JPA to expire.
- ICANN should remain as a nonprofit organization, but its governance should be restructured, so that it is governed by and directly accountable to its direct users: the registries and the registrars. Seats on ICANN's board of directors could be rotated among the major operators in a manner that would reflect the diversity of viewpoints among registries and registrars.
- ICANN should have a clear mission of encouraging competition. This implies a minimal role as a regulator with respect to the creation of new gTLDs. Instead, ICANN should adopt a relatively automatic way of introducing gTLDs, whereby any entity that meets a set of minimum technical and financial qualifications for being a registry should be able to be certified to become a registry for any gTLD that is not already taken.
- For this "open entry" policy to be workable and beneficial, ICANN must also strengthen the protections for incumbent domain name holders, so that they are not subject to "nuisance" or "ransom" demands from new registries; adopting an IP registry and strengthening ICANN's "uniform dispute resolution policy" (UDRP) could be part of these improved protections.

These four recommendations are complementary, and combined they would significantly further the goals of Internet efficiency and innovation.