

ICANN at a Crossroads: A Proposal for Better Governance and Performance

by

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Purpose of our Study

- The expiration of the Joint Project Agreement with the U.S. DoC in September 2009
- Examine ICANN's institutional design
 - From an economist's viewpoint
 - How can its incentive structure be improved?
 - Best way to approach the “accountability” issue
- Examine ICANN's role as *de facto* regulator
- Recommendations

ICANN is Unique

- Almost no accountability: external checks
 - U.S. courts?
 - Suppose that ICANN moved to the Cayman Islands?
- Compare with other organizations:
 - For-profit corporations: customers, shareholders
 - Other non-profits: funders, customers
 - Government agencies: judicial review, electorate
- ICANN is accountable only to itself
 - Ties with U.S. DoC are largely gone
- This is not a problem that can be solved by adopting new procedures

No Good Alternatives

- For-profit corporation
 - ICANN is a monopoly
- Government regulation
 - Which government(s)?
 - Well-known distortions
- Government agency
 - Which government(s)?
 - Inefficiencies and political influence
- International agency
 - Inefficiencies and political influence
- Best alternative: Improve existing institutional structure

Lessons From Other Models

- American National Standards Institute
- Depository Trust and Clearing Corporation
- GS1 US (Uniform Code Council)
- International Telecommunications Union
- National Automated Clearinghouse Association
- Nav Canada
- North American Numbering Plan Administrator
- Options Clearing Corporation
- Universal Postal Union

Lessons From Other Models (cont'd)

- No other organization operates with ICANN's independence
 - Assured and growing income
- Other organizations are governed by their direct users
- Most also have some form of government oversight

Options for ICANN Governance and Accountability

- Status quo
 - Works tolerably well; but
 - There is little or no external accountability
 - Suppose that ICANN moved its headquarters to the Cayman Islands?
- Oversight by an international organization
 - Might impede development of the Internet
- Modify ICANN's governance structure

Modify ICANN's Governance Structure

- Governance by direct users – registries and registrars
 - Incentive to assure that ICANN fulfills responsibilities efficiently, with budgetary discipline
 - Incentives aligned with end users of Internet: businesses and individuals
 - With pro-competition mandate, unlikely to restrict entry
 - Should remain subject to antitrust laws
- How to get from here to there?

Role as *De Facto* Regulator

- ICANN plays “licensing” role
 - No statutory criteria, procedures, judicial appeal
 - No professional staff
- ICANN should minimize regulatory role
 - There is competition between TLDs
 - With recent proposal to expand gTLDs, there will be more competition
- Issue of defensive registrations, cybersquatting should be addressed directly

Recommendations

- Reform ICANN's governance
 - ICANN should remain a non-profit
 - Governed by registries and registrars
- Clear mission to encourage competition, open entry into gTLD space
- Improved protections for incumbent domain name holders