

ICANN AT A CROSSROADS

A PROPOSAL FOR BETTER GOVERNANCE
AND PERFORMANCE

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▫ Studying the Global Information Economy ▫

Purpose of the Study

- ICANN's Joint Project Agreement with DoC expires September 30
- We examine ICANN's institutional design
 - How can incentive structure be improved?
 - Best way to approach the “accountability” issue
- We examine ICANN's role as *de facto* regulator of gTLDs
- Recommendations

ICANN is Unique

- Almost no accountability, no external checks
- Compare with other organizations' accountability
 - For-profit corporations: customers, shareholders
 - Other non-profits: funders, customers
 - Government agencies: judicial review
- Except for (loose) ties with U.S. government, ICANN is accountable only to itself
- This is not a problem that can be solved by adopting new ICANN procedures

No Wholly Satisfactory 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
 - Unpopular internationally
- Complete transition to private sector
 - Diminish limited external accountability
 - Popular internationally
- Oversight by international organization
 - Popular internationally
 - Might impede development of Internet
- Modify ICANN's governance structure

Modify ICANN's Governance Structure

- Retain non-profit corporate status; but
- 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
- Could eventually allow for ending ties with U.S. Government

ICANN's Role as *De Facto* Regulator

- ICANN has a “licensing” role with respect to gTLDs
 - No statutory criteria, procedures, judicial appeal
 - No professional staff
- ICANN should minimize its regulatory role
 - There is competition between TLDs
 - With recent gTLD proposal, there will be more competition
 - Open gTLDs even further?
- Issue of defensive registrations, cybersquatting should be addressed directly

The Advantage of More gTLDs

- More competition among registries
 - Better service, better prices, better...?
 - Registries would need to meet minimum technical and financial qualifications
- Perhaps allow individual companies to have their own gTLDs and be their own registries?
 - Why not have .ibm, or .kraft or .ford?

The Defensive Registration Problem

- Incumbent domain name holders fear that they would be held up for ransom by new gTLD registries
 - This is a legitimate concern
- A fast, low-cost dispute resolution mechanism that protects incumbents' intellectual property is necessary to allay these fears
 - If ICANN's UDRP is too slow, then new processes are necessary

Recommendations

- Agreement with DOC should be extended in some form
- 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