

# TPI Forum May 2009

ICANN at the Crossroads  
Privatization, Reform, Both or Neither?  
*Or*  
Haven't we been here before?



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# Agenda

- Key points of TPI report of March 2009 for me;
- What road ahead for ICANN?

# Key points of TPI Report for me

- 1: ICANN “Accountable to no one”
- 2: Department of Commerce “Provides Oversight”
- 3: “Governance by Registries and Registrars is right model” of accountability
- 4: “ICANN should have a clear mission of encouraging competition”

# 1: “Accountable to No One?”

- January 2008 - Accountability mechanisms detailed in ICANN Accountability and Transparency Frameworks and Principles:
  1. Public sphere;
  2. Corporate and Legal;
  3. Participating community.

# Public Sphere Accountability

- 3 public meetings per year - free and in different global location;
- Monthly Board meetings that have minutes on website in 3 days;
- All correspondence inbound and outbound is posted;
- Annual report;
- Ombudsman;
- External financial audit;
- Independent review of Structure every three years;
- Transcribe meeting discussions and post to website;
- Translate into 5 UN languages for major consultations;
- Mp3's of supporting org meetings back to 2003;
- Congressional hearings;
- Information Disclosure Policy.

# Corporate and Legal Accountability

- By Laws - anyone can request review or reconsideration;
- Californian Not For Profit corporation bound by state laws and federal laws;
- Those laws include laws applicable to contracting, tortious and monopolistic behaviour;
- Californian Attorney General is legal overseer of NFP's like ICANN and can conduct investigations and actions to ensure ICANN can't stray from its responsibilities;
- Directors have fiduciary responsibilities;
- Duty of prudent investment;
- Sue and be sued.

# Participating Community Accountability

- 15 voting members on board
- 6 elected by Supporting organizations;
- 8 from a nominating committee (nomcom) plus CEO;
- Bottom up selection process - nomcom is made up of reps of the community ;
- Government Advisory Committee: over 120 members, United States included;
- Plus 6 Liaisons from Technical, Security, Users, Internet Engineering Taskforce;
- Budget and Strategic Plans consulted on and scrutinized by community

# Independent Report on Transparency and Accountability 2007

*“Overall ICANN is a very transparent organization. It shares a large quantity of information on its website, probably more than any other global organization”*

One World Trust Organization (UK)

March 2007

# Wait There's More: IANA contract

- Internet Assigned Numbers Authority (IANA) contracts ICANN to perform global IP address allocation, root zone management for the Domain Name System (DNS), media types, and other Internet protocol assignments.
- Latest IANA contract began 1 October 2006,
- Contract for performance of the IANA functions is specifically assigned to ICANN apart from the JPA
  - Concludes in September 2011 if each annual option period is approved
  - IANA is currently in Option Year 2, ending 30 September 2009
- JPA NOT contractual: end date is 30 September 2009

## 2. Commerce Provides Oversight?

- From the Department of Commerce Notice of Inquiry on Expiration of JPA, April 24, 2009 :

*“The MOU does not give the Department of Commerce the ability to exercise oversight in the traditional context of regulation and the Department of Commerce plays no role in the internal governance or day to day operations of ICANN”*

- JPA was a stabilizer, now de-stabilizer: allows challenges to the model’s legitimacy and success and that threatens growth and certainty. We need to consolidate and declare key elements successful.

### 3. Governance by Registries and Registrars is right model?

- United States Whitepaper:

*“The new corporation should operate as a private entity for the benefit of the Internet community as a whole.”*

- Only One Group of Internet stakeholders would have maximum accountability

# 4. Clear mission of Competition?

## WE DO

- By laws, core values: “6. *Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest*”
- Whitepaper: “*This document provides the U.S. Government's policy regarding the privatization of the domain name system in a manner that allows for the development of robust competition...*”
- The JPA: “*ICANN shall maintain and build on processes to ensure that competition, consumer interests, Internet DNS Stability and security issues are identified and considered in TLD management*”

# Which Road Will ICANN Take?

- Remain private - not govt led;
- Remain independent - as a US corporation;
- Remain at home - stay in US
- Remain accountable and seek more
- Retain ties - IANA contract, US on GAC, our headquarters;
- Remain Not for profit ;
- Keep improving - with community.

# What we're not seeking

- Not privatizing - already private and private sector led;
- Not seeking independence - already independent;
- Not leaving home - committed to staying in US
- Not seeking less accountability - more please;
- Not cutting ties - IANA contract, US on GAC, our headquarters;

# Stay on the proven track

- Model works - 1999 = 1 Registry. Now 16 + 945 registrars. Cost of domain regn down from \$50 per name to as low as \$6;
- Narrow Function - security, stability;
- Single Interoperable Net;
- Private Sector led;
- Competition a core value;
- Accountable to all not a few;
- Change ICANN within ICANN - not via third parties.

# Can we Cross Yet?

REPORT: ICANN at a Crossroads (Tech Policy Institute) - March 2009

REPORT: Internet Governance at the Crossroads (Norid) - January 2009

CONFERENCE: ICANN at the Crossroads (IPA) - May 2008

BLOG POST: ICANN at the Crossroads (Lextext) - March 2006

CONFERENCE: ICANN, WGIG, WSIS: Internet Governance at the Crossroad (ICANN Studienkreis) - October 2005

MEDIA STORY: "Suddenly, ICANN is at a Crossroads" (Salon) - July 2002

# Or have we already crossed?

TESTIMONY BEFORE SENATE SUBCOMMITTEE: "Today ICANN is at a Crossroads" (CDT) - June 2002

BLOG POST: ICANN is at a Crossroads (Context) - March 2002

MEDIA REPORT: ICANN Surveys Its Crossroads (Wired) - March 2002

REPORT: ICANN at the Crossroads (OpenDemocracy) - Sept 2001

MEDIA REPORT: Net number system at a Crossroads (CNet) - May 1999

WE LEFT THE CROSSROADS BACK IN 1998 WHEN THE USG SET US UP

# Alternatives to ICANN model

- ITP Report p.14: “However it is also difficult to conjure an alternative structure for ICANN that would not also have substantial flaws”
- ICANN model is what it is because it has worked well even with its flaws for the past 10 years - LET’S RECOGNISE IT WORKS

“Democracy is the worst form of government except all the others that have been tried.”

– Winston Churchill

# Thank You