

May 29, 2002

Nancy J. Victory
Administrator
National Telecommunications and Information Administration
1401 Constitution Ave, NW
Washington, DC 20230

Dear Assistant Secretary Victory:

The non-profit civic, consumer, public advocacy, and policy organizations listed below respectfully call upon the United States Department of Commerce (DoC) to re-compete the three agreements (collectively "the MoU") under which the Internet Corporation for Assigned Names and Numbers (ICANN) manages the Domain Name System (DNS) when these agreements expire.

The history of United States telecommunications policy has proven time and again that competition inevitably yields better results than top-down management. Requiring ICANN to compete against qualified bidders will provide a strong incentive for ICANN to engage in a thorough housecleaning and become more genuinely responsive to the comments of stakeholders. It will also ensure that, if ICANN cannot put its house in order, the Department will have alternatives. In this way, re-competing the DNS management contracts will benefit the ICANN reform process, the American people, and Internet users around the world.

Four years ago, the Department of Commerce embarked on an experiment to test whether public resources could be managed by private parties. However well intentioned, and despite some efforts to address the concerns raised in the initial competition for the management contracts in 1998 relating to openness, transparency and accountability, there is general consensus that ICANN as currently constituted cannot carry out the functions assigned it by DoC.

Indeed, ICANN President Stuart Lynn, in a widely published paper, proclaimed that ICANN has failed in critical areas. ICANN has failed to gain the trust of the country code top level domain (ccTLD) administrators and has lost the trust of many in the technical community.

Of particular concern is the fact that ICANN has deployed new top-level domains (TLDs) at a snail's pace. This has stunted the opportunity for free and open expression on the Internet. At the one meeting at which the ICANN Board approved new TLDs, it did not even consider the possible opportunities for non-commercial and civic discourse. Nor has it generally considered, as part of its overall policymaking, how its policies impact non-commercial and political speech.

Nor has ICANN complied with the transparency and accountability requirements of the MoU and its 1998 by-laws. It has not created an Independent Review Board. Although ICANN promised to create an At-Large membership that elects half the 18 member Board, ICANN abolished this provision of its bylaws. In the one public election it permitted, ICANN retained four seats for its sitting unelected representatives, reducing public representatives from a majority to a minority on the 18-member board.

Finally, ICANN's staff and executive committee routinely set policy in secret. Nor has it made the details of its finances known, even to one of its own directors. As Representative Markey stated at one Congressional oversight hearing: "We know more about how the Cardinals select a new Pope at the Vatican than we do about ICANN's internal affairs."

ICANN has begun a process of internal reform. The signatories to this letter support this process and intend to participate in it. Nevertheless, this does not change the need for DoC to take immediate steps to announce that it will rebid the MoUs when they expire.

The signatories expect that ICANN will undertake strenuous efforts to reform itself. The necessary reforms, however, may well prove painful, and ICANN staff and directors may find it difficult to make the final decisions without the incentive of competition to compel consideration of alternatives that limit the scope of ICANN's authority or impose suitable accountability mechanisms.

Furthermore, if ICANN cannot reform itself successfully, beginning now a process to re-compete the DNS management agreements provides DoC with a suitable alternative or with public comment on which to base new bidder requirements. Prudence would suggest that, while Commerce can hope for success of ICANN's internal reform process, it must prepare for failure. Commerce's duty to the American people requires Commerce to act with planning and forethought, rather than to accept, for lack of a better alternative, whatever solution ICANN may propose.

Finally, ICANN's failures to date to fulfill its obligations under the existing agreements raise doubts as to ICANN's ability to solve its own problems. ICANN's current problems stem largely from its failure to work in an open and transparent manner. This has made it difficult for stakeholders to offer solutions to ICANN's problems, discouraged stakeholder participation, and engendered mistrust. While ICANN's Board and staff surely have worked with the best of intentions and to the best of their ability, bad processes produce bad results.

The Department of Commerce has the authority, through the well proven method of competitive bidding, to ensure a good process and a good result. It should seize the opportunity to do so quickly, when it can do the greatest good.

Respectfully submitted,

Harold Feld
Associate Director
Media Access Project

Barry Steinhardt
Director
Technology and Liberty Program
American Civil Liberties Union
125 Broad St.
New York City, NY 10004-2400

Solveig Singleton
Senior Analyst
Competitive Enterprise Institute
1001 Connecticut Ave, NW
Washington, DC 20036

Hans Klein
Chair
Computer Professionals for Social Responsibility
P.O. Box 717
Palo Alto, CA 94302

Mark Cooper
Director of Research
Consumer Federation of America
1424 16th Street, NW
Washington, DC 20036

James Love
Director
Consumer Project on Technology
P.O. Box 19367
Washington, DC 20036

Chris Murray
Internet and Telecommunications Counsel
Consumers Union
1666 Connecticut Avenue, NW
Washington, DC, 20009

Milton Mueller
Co-Director
The Convergence Center
Syracuse University School of Information Studies

Mikki Barry
President
Domain Name Rights Coalition
800 Nethercliffe Hall Drive
Great Falls, VA 22066

Sarah Andrews
Research Director
Electronic Privacy Information Center
1718 Connecticut Avenue
Washington, DC 20009

Shari Steele
Executive Director
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110-1914

Michael Calabrese
Director
Public Assets Program
New America Foundation
1630 Connecticut Ave, NW
Washington, DC 20009

Gigi Sohn
President
Public Knowledge
1875 Connecticut Avenue, NW
Washington, DC 20009

Robert Chase
Director
United Church of Christ Office of Communication, Inc.
700 Prospect Avenue
Cleveland, OH 44115