



International Chamber of Commerce

The world business organization

Policy statement

Observations on the US “White Paper” – “Management of Internet Names and Addresses”¹

(Docket No: 980212036-8146-02 dated 5 June, 1998)

Supplementary Commentary prepared by the ICC Domain Names Taskforce

ICC has issued a Policy Statement “Principles for an electronic commerce-friendly domain name system” (ICC Doc. 450/876, 23 July 1998) enumerating key principles which the international business community believes should apply to future domain name administration.

ICC has welcomed the publication of the White Paper and now offers the following Supplementary Commentary from the business perspective in the specific context of the US Government’s Revised Policy Statement in the White Paper.

For convenience, this Supplementary Commentary follows the format of the Revised Policy Statement in the White Paper. A brief summary of each statement in the White Paper is followed by specific commentary including references, where appropriate, to the relevant principles already outlined in the ICC Policy Statement.

Introduction

ICC strongly supports the proposed transfer of administration of the Internet name and address system to a not-for-profit corporation to be formed and run by private sector Internet stakeholders. This approach is consistent with the promotion of private-sector, self-regulatory initiatives for dealing with such issues of governance which has been widely endorsed in various governmental statements on the creation of an appropriate regulatory framework for international e-commerce. The European Union, the US and Japan, for example, have all issued statements² supporting such an approach.

1. <http://www.ntia.doc.gov/ntiahome/domainname/6-5-98dns.htm>

2. *A European Initiative in Electronic Commerce* - <http://www.cordis.lu/esprit/src/ecomcom.htm> Joint
E.U. -US. Statement on electronic commerce - <http://www.qlinks.net/comdocs/eu-us.htm>
US - A Framework for Global Electronic Commerce - <http://www.ecommerce.gov/framework.htm>
US-Japan Joint Statement On Electronic Commerce - <http://www.ecommerce.gov/usjapan.htm>

The US Government's assurance that access will be provided to existing databases and software developed under relevant agreements with the US. Government is fundamental to ensuring continuity and a smooth transfer of operations. Insofar as such access will be essential to open the existing system to effective competition, it is important that every effort should be made to achieve this access by 30 September 1998 when the existing contracts expire.

The Coordinated Functions

The White Paper proposes that the new corporation should coordinate:

- Management of IP addresses
- Operation of the root server network
- Policies for management of gTLDs (including addition and allocation of gTLDs)
- Policies for establishing TLD registries and registrars
- Maintenance and dissemination of protocol parameters

ICC agrees with this proposal.

Principles for a New System

The White Paper indicates that the new corporation should particularly respect four key principles :

1. Stability

This is recognised as the essential first priority, a principle which is fully endorsed by the business community (see ICC Principle 1). As the White Paper states, stability also comprises security and reliability. Again, these are clearly key to establishing and maintaining business and general user confidence in the system.

2. Competition

ICC obviously supports the view that the new corporation should encourage competition wherever possible and should be oriented to the needs of the market. However, the fundamental importance of maintaining stability of the domain name system and avoiding chaos means that the introduction of competition must be managed responsibly (see ICC Principle 3). At present, therefore, ICC shares the generally accepted view expressed by most other stakeholders that registries should be operated on a not-for-profit basis allowing shared access to the registry database and accepting registrations without discrimination from recognised registrars who operate in open competition with each other. The underlying policy objective should be to improve the functionality and utility of the DNS for businesses and consumers as a whole, rather than just to increase business opportunities for new registries or registrars.

3. Private, Bottom-Up Coordination

The new corporation should be organized to gather input from all stakeholder groups so as to respond most effectively and efficiently to the market requirements consistent with its policy objectives above (see ICC Principle 5).

4. Representation

ICC agrees that the new corporation should reflect the functional and geographic diversity of the Internet stakeholder groups. There must be broad international participation at all policy-making levels of the new corporation. From the business perspective, any proposals for apportioning representation must recognise that it is business which will increasingly be the primary source of future investment in the Internet and which will comprise the most significant market for domain names. The Internet has become overwhelmingly commercial in use and application. Most of the current infrastructure development of the Internet is geared to commercial use and exploitation of the medium (this includes new entertainment and communications delivery technologies). This is not to diminish the importance of the work of those involved in the technicalities of IP Addressing or Protocol issues, nor is it intended in any way to marginalize the significant and altruistic

contributions of the many dedicated engineers who have developed and continue to maintain the technical foundations of the Internet. It is simply an acknowledgement of the reality that the focus and primary use of the medium is now commercial (see ICC Principle 2).

Purpose

The new corporation is intended to have authority over :

- Policy for allocation of IP addresses
- Administration of the authoritative root server network
- Policy for addition of new TLDs
- Assignment of other Internet technical parameters.

ICC agrees that such authority is appropriate in the circumstances.

Funding

The White Paper suggests that the new corporation could be funded by domain name registries and IP registries or possibly some other as yet unspecified entities. Funding by domain name registries and IP registries would be logical, and would presumably involve imposing a levy on registrations undertaken by each such body. The costs would therefore ultimately fall on the registrant or end-user of a domain name or IP address in each case. Any funding mechanism should be transparent and impose the minimum additional costs on users consistent with enabling the new corporation to properly carry out its allocated responsibilities.

Staff

ICC agrees that for continuity and efficiency it is highly desirable that the new corporation should be able to draw on the unique experience and expertise of the existing IANA and other relevant bodies (e.g. the IAB) so far as possible.

Incorporation

Consistent with its position on representation (see ICC Principle 5) ICC supports the White Paper's expectation that the new corporation's organizers should include representatives of the full range of stakeholder groups. The White Paper proposes that the new corporation should be headquartered in the US. This obviously makes good practical sense given the historical involvement of US based entities in the administration processes to date and the need to ensure continuity. However, it is important that this should not entrench effective control in the US. The new corporation should facilitate globally representative participation in all aspects of administration, including technical, operational and administrative functions, so that no one country has any long-term or de facto control over those functions.

Structure

Again, the organizational structure must provide for appropriate international representation of all stakeholder groups. In particular, it must accord business interests a level of participation commensurate with the critical role business will have as the primary investors in the future information infrastructure and services (see ICC Principle 2).

The White Paper proposes that an Interim Board should be constituted initially to establish a system for electing a full Board of Directors; to develop policies for the addition of TLDs and to establish qualifications for registries and registrars.

ICC believes that the role of the Interim Board should be restricted to settling the initial organizational structure and developing the processes for election of the full Board. The Interim Board should not take any final decisions on contentious operational issues such as the addition

of new TLDs. Such decisions should be left for the full Board to consider based on considered recommendations of the specialist, subsidiary “councils” which are intended to be established to review such issues in detail. However, the Interim Board should clearly have authority to initiate appropriate studies and consideration of the substantive issues relevant to each respective Council.

ICC agrees that the Interim Board members should also be properly representative of the functional and geographical diversity of internet stakeholders, and that it would be appropriate for both Interim and full Board positions to be nominated and elected from membership or other associations that can ensure broad representation. ICC also agrees that whilst representatives of governments and intergovernmental organizations would be welcome to participate in an advisory capacity, it would not be appropriate for them to be accorded voting rights in the new private-sector organization.

Governance and Operations

The White Paper rightly emphasizes that the new corporation should establish sound and transparent decision-making processes, with appropriate safeguards, including super-majority or even consensus requirements for critical changes. Proposals to change the constitution of the new corporation (e.g. amending its Charter, Bylaws etc.) should require more than a simple majority vote, for example. However, as the Internet is evolving and the various stakeholder communities are also changing, the new corporation must also have flexibility to adapt its constitution and organization to reflect such changes.

The White Paper envisages the formation of specialist, subsidiary “councils” to develop, review and make policy recommendations to the Board in the area of each council’s competence. Councils for IP numbering, Internet Protocols and Domain Names have been proposed. Devolving responsibility for proposals to specialist councils comprising experts in their respective fields is clearly a practical approach to deal with the differing administrative issues which the Board will have to manage. ICC supports such devolution in principle. However, it will be essential that the councils themselves are also fully representative of all the interested stakeholders in each case. In any event, the Board should always retain the ultimate authority to approve or reject policies recommended by the councils.

ICC agrees that the new corporation must be pro-competitive, subject to the overriding requirements to maintain stability, security and reliability of operation of the DNS as noted above in discussion of the basic Principles for a New System (see ICC Principles 1 and 3). At this stage ICC also agrees that there would seem no reason to exempt the new corporation from the commercial discipline of antitrust legislation.

Trademark Issues

Where there is potential for conflict between domain name and trade mark interests, it is essential that sufficient information be available from domain name registry databases to identify registrants and permit an effective challenge to a registration in such cases. ICC recommends that the same information as is customarily available about the proprietor and other details of a registered trade mark from a trade mark registry should also be required from a domain name registry. The White Paper suggests that, as a minimum, up-to-date contact and registration information, including a mail address for service and registration history, including all relevant dates should be provided. Information on the country of establishment of the registrant and location of its operations using the registered domain name would also be desirable for jurisdictional purposes, together with corresponding information on the registrar which carried out the registration (see ICC Principle 6).

The US Government also expressly recommends the adoption of policies requiring:

- payment of registration and renewal fees at the time of registration or renewal – many abuses under the present system have exploited the fact that domain names can be delegated and put into operation without the registrant ever paying; ICC has no objections to requiring pre-payment if this is effective in reducing the levels of abuse ;

- submission to the jurisdiction of the registry, registry database, registrar or location of the “A” root server – whilst recognising the practicality of this proposal, ICC is concerned that any such prescriptive jurisdictional provisions should be subject to review to ensure that they do not systematically advantage or disadvantage registrants or challengers in one country over those in another (see ICC Principle 4);
- alternative dispute resolution to deal with cybersquatting and cyberpiracy – many members of ICC have suffered from the misappropriation of their trade marks and trading names in domain names registered by those with no rights to such names but who seek directly or indirectly to benefit from the established reputations and goodwill of the rightful owners of those names. Fortunately, national Courts have generally recognised such misappropriation as an evident abuse and several judgments have condemned the practice. However, Court action is costly and may be prohibitive for smaller businesses, so ICC welcomes any proposals which would enable the problem to be dealt with more quickly and cheaply and consistently (ICC can offer input from its own experience and expertise in administering alternative dispute resolution procedures through ICC International Court of Arbitration, which could itself act as an ADR forum for disputes in this field (see ICC Principles 7 and 8)); as an additional deterrent to abusive registrations, ICC would also recommend that penalties should apply where the database details provided by the registrant are false or misleading ;
- processes for protecting certain “famous” trade marks – ICC supports moves to provide effective protection for “famous” marks – the identification of what is or is not a “famous” mark will need to be based on objective, quantifiable criteria if it is to be workable and acknowledged as fair, otherwise this issue may prove intractable (see ICC Principle 7);
- no restriction on recourse to national law – ICC agrees that all parties must clearly remain free to have recourse to their national courts.

The Transition

The US Government has identified certain actions which should be carried out in the near future :

- The private sector must establish the new corporation and the Interim Board must be in place by the 30 September, 1998 deadline when the existing contractual arrangements will expire. The US Government will then need to enter into appropriate arrangements with the new corporation to effect the desired transfer of responsibilities. ICC strongly approves the US Government’s express commitment to consult with the international community over decisions relating to the transfer. Full consultation and consideration of international stakeholder interests will be essential if the transfer is to foster broad acceptance around the world.
- The US Government must come to an agreement with NSI to facilitate shared registry operation and the opening of equal access to enable competition between registrars for registrations in the existing gTLDs, .com, .org and .net. ICC believes that all possible steps should be taken to ensure that this transition takes place without delay. Early introduction of effective competition in the existing gTLDs will do much to relieve concerns many stakeholders have over the lack of adequate competition in domain name registration. However, uncompetitive behaviour is not exclusively a gTLD problem. Many country code domains (ccTLDs) could also benefit from more competitive operation. Many ccTLDs are not being utilised as efficiently or effectively as they could. Internationally consistent, market-oriented organization and operation of ccTLDs could reduce the pressure on gTLDs and reduce the potential for undesirable conflicts over domain names (see ICC Principle 9).
- The White Paper anticipates that WIPO will be requested to convene an international process to develop recommendations for resolving trade mark and domain name disputes – ICC welcomes the moves WIPO has already started to carry out such a process. In particular, ICC supports the broad terms of reference drafted by WIPO in its rfc-1³. ICC believes that it is

indeed important that the panel of experts constituted by WIPO to assist in the process should be chosen for their specific expertise as well as being appropriately representative.

- An early review of the root server system is proposed, with specific focus on increasing security and placing the system under professional management. ICC agrees that this is certainly one of the important issues which the new corporation will need to address as a matter of urgency.

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3.. <http://wipo2.wipo.int/process/eng/rfc.html>