February 1, 2008


Suzanne R. Sene
Office of International Affairs
National Telecommunications and Information Administration
1401 Constitution Avenue, N.W.
Room 4701
Washington, DC 20230


RE:     Midterm Review of the Joint Project Agreement between the
        U.S. Department of Commerce and ICANN


Dear Ms. Sene,

TechNet is a bipartisan political network of chief executive officers and senior executives of leading U.S. technology companies. Founded in 1997, TechNet's members represent the top innovators in information technology, e-commerce, biotechnology, venture capital and investment banking.

TechNet's mission is to serve as the voice and advocate of the innovation economy by uniting CEOs and other senior executives with leading policymakers in a bipartisan effort to sustain and advance America's global leadership in technology and innovation.

For TechNet members, the stability, security and effective management of the Internet's global addressing system are of foremost importance. The companies we represent rely on the Internet to communicate with millions of customers and transact billions of dollars in business. TechNet members have been involved at every level of the Internet's development and continued evolution. Our companies build the applications that maximize the Internet's potential and maintain the infrastructure that keeps it functioning and growing.

TechNet strongly supports the nongovernmental, bottom-up model for managing the Domain Name System and commends the Department of Commerce and the Internet Corporation for Assigned Names and Numbers (ICANN) for the work they have done over the past decade to foster that model.

Under the current oversight structure, the Internet's addressing system has witnessed exponential global growth, resisted major failures and supported a robust competitive market for naming products and services.

In this mid-term review of the Joint Project Agreement (JPA) between the Department of Commerce and ICANN, Commerce faces difficult questions about the next steps in the evolution of DNS management. TechNet urges that any potential steps be considered in the context of what they will mean to the long-term stability, accountability and reliability of the management process.

It is the view of TechNet that ending the JPA between ICANN and the Commerce Department at this time would be premature and contrary to the best interest of the Internet.

In the weeks leading up to this midterm review process, ICANN has made clear in its annual report and official filings that it believes the JPA should be terminated immediately, 18 months before it is slated to expire. To support its position, ICANN cites progress it has made toward meeting the 10 responsibilities laid out in an annex to that document.

Over the past 10 years, and particularly over the past 18 months, ICANN has made commendable progress in several key areas. The organization has improved transparency by making more of its work product available online; continued to support robust competition in the domain name space; and correctly enhanced its focus on stability and security. TechNet applauds the organization for the efforts outlined in its annual report, many of which appear to have been undertaken -- it should be noted -- in response to the JPA.

We are concerned, however, by ICANN's assertion that it has "achieved" such critical goals as accountability, transparency, security, stability and corporate responsibility. These assertions by ICANN are troubling on several counts. First, the notion that such foundational organizational goals as "accountability" and "security" are line items that can be affirmatively achieved raises serious questions about ICANN's sensitivity to its ongoing responsibility to continuously improve in those critical areas. Second, we question ICANN's uncritical assessment of its own progress in the areas of accountability, transparency, security and stability -- issues of critical importance to the high-tech industry.

Finally, we are troubled by the view that the 10 responsibilities listed in the JPA are a binary "checklist" against which ICANN will be graded. Accurately assessing the progress ICANN has made toward fulfilling responsibilities is a complicated process that speaks to the larger question of whether ICANN is ready to take the next step toward independent operation.

From the standpoint of our companies, there are at least two key areas in which more work remains before we would be comfortable with the U.S. Government making wholesale changes to its small but constructive role in the ICANN process.

Measured against the typical nonprofit company, ICANN has more than adequate accountability and transparency measures. But ICANN is not a typical nonprofit company. The ICANN Board of Directors makes management decisions that directly affect thousands of companies, millions of employees and billions of dollars worth of commerce transacted over the Internet. ICANN is a unique experiment in nongovernmental management of an invaluable global resource, and as such must be judged against a unique standard for accountability, transparency and redress.

Against that standard, ICANN still falls far short of having developed the infrastructure and mechanisms necessary to ensure that businesses and other stakeholders in the process have their concerns heard; can clearly identify how those concerns are being addressed; and have a meaningful mechanism to appeal adverse decisions.

As of this writing, the only proven method for successfully appealing an ICANN decision has been to file a full-scale lawsuit in a California court. Not only is this an inefficient and extremely costly last-resort alternative, it is unclear as to whether it would even be available to the vast majority of companies affected by ICANN decisions. The company that filed the lawsuit held a contract with ICANN and as such had standing in the courts -- something that is not true for most companies that depend on the Internet and the DNS. In any case, a lawsuit is a crude, expensive and exclusive tool that is poorly suited to resolving basic policy concerns.

Even that last-resort option could be in jeopardy if the relationship between the U.S. Government and ICANN is ended or substantially reduced before the larger issues of redress and accountability are resolved. An ICANN not bound by agreements with the U.S. Government would be free to locate in a jurisdiction with a less-well-developed mechanism for addressing corporate legal disputes.

ICANN has taken great strides in the area of transparency -- making the vast majority of its work product available online in a timely manner -- but we are concerned that ICANN has improperly conflated "transparency" with "accountability." Although it is useful for companies to be able to observe ICANN's policymaking process, it is equally important that they be able to track how their concerns are being addressed. ICANN has ample procedures for soliciting comments from stakeholders, but it is often difficult, if not impossible, to determine how and whether those comments factor into the policymaking process. Absent a meaningful mechanism for redress, this dynamic can make participating in the ICANN process a frustrating exercise for companies with limited resources to devote to it.

Somewhat ironically, the JPA itself has served as one of the most meaningful ICANN accountability measures from the standpoint of industry. In advance of this midterm review process, ICANN officials not only produced extensive documentation of their efforts to meet the responsibilities of the JPA, they also held several consultations with industry in which they explained their existing processes, discussed plans for improvement and responded to concerns. To the extent that the JPA has been useful in spurring ICANN to rectify the continued deficiencies in its accountability processes, it seems inappropriate to prematurely terminate it.

Despite its recent efforts spurred by the midterm JPA review, there remain many unanswered questions surrounding a post-JPA ICANN.  For example, ICANN has not adequately demonstrated that it has put in place the proper mechanisms and procedures to avoid capture by any single group or cartel. It is of particular concern that in its past restructuring efforts and in its present GNSO review process, ICANN has proposed reforms that marginalize input from the broader private sector, in particular those companies that are not directly involved in the DNS although manifestly affected by ICANN's decisions. The continued inability of ICANN to ensure that all private sector interests are adequately represented in the ICANN process clearly indicates that there is further work to be done before the Commerce Department ends its oversight.

For companies that rely on the Internet and the DNS, security and stability are the foremost concerns. That the Internet's addressing system has been a paragon of stability and resiliency since its inception is a testament to the work of ICANN, the Commerce Department and the companies and organizations that maintain its infrastructure.

In the wake of the September 2001 terrorist attacks, ICANN commendably strengthened its focus on security and stability, demonstrating valuable leadership. But it is also clear that the U.S. Government, particularly the Department of Commerce has played an important role in ensuring that the DNS is capable of withstanding and responding to external threats and internal failures.

During the massive distributed denial of service attacks that struck the DNS root servers in 2002, the U.S. Government played a critical coordinating role in ensuring that the companies and organizations responsible for critical components of the DNS were able to effectively respond to the incident.

To the extent that ending the JPA signals another landmark step toward dissolving the U.S. Government's special relationship with ICANN, we urge that serious consideration be given to what that would mean for stability and security of the DNS. Specifically we're concerned about the vacuum that would be created if the Commerce Department's role as a safety net and emergency coordinator were to be eliminated.

Technology companies rely on the DNS and strongly endorse the bottom-up, nongovernmental management model embodied by ICANN. Technology companies applaud the work ICANN has done to improve its responsiveness to Internet stakeholders and are optimistic that future improvements will address remaining concerns.

The JPA has been an important tool in spurring continuing improvements to ICANN's accountability, responsiveness and transparency. With significant work remaining to be done in those areas, we expect that the JPA will continue be of great value to ICANN stakeholders for the duration of its term.

We see no compelling reason to prematurely terminate the JPA, which remains an important accountability measure within the ICANN process.

Sincerely,

Lezlee Westine
President  & CEO