



The Coalition for Online Accountability

Participants:

American Society of
Composers,
Authors and Publishers
(ASCAP)

Business Software Alliance
(BSA)

Broadcast Music, Inc. (BMI)

Entertainment Software
Association (ESA)

Motion Picture Association
of America (MPAA)

Recording Industry Association
of America (RIAA)

Software and Information
Industry Association (SIIA)

Time Warner Inc.

Walt Disney Company

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VIA E-MAIL to JPAMidTermReview@ntia.doc.gov

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

RE: Notice of Inquiry, 72 Fed. Reg. 62220 (Nov. 2, 2007)
Docket No. 071023616-7617-01

Dear Ms. Sene:

The Coalition for Online Accountability (COA) appreciates this opportunity to respond to the above-referenced Notice of Inquiry (NOI) issued by the National Telecommunications and Information Administration (NTIA) regarding mid-term review of the Joint Project Agreement (JPA) between the Department of Commerce and the Internet Corporation for Assigned Names and Numbers (ICANN).

COA consists of nine leading copyright industry companies, trade associations and member organizations of copyright owners. These are the American Society of Composers, Authors and Publishers (ASCAP); the Business Software Alliance (BSA); Broadcast Music, Inc. (BMI); the Entertainment Software Association (ESA); the Motion Picture Association of America (MPAA); the Recording Industry Association of America (RIAA); the Software and Information Industry Association (SIIA); Time Warner Inc.; and the Walt Disney Company. COA is a member of the Intellectual Property Constituency of ICANN's Generic Names Supporting Organization (GNSO).¹ COA and its participants have engaged actively in many aspects of ICANN's work since the inception of the organization. We support the ICANN model as the best available means for carrying out the vital but limited tasks assigned to it.

¹ COA's counsel currently serves as president of that constituency. However, this submission is not made on behalf of the Intellectual Property Constituency.

This submission makes three main points:

- Contrary to ICANN's assertions, ICANN has not achieved all the objectives of the JPA. For illustrative purposes, this submission focuses mainly on an issue which COA and its members know well – compliance and enforcement of the contracts ICANN has entered into with registries and registrars, including but not limited to contracts that mandate unrestricted public access to accurate information on domain name registrants (Whois). Far from having achieved an effective contract compliance program, the best that can be said is that ICANN has begun to take the first concrete steps toward such a program. This is commendable, but it is not “mission accomplished.” Nor is it a basis upon which to terminate the JPA, as ICANN calls for.
- NTIA and ICANN should use the mid-term review as an opportunity to make a mid-course correction, and to refocus the documentation of their relationship on defining more concrete, measurable and specific goals, whose fulfillment will represent actual achievements by ICANN, not simply activity on a particular topic.
- The remaining timeframe of the current JPA (through September 2009) should be dedicated to robust discussion about the next step in the relationship between ICANN and the U.S. government, keeping in focus the need to realize the original vision of a private-sector-led system for administering the domain name and addressing systems. From COA's perspective, ICANN's main deviation from that vision lies in the failure to provide an adequate channel for the voice of private sector interests that are significantly affected by ICANN decisions, but that do not have a contractual relationship to ICANN.

I. ICANN HAS NOT ACHIEVED THE OBJECTIVES OF THE JPA

ICANN's position is clearly stated in its response to the NOI: “ICANN has executed the terms of the JPA.... ICANN is meeting its responsibilities under the JPA... The JPA is no longer necessary.”² With respect, COA disagrees with these assertions. We participate actively in many aspects of ICANN's work. We know that ICANN has made significant progress across the board. But we also know that a number of critical goals of the JPA have not been achieved. In many areas of great concern to COA participants – and to other private sector organizations that are vitally affected by decisions ICANN makes – ICANN has shown activity, but not yet achievement.

The NOI follows the structure of the Affirmation of Responsibilities that the ICANN Board adopted on September 25, 2006, and that is annexed to the JPA itself.³ The gap between proclaimed “achievement” and the reality of limited progress is apparent on a number of these points. For instance:

² See Submission of ICANN at http://www.ntia.doc.gov/ntiahome/domainname/jpacomments2007/jpacomment_004.pdf.

³ See Annex A to <http://icann.org/general/JPA-29sep06.pdf>.

- ICANN pledged “to increase engagement with the Private Sector by developing additional mechanisms for involvement of those affected by the ICANN policies.” (See JPA Annex A, point 6, and NOI, question 6.) Of the 11 points in the Annex to its submission devoted to question 6, only one specifically addresses this pledge (item 6.9), and it consists of a list of twelve business organizations with which “ICANN has engaged in face to face meetings” during 2007. This outreach effort is commendable and valuable, and COA strongly supports it. But it is far from the same thing as “developing [a] mechanism for involvement” on an ongoing basis, through which these critical private sector voices can be heard within ICANN.⁴ Indeed, during much of the time this outreach was being carried out, a committee of the ICANN Board was preparing a “GNSO Reform” proposal (cited in the ICANN submission annex at item 6.2) under which one of the key existing “mechanisms for involvement of those [in the Private Sector] affected by ICANN policies” – the business-oriented constituencies of ICANN’s GNSO – would be significantly marginalized.⁵ This aspect of the GNSO reform proposal was reaffirmed on February 3, albeit with some minority views. We understand that it was forwarded to the ICANN Board at the ICANN meeting this week in New Delhi.
- ICANN pledged to “encourage improved transparency, accessibility, efficiency and timeliness in the consideration and adoption of policies.” (See JPA Annex A, point 2, and NOI, question 2.) ICANN’s lengthy response on this point in the Annex to its submission focuses almost entirely on transparency. Certainly it is true that ICANN publishes a great deal of information about its activities, and the usability and practical accessibility of all this data has certainly improved over the years. Yet the fact is that ICANN remains, from the perspective of most of the affected business community (including most intellectual property owners), an inaccessible, inefficient, and seemingly opaque venue for decision of issues that have a significant impact on their experience of the Internet and its use in their business activities.

From COA’s perspective, the most troubling aspect of ICANN’s assertions that it has “achieved” the objectives in the JPA has to do with the issue of contract compliance. This topic is addressed in the Affirmation of Responsibilities both generally (see point 10 of JPA Annex A, in which ICANN pledged to “devot[e] adequate resources to contract enforcement”), and specifically (see point 5 of JPA Annex A, in which ICANN committed to enforce its existing policies – embodied in the provisions of its contracts with all accredited registrars and all generic Top Level Domain (gTLD) registries – with regard to Whois). ICANN is beginning to do what is necessary to take on this crucial issue, for which we applaud it; but to date, it has “achieved” very little.

⁴ This issue is discussed further in Part III of this submission.

⁵ The Intellectual Property, Business and ISP constituencies of the GNSO currently have a total of 9 of 27 total votes on the GNSO Council, or 33%. Under the proposal, the share of votes allocated to representatives of “commercial registrants” – not necessarily chosen by constituencies – would be reduced to 4 of 21, or 19%. See generally <http://www.icann.org/topics/gnso-improvements/>.

Contract compliance is not simply one item in a laundry list of tasks ICANN should be undertaking; and ICANN's slowness to deliver a credible contract compliance program is not simply one shortcoming to be weighed neutrally against areas where it has performed better. Few concepts are more central to the success of the grand experiment in bottom-up, private-sector-led management of the domain name system (DNS) than is the demonstrated ability and readiness of ICANN to enforce its contracts. One of the most compelling features of the ICANN model is that it eschews direct management of key Internet resources by governments, who have the ability to make binding rules through legislation, regulation, and international treaty-making. Of necessity, the ability of a non-governmental entity like ICANN to manage these resources must depend on voluntary agreements among ICANN and the other participants in the system. If third parties who rely upon the terms of those contracts lack confidence that they will be enforced – if they come to expect that the failure of a contracting party to live up to an obligation of importance to third parties will not be investigated, will not be remedied, and will have no consequences – then the success of the entire experiment is at risk.⁶ ICANN has literally just started to step up to this central responsibility. Its first steps should be commended, encouraged, and supported; but they should not be confused with achievement of the goal.

One example is illustrative – and important: Whois data accuracy. It is well known that the database of contact information on gTLD domain name registrants – Whois data – is riddled with inaccuracies and patently false information. This fact has been the subject of several Congressional hearings, which also delved into the consequences, including reduced effectiveness and increased costs for government and private sector efforts to protect consumers against phishing and other forms of online fraud, and to enforce intellectual property rights on the Internet. Among other sources, the problem of inaccurate Whois data was highlighted in a 2005 report by the Government Accountability Office.⁷ The GAO documented that more than one in nine domain name registrations in the three leading generic Top Level Domains (.com, .net and .org) – representing more than 8 million registrations at that time – contained Whois data that is either obviously false, incomplete, or impossible to locate.

Furthermore, the GAO report confirmed that the main system ICANN had put in place to improve Whois data accuracy – the Whois Data Problem Reporting System, or WDPRS – was not working. Under the current version of WDPRS, reports of false Whois data received by ICANN through a specified portal are automatically routed to the registrars responsible for the domain name registration in question, which are supposed to investigate the problem and seek correct contact data from registrants. GAO submitted 45 reports to the WDPRS regarding instances of patently false Whois data, and found that “11 domain name holders provided updated contact information that was not patently false within 30 days after GAO submitted the error reports to ICANN. One domain name, which had been pending deletion before submission to ICANN, was terminated after GAO submitted the error report. The remaining 33 were not

⁶ Such reliant third parties include all domain name registrants, as well as intellectual property owners whether or not they have registered a particular domain name.

⁷ See Internet Management: Prevalence of False Contact Information for Registered Domain Names (GAO-06-165), November 4, 2005 (available at <http://www.gao.gov/docdb/lite/summary.php?rptno=GAO-06-165&accno=A41038>).

corrected.” Although one-third of these 33 were placed on “registrar hold,” an inactive status, the bottom line is that in nearly half the cases submitted by GAO to WDPRS, the domain names remained active thirty days later with no change to the patently false Whois data.

This result is consistent with ICANN’s own findings in its successive annual reports on WDPRS. ICANN’s most recent report found that in some 28% of the cases in which clearly false Whois data was reported via WDPRS, nothing was done about it.⁸ Updated data which ICANN deemed “plausible” was supplied in 37% of the cases, but ICANN had done nothing to check whether this “plausible” data was in fact accurate.⁹

Thus, at the time the JPA came into force, the problems of Whois data inaccuracy, and of the ineffectiveness of the WDPRS, were well documented. These facts bear directly on compliance by domain name registrars with the Registrar Accreditation Agreement (RAA) that each has signed with ICANN.¹⁰ First, the Registrar Accreditation Agreement contains a specific obligation for registrars to conduct a reasonable investigation of any report of claimed Whois data inaccuracy they receive, and to take reasonable steps to correct any inaccurate data. RAA Section 3.7.8. Additionally, provision of accurate, complete, and current Whois data is an obligation that registrars are required to impose on all domain name registrants, whose breach can be grounds for terminating the registration. RAA Sections 3.7.7.1 and 3.7.7.2.

Within the past several months, ICANN has finally begun to address the Whois data accuracy issue as a contract compliance problem. It has announced three compliance initiatives in this area. First, in April 2007, ICANN said it would conduct an unannounced annual “data accuracy audit” in which it randomly samples domain names from each accredited registrar and “attempt to verify the validity of the Whois data ... using independent sources,” or at least try to contact the registrant by e-mail. ICANN would then anonymously submit the unverified or unresponsive registrations to the WDPRS and see what happens. Registrars who take no action in response would be notified and required to explain. Audit results would be made public.¹¹

Second, ICANN announced in December 2007 that the previous month it had “commenced” a Whois Data Accuracy Study, by “developing a sampling plan to draw a representative sample of domain names from the gTLD name population.”¹² Yet to come is the

⁸ See <http://www.icann.org/whois/whois-data-accuracy-program-27apr07.pdf>.

⁹ In fact, ICANN’s reports understate the shortcomings of the WDPRS, because that system was designed to be self-evaluating. Complainants are supposed to be presented with current Whois data within 40 days after their complaint is received, and are asked to confirm whether the inaccuracy they complained about has been corrected. More than 90% of the time, the complainants answer no. The much lower proportions cited in the text above were produced by ICANN based on its own examination of the data (in effect, second-guessing the complainants). When 90% of the customers say they are unsatisfied, the assertion that objectively only 28-65% of them should be unsatisfied is not persuasive evidence of product quality.

¹⁰ See <http://www.icann.org/registrars/ra-agreement-17may01.htm#3>.

¹¹ See <http://www.icann.org/whois/whois-data-accuracy-program-27apr07.pdf>.

¹² See <http://www.icann.org/announcements/announcement-2-21dec07.htm#I>.

definition of what ICANN staff will do to determine the accuracy of Whois data associated with the sampled names. While this is far from the first time that ICANN has promised to carry out a statistically reliable study of Whois data inaccuracy¹³, this is the first time that such an effort has advanced as far as the stage of developing a sampling plan. However, even that phase of the study had not yet been carried out as of the end of 2007. If, in fact, this Whois Data Accuracy Study constitutes the first steps of the “data accuracy audit” announced last April, it is fair to characterize the status of that audit as embryonic.

Third, ICANN also announced last December that it would take action on the evidence that it has already compiled, in its WDPRS reports, concerning registrar failure to investigate claims of Whois data inaccuracy.¹⁴ After years of reporting in its own studies that many instances of false Whois data reported via WDPRS go uncorrected, ICANN is now beginning to ask registrars what if anything they have done to investigate the claimed inaccuracies, an obligation that registrars explicitly took on in the RAA. ICANN gave the example of WDPRS complaints filed on or before July 7, 2007, in which the Whois data remained unchanged on December 7, 2007. A report on this Registrar Investigation of Whois Inaccuracy Claims Audit is scheduled to be published this month. COA welcomes this initiative; but like the others listed above, to date it constitutes a plan to enforce contracts, rather than the act of enforcement itself.

Aside from the illustrative example of Whois data accuracy, ICANN’s efforts at even more basic levels of contract compliance remain a work in progress. For instance, every accredited registrar is required to have a website and to make Whois data accessible via the World Wide Web.¹⁵ ICANN determined in May 2007 that of the 779 accredited registrars that were actually in the registration business at that time, 19 had no working website, and 20 that did had no Whois service available on the website. Seven of these 39 registrars never responded to ICANN’s follow-up correspondence. Back in May, ICANN said it would send formal breach notices to these wholly non-compliant registrars.¹⁶ It said the same thing again in October, along with a commitment to publish “complete information regarding time to cure the violations cited by ICANN within the next 30 days.”¹⁷ COA is not aware of any further publication of information on this audit of one of the most basic contractual obligations of registrars.

In summary, ICANN has only begun to take the first concrete steps toward enforcing the provisions of the contracts it has signed with each registrar with regard to the accuracy of Whois

¹³ ICANN has apparently never undertaken a proactive statistical sampling of the accuracy of Whois data in the generic Top Level Domains, despite numerous promises over at least the past three years to do so. See, e.g., ICANN’s 2004 -05 budget, at <http://www.icann.org/financials/budget-fy04-05-06oct04.html> (“ICANN staff will also undertake proactive statistical sampling studies to determine the overall database accuracy and then develop a plan for improvement.”); ICANN 2006-07 budget, at <http://www.icann.org/announcements/proposed-budget-2006-07-cln.pdf> (approved June 30, 2006) (identical wording).

¹⁴ See <http://www.icann.org/announcements/announcement-2-21dec07.htm#III>.

¹⁵ Registrar Accreditation Agreement Section 3.3, at <http://www.icann.org/registrars/ra-agreement-17may01.htm#3>.

¹⁶ See <http://www.icann.org/compliance/reports/registrar-web-compliance-audit-report-17may07.htm>.

¹⁷ See <http://www.icann.org/compliance/reports/contractual-compliance-audit-report-18oct07.pdf>.

contact data, as well as on other important contract compliance issues. It is true that ICANN has done more in this area since the inception of the JPA than it did during the preceding six years under various versions of the Memorandum of Understanding (MOU) with the Commerce Department. COA acknowledges this and commends ICANN staff on the progress it has made toward achieving a credible contract compliance program. We also welcome recent budget proposals from ICANN that would increase the resources devoted to contract compliance. At the same time, the record to date refutes ICANN's claim that it has already "achieved" the goals of the JPA in this area.

Our focus in this document on enforcement of existing contractual obligations and ICANN policies regarding the accuracy of Whois data should not be interpreted as COA acquiescence in the adequacy of these existing obligations and policies. To the contrary, the inability to make any headway in the ICANN policy development process toward more effective, proactive steps to improve the accuracy of Whois data is a major disappointment for COA participants. In our view, this history is strong evidence that the elaborate policy development apparatus developed by ICANN remains unbalanced. Companies with contractual relationships with ICANN have the power to prevent progress toward policies that would enhance online accountability and transparency for all Internet users, such as more accurate Whois data; and these interests have not hesitated to exercise that power.¹⁸

In summary, COA agrees with ICANN that "conclusion of the JPA will have a powerful and long-lasting effect on the confidence of Internet and Internet users." In our view, if the JPA were terminated now, based on ICANN's assertions of "mission accomplished," that effect on confidence would be sharply negative. It would be viewed as an abdication of the U.S. government's commitment to the basic principles of private sector leadership in the coordination of the DNS, and as a compromise of the vision of DNS management based on the enforcement of voluntary contracts rather than on the fiat of one or more governments.

¹⁸Some examples are worth mentioning. In February 2003, an ICANN Whois Task Force adopted several recommendations on "Accuracy of Whois Data" aimed at improving the handling of complaints of false contact data (e.g., that registrars should take some commercially reasonable steps to check the plausibility of "corrected" Whois data submitted by a registrant in response to a complaint, and that ICANN should tell registrars that accepting unverified corrected data from a registrant that has previously submitted false contact data is not appropriate). See <http://www.icann.org/gnso/whois-tf/report-19feb03.htm#I>. Five years later, few of these recommendations – and neither of those listed in the preceding sentence – have been implemented as ICANN policies. Next, on June 2, 2005, the GNSO Council voted down a measure to include the issue of up-front verification of Whois data submitted by registrants within the scope of work of a reconstituted Whois Task Force. Although there were 12 votes in favor, 7 against, and 6 abstentions, under GNSO Council rules, a measure must get a majority of all votes cast, including abstentions. It is also worth noting that 6 of the 7 "no" votes were cast by the 3 registrar representatives (who get double votes under ICANN's rules), and all 3 registry representatives (who also get double votes) abstained. Thus, registrars and registries succeeded in preventing the issue of up-front verification from even being discussed in the policy development process. A recording of this meeting can be found at <http://gnso-audio.icann.org/GNSO-Council-20050602.mp3>.

II. THE MID-TERM REVIEW SHOULD LEAD TO MORE CONCRETE, MEASURABLE MILESTONES

ICANN's forthright assertion that the JPA should be terminated because its goals have all been achieved has helped to focus attention on how those goals have been stated and how progress toward them should be evaluated. The significance of the shift in September 2006, from the MOUs that previously documented the relationship between the US government and ICANN, to the JPA that plays that role now, was accurately stated in the ICANN submission: "The responsibilities in the JPA are not milestones or measures that were determined by the U.S. Department of Commerce. They are milestones that the ICANN board adopted themselves." The ICANN submission also quotes former NTIA Administrator John Kneuer that "the [ICANN] board will ultimately be the judge of whether or not ICANN is meeting those responsibilities."

While perhaps every contestant would welcome the chance, not only to determine the location of the finish line, but also to be the sole judge of whether and when she had crossed it, this approach is not advisable when the race's stakes are as high as they are here. What is most needed at this point is to use the mid-term review to make a mid-course correction. Both ICANN and the public would benefit from more concrete statements of expectations and goals throughout the remaining 18 months of the JPA, including a clear statement that ICANN's performance should be evaluated against the criterion of measurable achievements. That this criterion has not been adequately specified so far is demonstrated by the argument that, because ICANN has addressed every topic listed in the JPA, it has consequently fulfilled what that agreement set out to do. Over the next 18 months, fairness to ICANN as well as to the community requires a clear statement from the U.S. government that it is looking for ICANN achievement, not simply ICANN activity, as it contemplates the next step in its relationship with ICANN.

III. DISCUSSION OF THE NEXT PHASE OF THE USG-ICANN RELATIONSHIP SHOULD BE LAUNCHED NOW

Since ICANN filed its submission in response to the NOI, its leadership has on several occasions described its call for immediate termination of the JPA as a "tactic" aimed at stimulating debate now about the "post-JPA" environment. This tactic has already succeeded, and ICANN is to be commended for taking advantage of this opportunity to focus attention on the critical question of what lies beyond the expiration of the current JPA in September 2009. COA and its members are eager to engage in this debate. Although we take no position at this time about what should happen in September 2009, we offer some preliminary observations at this mid-point of the existing agreement.

The critical factor to bear in mind is the need for private sector leadership in the management of the DNS. With respect to gTLD policies, COA believes that this goal has been partly achieved in the ICANN environment. Some private sector entities play a leading role: those whose businesses are based on contractual relationships with ICANN, i.e., gTLD registries and ICANN-accredited registrars. All other private sector entities – those businesses that may be significantly affected by ICANN decisions, but that are entirely independent of ICANN and have

not entered into contracts with ICANN in order to operate their businesses – play a much more marginal role.

At one level, this dichotomy is entirely understandable. Registries and registrars contribute the lion's share of ICANN's budget, through funds they collect from domain name registrants and pass on to ICANN in the form of various fees.¹⁹ The perception is strong that those paying the piper (albeit with money that originates from domain name registrants) are calling the tune. This perception is reinforced by structural features of the ICANN policy framework, notably the "weighted voting" at the GNSO Council, which accords double value to the votes of registry and registrar representatives on all matters, including the election of ICANN Board members.²⁰ Other pervasive features of the ICANN decision-making process – the uncertain timelines, the repetitive reviews, and the insistence on shifting decision-making venues around the globe to correspond to ICANN's public meeting itineraries – may be manageable for registry and registrar companies whose business models are intimately intertwined with ICANN. But these features are real barriers to participation by businesses and associations that are independent of ICANN, but whose businesses may be profoundly affected by decisions falling within ICANN's jurisdiction.

In theory, ICANN's heavy reliance on public comment periods could provide one channel for these non-contracted private sector groups to influence decisions within ICANN. However, the experience of COA and its participants, and of other private sector entities, with ICANN public comment exercises has been mixed at best. To cite one notable example, dozens of companies, trade associations, major non-profit institutions, and other private sector entities submitted comments to ICANN in January, 2007, opposing many aspects of a proposal to change long-standing ICANN policy about the public availability of Whois data on domain name registrants (the so-called "Operational Point of Contact," or OPOC proposal). The commenters included trade associations representing industry sectors ranging from major financial institutions to the music and recording industries, and from hotel and lodging companies to film and video producers. Leading global companies also commented, including both those that are Internet-based (for instance, eBay, Expedia, Priceline.com, and Yahoo!), and those that mainly provide products and services offline (e.g., Mars, Inc.; Procter & Gamble; du Pont; General Motors), with strong representation from hardware and software companies such as Apple, Dell, Novell and Microsoft. Major charitable organizations, including the American Red Cross, American Heart Association, and March of Dimes Foundation, also raised serious concerns about OPOC in their comments.²¹ Although the overwhelming majority of commenters opposed approval of the OPOC proposal, the only official reaction of the GNSO Council was to establish

¹⁹ In the current fiscal year, these gTLD registry and registrar fees make up 91% of ICANN's revenue. See http://icann.org/financials/adopted-budget-29jun07.htm#_Toc170817101.

²⁰ Weighted voting at the GNSO council would be abolished under the GNSO Reform proposal mentioned above. However, registries and registrars would be allocated twice as many votes on the GNSO Council as the representatives of "commercial registrants" who are not in contractual relations with ICANN (8 vs. 4). Currently, these contracted parties have 12 votes, and the three business-oriented constituencies of the GNSO share 9 votes. Thus, as a matter of arithmetic, the reform will worsen, not solve, the problem that weighted voting poses.

²¹ The comments are archived at <http://forum.icann.org/lists/whois-services-comments/>.

a working group charged with examining the issues for implementing the OPOC proposal. (The working group was specifically instructed not to consider other proposals.) For many of the companies and associations that were participating in the ICANN process, through the public comment procedure, for the first time, it was a disillusioning and discouraging experience.²²

In short, members of the independent business community – including but by no means limited to copyright and trademark owners – who are not in contractual relationships with ICANN simply lack confidence that their voices will be heard and heeded when ICANN comes to make decisions that can profoundly affect their businesses. It has happened on some occasions, but a reliable, consistent mechanism for this input has yet to be found. Until such a mechanism is developed and implemented, as called for in point 6 of the Affirmation of Responsibilities, it cannot be said that the vision of a private-sector- led entity to manage the DNS has been realized. While there may be other challenges that ICANN must meet before the relationship between the U.S. government and ICANN can transition successfully from the current model (as reflected in the JPA), this is surely one of the most critical. COA urges NTIA to identify this as a principal task to be undertaken during the remaining 18 months of the current term of the JPA. We look forward to participating in such an initiative, and to working with ICANN to achieve this critical objective.

COA and its participating organizations thank NTIA for conducting this mid-term review, and for its consideration of our views. If we can provide further information or answer any questions, please do not hesitate to contact the undersigned.

Respectfully submitted,

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²² Ultimately the OPOC proposal was rejected, but only after the implementation working group, consisting of 70 persons, met in over 20 teleconferences and one full-day face-to-face session. That these thousands of hours of time had to be expended to reach the conclusion prefigured in the public comments demonstrates that a viable mechanism for private sector input to ICANN decision making has yet to be implemented.