

The Future US Role in Internet Governance: 7 Points in Response to the U.S. Commerce Dept.'s "Statement of Principles"

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Introduction

On June 30, 2005, the United States Department of Commerce National Telecommunications and Information Administration (NTIA) released the "US Statement of Principles on the Internet's Domain Name and Addressing System." The Internet Governance Project (IGP) has issued the following response to the NTIA's declaration.¹

We applaud the attention Commerce Department officials are giving to this critical issue. The NTIA's declaration is welcome as a formalization of current US policy, in advance of the now-released report of the UN Working Group on Internet Governance. However, the debate has moved on, and so too must US policy. We make 7 points below in response to the "Statement of Principles" showing the direction we believe is in the interests of the United States and the world.

1. US policy, from the White Paper forward, has promoted internationalization of, and a leading role for non-state actors in, Domain Name System (DNS) governance.

Non-governmental internationalization of Internet administration was intended to keep the Internet's core coordinating functions free from national political rivalries and territorial jurisdiction. That choice promoted openness, accessibility and innovation, and also discouraged the fragmentation that might result from the assertion of national legislative authority. Accordingly, DNS management was privatized and internationalized through the Internet Corporation for Assigned Names and Numbers (ICANN), a 7 year-old nonprofit corporation headquartered in California. ICANN governs by means of private, globally applicable contracts and its decision making processes strive to represent civil society, business and the technical community, with consultation from governments. Both sides of the domestic political aisle supported this approach at the time.

We support the broad outlines of that policy, even if we have had vigorous disagreements with its implementation.² Globalized contractual governance, supported by transparent and objective governance processes, when implemented in a more democratic and politically balanced way, serves the interests of both US citizens and the global Internet

¹ http://www.ntia.doc.gov/ntiahome/domainname/USDNSprinciples_06302005.htm We note that five of the IGP's six partners are US citizens and resident in the United States.

² See the IGP paper, "What to Do About ICANN: A Proposal for Structural Reform," April 2005, <http://dcc.syr.edu/miscarticles/IGP-ICANNReform.pdf>

community. More open processes invite all stakeholders to participate while distributing power more evenly. By more narrowly focusing on technical coordination, the regime helps ensure that the vitally important security and reliability of the Internet is preserved. Freeing the Internet's resource allocation and assignment regimes from repressive political pressures was a design objective for these policy choices, one which we support.

2. The US Government's Current Role Contradicts its own 1998 White Paper

The US Government's exceptional role as unilateral contracting and oversight authority for ICANN, should it continue ad infinitum into the future, will directly contradict the two prongs of the 1998 White Paper policy (internationalization and privatization). Obviously, Internet governance is neither internationalized nor privatized if one national government arrogates to itself the exclusive authority to supervise ICANN, negotiate the terms of its contracts, and approve any changes in the root zone. The policy if unchanged also invites reciprocal actions by other states that may undermine the global compatibility of the Internet and the interests of users and suppliers in the United States.

3. The US Position is Unclear

Unfortunately, the US position on how it intends to handle the contradiction between its commitment to internationalization and privatization on the one hand, and its unilateral oversight role on the other, has never been made clear. Over the past seven years, the US government has issued inconsistent statements about its role, sometimes saying it would withdraw from DNS governance completely, at other times saying that it did not intend to give up its policy oversight over the root, and at other times indicating that it would withdraw after ICANN fulfilled the terms of its MoU. A clear path forward is not yet apparent from the "Declaration of Principles." At best, it merely reiterates the current situation; at worst it implies that it will continue forever.

We acknowledge that it is not usually best practice when playing poker to lay one's cards on the table before the hand is done. Likewise, in international negotiations we would not expect the United States to make unilateral concessions when the possible mechanisms for alternative arrangements and governance structures are only now beginning to come into focus. But the ambiguity in the US position makes it difficult for others to formulate their own positions. National interest dictates that the United States government should help lead the further evolution of global Internet governance to meet global needs for transparency, accountability and participation in decision making in a manner consistent with legitimate US policy objectives. We urge the US to forthrightly reaffirm its support for the principles of the 1998 White Paper, which include an expectation that internationalization and privatization should supersede top-down, unilateral governmental control, *including* control by the US government.

4. ICANN Does Need Oversight – But Oversight Powers must be Internationalized, Limited and Lawful.

As a private yet global organization, with regulatory and "taxing" powers over the domain name supply industry and potentially expansive powers over the users of domain names, ICANN requires some legal supervision and accountability mechanisms. However, by "oversight" we do *not* mean arbitrary reviews, vetos or second-guessing by a council of governments. That kind of "oversight" of decisions emerging from ICANN's processes is more properly called "top-down interference," and risks subjecting DNS and IP address management to the vagaries of geopolitics unrelated to the efficient and fair administration of the Internet's unique identifiers.

We believe that governments, instead of asserting a right to arbitrary oversight, should agree on clear limits to ICANN's responsibilities and agree on means of enforcing those limits. True "oversight" means that well-defined, internationally agreed rules or judicial processes should provide recourse if ICANN abuses its authority or does not follow its own administrative procedures.³

Internationalizing this oversight function makes sense. No single government can be trusted to eliminate all considerations of national self-interest from its oversight role. To ensure a more neutral and less intrusive role for governments, it is essential that the oversight function be shared and collective.

5. If Interpreted as a Prospective Statement, the NTIA "Statement of Principles" Undermines the Viability and Legitimacy of ICANN.

For years, the US federal government encouraged the perception that ICANN would become independent of the USG if it fulfilled the conditions of its MoU. The June 30th statement of the NTIA, while possibly merely reiterating the *status quo*, undermined that widely held expectation. By sending the world the message that ICANN will remain under the control of the US government exclusively (until when?) the Commerce Department's statement has undermined its own efforts to institutionalize a nongovernmental, globalized steward for the DNS. If this is merely a negotiating ploy, it could be taken as a sign of bad faith in the internationalized, multistakeholder processes that created the global Internet of today. If the US does not trust other governments to play a responsible, collective role in ICANN's oversight, why should other governments trust it and participate wholeheartedly in the ICANN regime?

6. Continued US Unilateralism in Internet Governance Undermines the Long-term Stability of the Internet.

Of course the Internet grew up initially in the US and a few allied nations. But with over a billion users now, US citizens are a small minority of the networked world. It is

³ The Internet Governance Project has advocated negotiation of a Framework Convention on the Internet as a means of achieving agreement on oversight roles and mechanisms.

inconsistent for the US to assert that DNS management should be free of national interests while at the same time reserving to its own national government special and exclusive powers over netizens of other nations. That inconsistency has already produced several years of increasing politicization of ICANN and its functions. If nothing changes, the US role will continue to inflame political criticism of Internet governance for years to come.

Continued US unilateral control of the Internet's domain name space does not increase the security of the Internet. On the contrary. If oversight of the DNS is seen as a US strategic asset rather than as a globally shared infrastructure, the risks of deliberate disruption and politicization of the Internet's central coordinating operations can only increase. Politicization brings with it a growing risk of fragmentation of the Internet into national and linguistic blocs insulated from US participation. Aggressive assertions of US control only increases the possibility that other nations will support policies that will de-globalize and territorialize authority over the Internet. Moreover, it is important to get the cooperation and buy-in of developing countries such as China, Brazil and India now, before they choose to go their own way according to principles and norms or technical standards that may or may not be acceptable to the US or to other Internet users.

7. The US should take a leadership role in defining future a global governance framework

We understand that any transition raises short-term uncertainties, fears and risks. That is why it is essential that the US government take a cooperative and progressive role in Internet governance. The US must accept the need for change and actively put forward viable ideas for the internationalization of its oversight and supervision functions. It is better to act now than to be forced to act later when its control may be threatened by competing and hostile interests. The US should be willing and able to advocate key principles and norms of administration and governance that will preserve the freedom, openness and innovation of the Internet, and obtain the binding agreement of other governments on those principles and norms. The release of the UN Working Group on Internet Governance (WGIG) report, the recommendations of which in most respects is compatible with the enlightened policies on governance supported by many US stakeholders, offers an excellent opportunity for US federal policymakers to ponder what should come next to keep the Internet on a course that will ensure freedom and stability for decades to come.

Respectfully,

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