ICANN, New TLDs, and the UDRP

Boalt Hall Speaker Series

Berkeley, California

20 November 2000

Louis Touton

Vice President and General Counsel

ICANN: The Basic Idea

ICANN =

An Experiment in
Technical Self-Management
by the global Internet
community

ICANN: The Basic Bargain

ICANN =

Internationalization
of Policy Functions for DNS and IP
Addressing systems

+

Private Sector
(non-governmental) Management

What does ICANN do?

Coordinates policies relating to the unique assignment of:

– Internet domain names

– Numerical IP Address

– Protocol Port and Parameter Numbers

Coordinates the DNS Root Server System

- through Root Server System Advisory Committee

Says *The Economist:*

- "ICANN is in many ways a completely new institutional animal."

- "It is a hybrid between an online community and a real-world governance structure, an untested combination."

- "It is also a new type of international organisation: an industry trying to regulate part of itself, across the globe, with little or no input from national governments."

(10 June 2000)

Domain names & IP addresses

- Domain names are the familiar, easy-to-remember names for computers on the Internet
  - e.g., amazon.com, icann.org, nic.or.kr

- Domain names correlate to Internet Protocol numbers (IP numbers) (e.g., 98.37.241.130) that serve as routing addresses on the Internet

- The domain name system (DNS) translates domain names into IP numbers needed for routing packets of information over the Internet

Categories of Internet Domains

- Generic Top Level Domains (gTLDs)
  - .com, .net. .org, .gov, .mil, .edu, .int
  - .com, .net. .org open for registration by all; others restricted in various ways
- Country Code Top Level Domains (ccTLDs)
  - .kr., .uk, .fr, .us, .mx, .ca, .de, etc.
  - Registration requirements vary by domain (many require domicile within the territory or other connection with the territory)
  - Derived from ISO 3166-1 list
- Infrastructure Top Level Domain
  - .arpa

Status Quo Ante ICANN

Most Internet DNS and IP Address coordination functions performed by, or on behalf of, the US government:

- **Defense Advanced Research Projects Agency (DARPA)**
  - Stanford Research Institute (SRI)
  - Information Sciences Institute (ISI) of University of Southern California
- **National Science Foundation (NSF)**
  - IBM, MCI, and Merit
  - AT&T, General Atomics, Network Solutions, Inc. (NSI)
- **National Aeronautics and Space Administration (NASA)**
- **US Department of Energy**

IANA

- "Internet Assigned Numbers Authority"
- A set of technical management functions (root management; IP address bloc allocations) previously performed by the Information Sciences Institute (ISI) at the University of Southern California, under a contract with the U.S. Government
- Includes protocol parameter and port number assignment functions defined by the Internet Engineering Task Force (IETF)
- Now a part of ICANN

IANA

*Jon Postel
1943-1998*

Need for Change

- [Globalization](#) of Internet
- [Commercialization](#) of Internet
- Need for [accountability](#)
- Need for more [formalized management](#) structure
- Dissatisfaction with [lack of competition](#)
- Trademark/domain name [conflicts](#)

White Paper Principles

White Paper: new policy/management structure must promote 4 goals:

- ◆ Stability
- ◆ Competition
- ◆ Private, bottom-up coordination
- ◆ Representation

White Paper Implementation

- Internet community to form non-profit corporation meeting White Paper's 4 criteria
- US Government (through Commerce Department) to transition centralized coordination functions
- Amendment of Network Solutions agreement to require competitive registrars in .com/.net/.org registries
- Request to WIPO to study & recommend solutions for trademark/domain-name conflicts

Status of Transition from USG

- ✓ 25 November 1998 - ICANN recognized in MoU
- ✓ June 1999 - Cooperative agreement among ICANN, US Government, root server operators
- ✓ 10 November 1999
  - ICANN and Network Solutions sign gTLD registry and registrar agreements
  - DoC transfers root authority over gTLDs to ICANN
- ✓ 9 February 2000
  - Contract with US Government to complete transfer of IANA functions
- ✓ September 2000
  - MoU narrowed to reflect completed tasks; agreements extended for up to one year
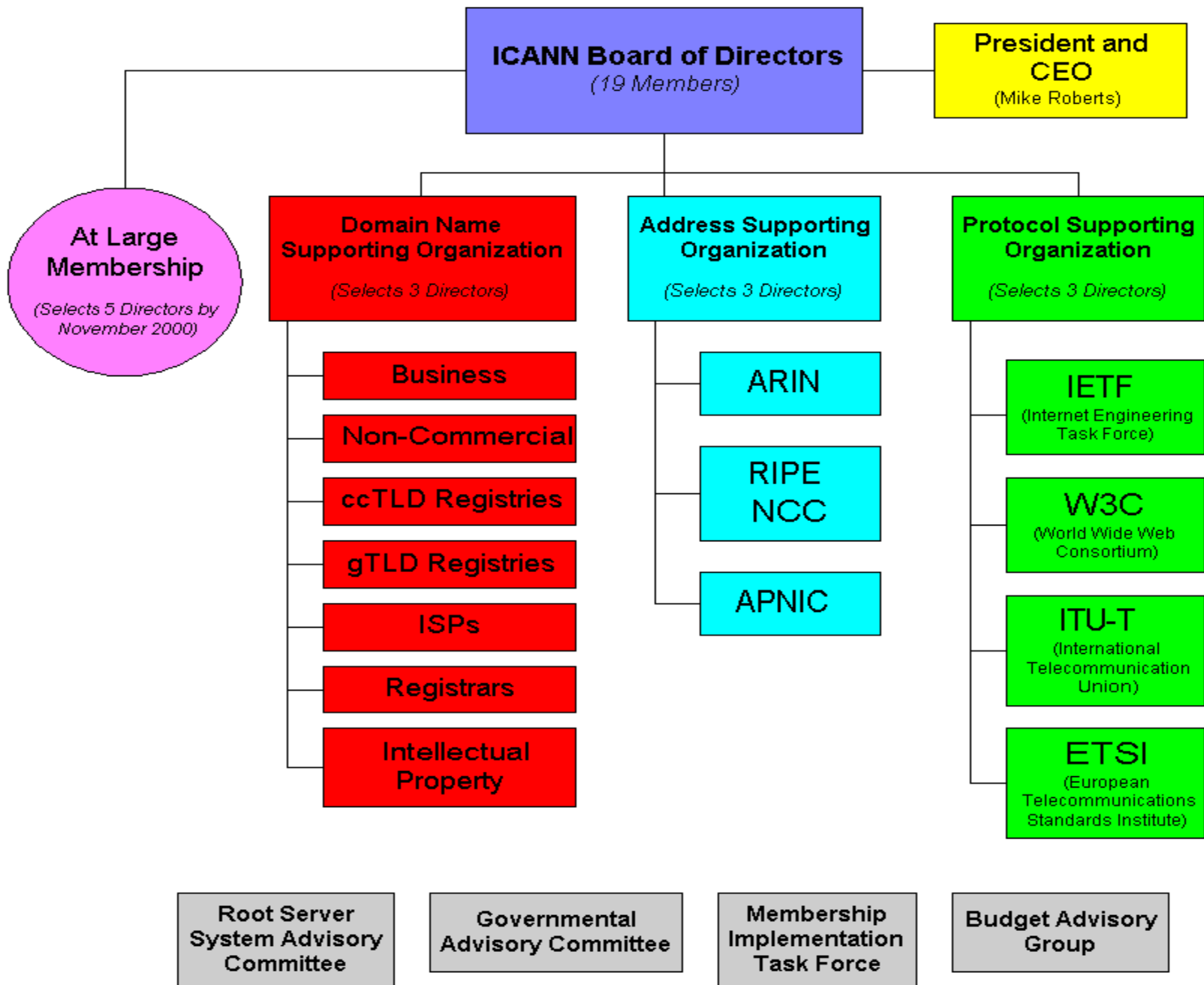
Policy Objectives for Year 2000

- New Top-Level Domains
- ccTLD registry agreements
- IP Address registry agreements
- Root server operator agreements

Structure of ICANN

ICANN Board of Directors

At Large Directors:

- **Karl Auerbach (USA)**
- **Ivan Moura Campos (Brazil)**
- **Frank Fitzsimmons (USA)**
- **Masanobu Katoh (Japan)**
- **Hans Kraaijenbrink (Netherlands)**
- **Andy Mueller-Maguhn (Germany)**
- **Jun Murai (Japan)**
- **Nii Quaynor (Ghana)**
- **Linda S. Wilson (USA)**

ASO Directors:

- **Rob Blokzijl (Netherlands)**
- **Ken Fockler (Canada)**
- **Sang-Hyun Kyong (Korea)**

DNSO Directors:

- **Amadeu Abril i Abril (Spain)**
- **Jonathan Cohen (Canada)**
- **Alejandro Pisanty (Mexico)**

PSO Directors:

- **Helmut Schink (Germany)**
- **Vint Cerf (USA) (Chairman)**
- **Phil Davidson (U.K.)**

At Large Membership

- Open to any individual with verifiable name, email address, physical address
- Free to join and to vote
- At Large members cast votes for 5 ICANN Directors in October, 2000 (election by geographic region)
- Paths to ballot: Nominations committee + member-nomination
- 6-month study period to follow
- Membership Implementation Task Force
- See http://members.icann.org

Why At-Large Directors?

- Accountability
- Transparency
- Representation
  - Geographic
  - Sectoral
- Diversity of views
- Distributed architecture of selection

ICANN Staff

New Model: Lightweight
     (minimal staff = minimal bureaucracy)

Current Staff:

- President and CEO (Mike Roberts)
- Vice President/General Counsel (Louis Touton)
- Chief Policy Officer/CFO (Andrew McLaughlin)
- Registrar Liaison (Dan Halloran)
- IANA staff (Joyce Reynolds, Michelle Schipper, Bill Huang, Lauren Graham)
- Office Manager (Diane Schroeder)
- Network Administrator (Jim Villaruz)
- Technical Advisor (Suzanne Woolf)

ICANN = Cybergovernment?

A: NO!

- ICANN has no inherent coercive power, only the ability to enter into contractual relationships through a process of consensus & consent

- ICANN is not a substitute for the powers of governments (i.e. courts and laws)

Does ICANN regulate?

- ## No: ICANN <u>coordinates</u>.
- **But**: technical coordination of unique values sometimes requires accounting for non-technical policy interests:
  - Data privacy protection
    - (WHOIS database)
  - Intellectual property/trademark law
    - (UDRP)
  - Competition law
    - (Registrar accreditation for .com, .net, .org)

What ICANN doesn't do

- Network security
- Spam
- Web Sites' Data Privacy Practices
- Censorship & speech restrictions
- Internet Content
  - Pornography
  - Hate speech
  - Copyright violations
  - Deceptive business practices / consumer protection
- Multi-jurisdictional commercial disputes
- Definition of technical standards
  - Network surveillance and traceability
- Internet gambling

What ICANN is NOT

- Technical Standard-Setting Body
- Internet Police Force
- Consumer Protection Agency
- Economic Development Agency
- Legislature or Court

Lessons from the Experiment?

- **Private-sector self-management is possible, if narrowly chartered**
- **Global consensus on policy is difficult to define; even harder to achieve**
  - Consensus is a tradition in the technical community in which ICANN is rooted, because one can test solutions & refer to objective data
  - Consensus on policy questions can be elusive, because it depends upon subjective values

New TLDs: the Process

- White Paper: ICANN to "oversee policy for determining the circumstances under which new TLDs are added to the root system"
- 30 April 1999: WIPO Report recommends conditions for new TLDs; referred to ICANN DNSO
- 25 June 1999: Working Groups B & C established
- March/April/May 2000: Working Groups B & C report

New TLDs: the Process

- April/May 2000: DNSO Names Council makes recommendations under which new TLDs would be introduced in "measured and responsible manner":
  - "a limited number of new top-level domains [should] be introduced initially and . . . the future introduction of additional top-level domains [should] be done only after careful evaluation of the initial introduction"
  - "several types of domains should be considered in the initial introduction"
  - promote competition in the domain-name registration business at the registry and registrar levels
  - roll-out must not jeopardize the stability of the Internet

New TLDs: the Process

- 16 July 2000: ICANN Board adopts DNSO recommendations; directs ICANN staff to implement
- 15 August 2000: Application materials and selection criteria published
- 2 October 2000: 44 complete applications received (100+ TLDs)
- Public comment & neutral evaluation team
- 15 November 2000: Public comment forum

New TLDs: the Results

- Seven new TLD proposals selected:
  - .aero – for use of air transportation industry
  - .biz – for use by businesses generally
  - .coop – for use by cooperatives
  - .info – for unrestricted use
  - .museum – for use by museums
  - .name – for personal web sites and other personal uses
  - .pro – for uses by accountants, doctors, and lawyers

New TLDs: Next Steps

- Negotiations with selected applicants
  - Goal to complete by 31 December 2000
- Implementation beginning 2Q 2001

UDRP

- Began operation 1 December 2000
- Administration handled by 4 dispute-resolution service providers
- Over 100 panelists hear and decide cases
- 2234 proceedings filed
- 1486 decisions
- 222 settlements

UDRP Review

- To be conducted by DNSO
- Some possible topics:
    - Additional guidance to panelists
    - Choice of law
    - Provider/panelist selection
    - Adjustment of time periods, other procedural revisions
    - Multilingual domain names

Other Intellectual Property Topics

- Start-up of New TLDs
- Whois enhancements
- Second WIPO Domain-Name Process
  - personal names
  - International Nonproprietary Names (INNs) for Pharmaceutical Substances
  - names of international intergovernmental organizations (such as the United Nations)
  - geographical indications, indications of source or geographical terms
  - tradenames

Other Technology-Law Topics

Although ICANN is not responsible for social values, its policies take into account laws relating to:

- Competitive access/non-proprietary technology

- Online privacy

- Free expression on the Internet

- Secure digital commerce

For Further Information:

Louis Touton

<touton@icann.org>

http://www.icann.org