

## **STATEMENT OPPOSING POLITICAL INTERVENTION IN THE INTERNET'S CORE TECHNICAL ADMINISTRATIVE FUNCTIONS**

Internet Governance Project  
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The partners of the Internet Governance Project, along with the undersigned civil society groups and individuals, wish to express their concern over the August 11, 2005 request by the U.S. Department of Commerce's National Telecommunications and Information Administration (NTIA) to delay, and possibly deny, a gTLD delegation decision by ICANN's Board. The intervention by the NTIA raises important issues regarding the appropriate role of governments in the global administration of the Internet.

In 1998, governance of the domain name system (DNS) was given to a private, nonprofit corporation (ICANN). This policy was intended to keep the Internet's core coordinating functions free from national politics, geopolitical rivalries and territorial jurisdiction. Governance was globalized by delegating responsibility to the world's technical experts, civil society organizations and the private sector – while avoiding a traditional treaty-based intergovernmental organization. As a logical extension of that policy, the influence of governments in ICANN was deliberately minimized.

From the beginning, however, the special status of the United States government was inconsistent with the underlying policy. As the contracting authority for ICANN, the U.S. is in a position to strongly influence its management. It also possesses the unilateral right to approve modifications to the DNS root zone file. By insisting on retaining this unilateral oversight authority, the U.S. encouraged other states to assert equal sovereign rights to oversee Internet governance. These concerns about the U.S. government's special authority, however, were met with assurances from the U.S. and from ICANN that it would never be used to shape policy but was only a means of protecting the stability of the organization and its processes.

The NTIA's recent intervention in the .xxx proceeding undermines those assurances. It calls into question the neutrality of the U.S. government's special authority over ICANN. Whether intended or not, this intervention has the potential to become a turning point in the history of Internet governance.

Concern about the US intervention is particularly strong in this case because of the open acknowledgement in the NTIA's letter of the influence of an organized campaign by domestic religious groups devoted to content regulation of the Internet.

We are well aware that other governments had also expressed opposition to the .xxx domain. But there was no motion for a delay by ICANN or its Governmental Advisory Council until after the NTIA sent its letter. And while some of the governments' opposition may have been sincerely grounded in cultural and moral concerns, we fear that others saw in the connection to explicit sexual content an opportunity to embarrass and discredit ICANN and the U.S. government.

This incident therefore underscores precisely the kind of danger that led to bipartisan support for a private-sector approach to DNS administration originally: the danger that the policies governing the Internet's core coordinating functions would become destabilized, paralyzed or overly restrictive because of exposure to geopolitical conflicts among the world's nation-states.

We acknowledge the existence of legitimate demands for revising the oversight relationship between governments and ICANN. The Internet Governance Project has been on record for some time as stating that oversight relying exclusively on the U.S. government was divisive and unsustainable. An ad hoc, last-minute intervention around .xxx, however, is not the right way to initiate constructive changes. By setting a precedent for hasty governmental intervention, the .xxx decision has the potential to set in motion ill-advised long-term changes in ICANN's oversight structure.

We believe that censorship and content regulation should be avoided whenever possible; when perceived to be necessary it should not be extended into the global management of the domain name system but remain the province of national-level policies. If there are to be any government-imposed limitations or constraints on the global name space, they should meet the most stringent procedural and substantive standards, such as:

- A well-defined process controlling when and in what form governments are permitted to intervene in the TLD addition process;
- General principles defining what criteria can be used to justify a decision to refuse to permit the addition of a particular name and (equally important) what criteria are *not* admissible
- Very high levels of agreement, or complete consensus, among governments before any veto could be taken.

The transmission of two brief letters to the ICANN Chief Executive three days before a Board meeting, in contrast, does not meet a standard of due process sufficient to reverse an eighteen month process involving the investment of over a million dollars by the private sector applicant.

Our general defense of the ICANN governance model does not mean that we fail to see the deep flaws in ICANN's top level domain addition processes and in its structures of representation and accountability. The new voice and power being given to national governments contrasts sharply with the powerlessness of individual domain name registrants within ICANN, who, despite being the most significant stakeholder in the system, were deprived of their right to vote for ICANN Board members in 2002.

We believe that in nearly all cases the decision to authorize new top level domains should be content-neutral. We have always urged ICANN to add many new top-level domains – to respond to demand and to diminish the economic, political and cultural passions surrounding any one of them. We have also urged it to add TLDs using objective and neutral procedures, such as auctions, lotteries or other objective methods, rather than the “beauty contests” ICANN has relied on so far. ICANN has consistently ignored that advice, and now it is paying the price.

Our response to this development should not be taken as indicative of any of our members' or supporters' position on sexual content or the .xxx domain itself. We do however believe that, contrary to the unsubstantiated claims of certain groups, approval of the .xxx domain will neither increase nor decrease the amount of sexually oriented content on the Internet.

To conclude, this watershed in the evolution of Internet governance creates real dangers, but also opportunities. In reviewing its decision regarding the .xxx delegation, we urge the ICANN Board to be mindful of the future, and of the Internet's legacy of freedom. Its decision must take into account the need to restrain the influence of national politics and content regulation advocacy on the Internet's operation. We urge it not to make any concessions or statements that would encourage more such interventions in the future. We urge the world's governments to take a more deliberative and procedurally sound approach to the reform of ICANN.