

SECRET

**DOMAIN NAME SYSTEM PRIVATIZATION: IS ICANN
OUT OF CONTROL?**

HEARING
BEFORE THE
SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON COMMERCE
HOUSE OF REPRESENTATIVES
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DOMAIN NAME SYSTEM PRIVATIZATION: IS ICANN OUT OF CONTROL?

THURSDAY, JULY 22, 1999

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 11 a.m., in room 2322, Rayburn House Office Building, Hon. Fred Upton (chairman) presiding.

Members present: Representatives Upton, Bilbray, Bryant, Bliley (ex officio), Klink, Stupak, and DeGette.

Also present: Representatives Tauzin, and Pickering.

Staff present: Eric Link, majority counsel; Paul Scolese, majority professional staff; Mike Flood, legislative clerk; and Edith Holleman, minority counsel.

Mr. UPTON. Good morning everyone. One piece of housekeeping before we get started. I want to acknowledge and thank the Berkman Center for Internet and Society at Harvard Law School for carrying today's proceeding live over the Internet.

While the Berkman Center has an ongoing relationship with one of today's principle witnesses, the Internet Corporation For Assigned Names and Numbers, or ICANN, I have received assurances that the funding for Berkman's presence here today is being provided directly by Harvard University.

I might also add that this hearing is also being webcasted on the committee's website. I hope that many Internet users take advantage of this opportunity to listen in on the subcommittee's proceedings.

Today the subcommittee will examine the administration's efforts to transfer control of the Internet domain name system from the public sector to the private sector. This transition is important because the domain name system is a critical component of the Internet that routes all Internet traffic and allows users to locate websites and ensure e-mail is properly sent and hopefully received.

As such, it plays a vital role in the stability of the Internet. Under the direction of a 1997 Presidential Directive, the Department of Commerce moved to end the Federal Government's role in the DNS. To achieve this, the Department of Commerce released a series of proposals. The Department of Commerce's final proposal, known as the "White Paper," outlined the transfer of many of the DNS management functions to a private not-for-profit corporation.

This corporation was to be created by the Internet community at large through a consensus-building process. Ultimately, ICANN was selected and recognized as this not-for-profit corporation by Commerce in October 1998.

Many of the current DNS functions, such as registering .com, .net, and .org domain names are carried out by Network Solutions, Inc. or NSI. NSI carries out these functions under an exclusive cooperative agreement with the Department of Commerce.

NSI signed this cooperative agreement with the National Science Foundation in 1993. NSF managed this cooperative agreement until it was transferred to Commerce in September 1998. The Committee on Commerce gained direct jurisdiction of this issue when NSF transferred the cooperative agreement to the Department of Commerce in September 1998.

In October 1998, Chairman Bliley began reviewing the administration's selection of ICANN, how it was formed, and the selection of ICANN's board members. During the course of today's hearing, I think you will come to see that these questions are just as relevant today as they were last fall. The Department of Commerce recognized ICANN in November 1998 as the private sector body who would assume responsibility for the management of the domain name system. In the 8 months that have passed since then, ICANN has attempted to start filling its obligations to the administration.

Most notably, ICANN is responsible for introducing competition into the registration of domain names. Introducing competition in this area requires the cooperation of NSI, since under its agreement with the Department of Commerce, NSI maintains the authoritative registry of domain names.

Competition for Internet domain name registration currently is in a test period, with three competitors offering registration services, and two others soon to follow. Today we will hear from 3 of the 5 test-bed registrars.

Recently some problems have developed in the transfer of the domain name system from the public sector to the private sector. For instance, the test-bed period for competitive registrars has been extended several times. Also, NSI and ICANN have been unable to reach an agreement addressing the transfer of fundamental responsibilities relating to Internet management. This impasse needs to be addressed before the administration's transfer plan can go much further.

Finally, many observers have taken issue with several decisions made by ICANN's unelected interim board of directors, including their decision to hold portions of their meetings in private, as well as the imposition of a \$1 per domain name fee. However, following an inquiry by Chairman Bliley regarding these practices, ICANN announced that it was suspending both until further notice.

Today's hearing will provide an opportunity to explore the present state of the domain name system's transition, and evaluate whether the administration's plan, as it is currently being implemented, may benefit or threaten the Internet.

In addition to hearing from the three principal players in this situation, the Department of Commerce, ICANN and NSI, we also

will be hearing from a variety of interested parties who will share their perspective on the present situation.

I thank all of today's witnesses for testifying before this subcommittee on a matter that I am sure will take on increasing importance. I would note, too, that those in attendance need to move from the back wall, or else you will be asked to leave. So, if you can spread out a little so we can shut that door, it will be helpful.

I yield at this time my ranking member and friend, Mr. Klink. [The prepared statement of Hon. Fred Upton follows:]

PREPARED STATEMENT OF HON. FRED UPTON, CHAIRMAN, SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS

One piece of housekeeping before we get started today. I want to acknowledge and thank the Berkman Center for Internet and Society at Harvard Law School for carrying today's proceedings live over the Internet. While the Berkman Center has an ongoing relationship with one of today's principal witnesses, the Internet Corporation for Assigned Names and Numbers, I have received assurances that the funding for Berkman's presence here today is being provided directly by Harvard University. I might also add that this hearing is also being webcasted on the Committee's website. I hope that many Internet users take advantage of this opportunity to listen in on the Subcommittee's proceedings.

Today the Subcommittee will examine the Administration's efforts to transfer control of the Internet domain name system from the public sector to the private sector. This transition is important because the domain name system is a critical component of the Internet that routes all Internet traffic and allows users to locate websites and ensure e-mail is properly sent. As such, it plays a vital role in the stability of the Internet.

Under the direction of a 1997 Presidential Directive, the Department of Commerce moved to end the Federal government's role in the DNS. To achieve this, the Department of Commerce released a series of proposals. The Department of Commerce's final proposal known as the "White Paper"—outlined the transfer of many of the DNS management functions to a private, not-for-profit corporation. This corporation was to be created by the Internet community at large through a consensus-building process. Ultimately, the Internet Corporation for Assigned Names and Numbers—or ICANN ("eye-can")—was selected and recognized as this not-for-profit corporation by the Department of Commerce in October 1998.

Many of the current DNS functions, such as registering com, net and org domain names are carried out by Network Solutions, Inc.—or NSI. NSI carries out these functions under an exclusive cooperative agreement with the Department of Commerce. NSI signed this cooperative agreement with the National Science Foundation in 1993, and the National Science Foundation managed this cooperative agreement until it was transferred to the Department of Commerce in September 1998. The Committee on Commerce gained direct jurisdiction of this issue when National Science Foundation transferred the cooperative agreement to the Department of Commerce in September 1998.

In October 1998, Chairman Bliley began reviewing the Administration's selection of ICANN, how ICANN was formed, and the selection of ICANN's interim board members. During the course of today's hearing, I think you will come to see that these questions are just as relevant today as they were last fall.

The Department of Commerce recognized ICANN in November 1998 as the private sector body who would assume responsibility for the management of the domain name system. In the eight months that have passed since then, ICANN has attempted to start fulfilling its obligations to the Administration. Most notably, ICANN is responsible for introducing competition to the registration of domain names. Introducing competition in this area requires the cooperation of NSI, since under its agreement with the Department of Commerce, NSI maintains the authoritative registry of domain names. Competition for Internet domain name registration currently is in a test period, with three competitors offering registration services and two others soon to follow. Today we will hear from three of the five test bed registrars.

Recently, some problems have developed in the transfer of the domain name system from the public sector to the private sector. For instance, the test bed period for competitive registrars has been extended several times. Also, NSI and ICANN have been unable to reach an agreement addressing the transfer of fundamental responsibilities relating to Internet management. This impasse needs to be addressed

If you could summarize it in 5 minutes or less, that would be terrific.

TESTIMONY OF RICHARD D. FORMAN, CHIEF EXECUTIVE OFFICER, REGISTER.COM; KENYON T. STUBBS, CHAIRMAN, EXECUTIVE COMMITTEE, INTERNET COUNCIL OF REGISTRARS; AND JAMES R. BRAMSON, COUNSEL, AMERICA ONLINE, INC.

Mr. FORMAN. Thank you, Mr. Chairman and members of the committee. I appreciate your inviting me to testify because my company and I, personally, are concerned about the rate of transition in the industry as it was laid out in both the White Paper and Amendment 11 to the cooperative agreement.

We are very interested in ensuring that there is fair and equitable governance, and management of the Internet domain name system. As has been discussed today, NSI has maintained exclusive rights for the .com, .net, and .org top level domains up until recently.

ICANN was created with the Internet community and a consensus in order to oversee the management of names. We have benefited from that process. We were the first registrar, the first competitive registrar, to go live along side Network Solutions.

Just to try and give some brief background on the market, many projections are that the market is going to grow over 20-fold over the next 4 years to approximately 32 million new names, 32 million new registrations, for a total market of about 100 domain names by the year 2002, 2003. Competition is going to help fuel that growth.

It is also going to introduce new products and services built around a domain name. We are one of the leading registrars in the world. Our business model is geared toward trying to help small and medium-sized businesses grow, using the Internet, and by putting a domain name to work.

The subcommittee hearing regarding Is ICANN Out of Control, we believe that there are three main issues that frame the issue of ICANN.

One, participation in ICANN's processes by interested parties. What is the progress made to-date and with their fees? In terms of ICANN participation, I think that we all need to demand accountability from ICANN. We have personally been involved with every ICANN meeting. There is an open meeting at every ICANN session where there are public comment periods.

Anyone who can get to the meeting is welcomed to go up to the microphone and testify. If you are unable to make it to a meeting, they have facilitated the Internet to provide remote participation. In fact, in the Singapore meeting where I was unable to attend, I was able to participate in that meeting remotely using Real Audio.

In fact, questions that I had were asked during that session. So, I feel as though ICANN is an inclusive organization that encourages participation worldwide. There are many news groups that are out there. I think that one thing that ICANN can do in order to show that it is very interested and involved in some of the discussions is that it can take a more active role in some of the news groups, rather than just Esther Dyson or Michael Roberts participating.

I think that the entire board would benefit by getting involved in some of the discussions. To-date, we think that ICANN has been very successful. They have accredited 52 post-test bed registrars. That is in a period of, I guess the MOU was signed back in November. So, in a period of about 9 months.

They have authorized 52 registrars. It has taken the U.S. Government about 2 years to put all of these plans together. So, I think that ICANN has moved aggressively to try and deregulate the market. ICANN's solutions are not perfect, but there are open meetings and an open interest in trying to solve those problems.

In terms of their fees, I know that there has been a great deal of controversy over the \$1 fee. It may not be the best solution, but ICANN needs to find some way to recover its operating costs. As discussed in Amendment 11, the fees for ICANN are to be provided by the registry and/or the registrar. So, we are comfortable with that \$1 fee, just as we are obligated to pay Network Solutions a \$9 per name fee.

In terms of competition in the market, we believe that as this market grows and in order to help it grow and mature, we believe that all registrars must be on an equal level. There are two major issues regarding that. No. 1 is the domain name Internet .net and the contractual obligations that exist in this industry.

The data base Internet .net has caused us major problems. Approximately 20 percent of all the customer service requests we get are a function of the fact that NSI controls the domain name Internet .net, which is making it very hard for us to offer our customers service that they demand.

In terms of contractual obligations, we believe that all registrars, including NSI, should be obligated to sign the same contract with ICANN. We believe that the next step for the industry is that the Department of Commerce should be allowed to finish the process that it started out approximately a year ago.

I do believe that there is a substantial risk if the current process is derailed, that foreign governments may not continue to want to ascribe to the U.S. Government's management of Internet domain names. So, I hope that Congress and the committee support the current efforts as a road toward deregulation.

Thank you.

[The prepared statement of Richard D. Forman follows:]

PREPARED STATEMENT OF RICHARD D. FORMAN, CEO, REGISTER.COM

Mr. Chairman, Members of the Committee: It is my pleasure to appear before you today as a representative of register.com, inc. ("register.com"). I commend the Committee for holding this hearing to spotlight the issue of Internet Domain Name System Privatization—an issue of vital importance as the Internet moves into an era of massive growth and increased commercial use.

I appreciate the Committee inviting me to testify because I am concerned about the pace and the process by which the industry is transitioning to a more competitive and open environment. My testimony is organized into the following sections: Overview; Industry and Company Background; ICANN's Process and Procedures; Fair Competition; and Next Steps for the Industry

OVERVIEW

One of the interests of register.com is to ensure fair and equitable governance and management of the Internet's domain naming system. Network Solutions, Inc. ("NSI") (Nasdaq:NSOL) has maintained exclusive rights under a government con-

tract¹ to serve as the sole provider of generic top level domain names ("gTLDs"), primarily with suffixes .com, .org, and .net, since 1992. The majority of domain names that are issued fall under this classification. In April 1999, the Internet Corporation for Assigned Names and Numbers ("ICANN"), a not-for-profit entity recognized by the Department of Commerce to oversee the management of Internet names and addresses, selected register.com as one of five companies worldwide to be a test-bed registrar. My Company, register.com, was the first of these five registrars to successfully begin registering gTLDs alongside Network Solutions, Inc.

By way of introduction, please allow me to present some information about the growth of the Internet marketplace and my Company, register.com.

INDUSTRY AND COMPANY BACKGROUND

The market for domain names is projected to grow at least 20 fold over the next four years, reaching more than 32 million new registrations and achieving revenues in excess of \$2 billion annually by 2002². According to SEC filings by Network Solutions, Inc., new generic top-level domain registrations were averaging approximately 1,000,000 names during the first quarter of 1999. This is a dramatic increase from the average quarterly volumes during previous years. I believe this high level of growth will be sustained as Internet use continues to penetrate all aspects of society and I believe we will see the market grow to over 100 million domain names in the coming years.

The recent introduction of competition by way of new registrars into the industry will facilitate (i) new products and services built around a domain name (ii) improved levels of service and (iii) an acceleration of the overall growth of the market. Register.com currently offers domain name registration services along with technical name services capabilities³, effectively the same service package as NSI, for approximately one-half the price (\$70 for register.com versus \$119 for Network Solutions, Inc.).

My company, register.com, is one of the leading domain name registrars on the Internet. We estimate that we have captured a substantial portion of the global domain name market since launching our registration service. Our business model is geared towards helping small and medium sized companies worldwide establish and grow their business by using the power of the Internet.

Register.com has twice been ranked as a Top 100 Web Site by *PC Magazine*, a Ziff-Davis publication, and we were recently named one of *Fortune Magazine's* Top 25 Products to Watch. The Company has also been featured in numerous publications and news services such as the Wall Street Journal, the New York Times, CNBC, CNNfn, Bloomberg, Fox News and WABC-TV.

"IS ICANN OUT OF CONTROL?": ICANN'S PROCESS AND PROCEDURES

The Committee is meeting to review the facts regarding the transition of the management of Internet names and addresses from the U.S. Government to ICANN, an industry led not-for-profit corporation. The interests of ICANN and NSI will undoubtedly be inconsistent given that ICANN is trying to reduce NSI's monopoly power and create a level playing field for all registrars.

There are three main issues that must be discussed to fully understand the debate:

- Participation in ICANN's process
- Progress made by ICANN
- ICANN's proposed fees

ICANN has achieved widespread recognition and participation from various individuals, interest groups and commercial enterprises worldwide. It has also demonstrated significant progress in deregulating the domain name registration market and created the foundation for a more permanent management structure. Despite some growing pains and a very limited budget, ICANN is indeed moving in the proper direction.

ICANN Participation

Among the criticisms leveled against ICANN has been that board meetings, as well as several organizational and policy development meetings, have been closed. ICANN's board cannot realistically operate and make difficult decisions in an open environment with hundreds of participants. Some of the most vocal critics of ICANN

¹ The Cooperative Agreement originally executed between the National Science Foundation and NSI

² register.com company estimates

³ DNS services

have, in fact, been deeply involved in the process but have been unhappy with the results. We should all demand accountability from ICANN for its decisions and, thus far, the board has showed its responsibility in this regard. While it is true that board meetings are closed, ICANN has fostered widespread participation in the de-regulation process and the changing environment through a variety of means, including the innovative use of technology.

I personally participated remotely (from New York) in one of the ICANN meetings held in Singapore by linking up electronically via the Internet. My comments were duly noted and my questions were indeed asked and answered by the meeting's organizers and attendees, respectively. In fact, to my pleasant surprise, my question sparked a further discussion at the conference.

ICANN's board has also been criticized for their lack of participation in the various Internet domain name related newsgroups. I believe that these members should be more assertive and involved in these newsgroups. Over the past two months alone I have received over 8,000 e-mail messages as a participant in these various groups. Many of these messages come from individuals or businesses that have an interest in the evolving market and want to express their opinions. Periodically, Esther Dyson⁴ and Mike Roberts⁵ contribute to the newsgroups; however, few, if any, of the other board members participate. This lack of participation creates an impression among many of the involved parties, mainly concerned commercial entities and individuals, that ICANN board members do not care or do not appreciate the issues being raised. I do believe that they care, but their lack of participation sends the wrong message.

ICANN Progress

ICANN has been relatively successful in the short time it has been in existence. ICANN grew out of a U.S. Government mandate and the grass roots efforts of many parties, in effect, an industry consensus that was painstakingly reached over a period of years. The White Paper, published by the Department of Commerce, took into account the thinking of the entire industry. In only nine months from inception ICANN has accredited five test bed registrars and 52 post test bed registrars and has introduced competition into the market. At the same time, the Internet community and ICANN conceived of and recognized constituencies to help influence the evolution of the industry. While perhaps not providing perfect solutions, ICANN did indeed reflect workable compromises acceptable to a large majority of the interested parties representing individuals, corporations, industry trade groups and not-for-profit organizations.

ICANN Proposed Fees

There has been considerable controversy over ICANN's proposed \$1.07 fee per registered domain name. Given ICANN's status as a not-for-profit entity, there must be some mechanism for ICANN to recover its operating costs, without which it will be unable to continue its work. Its funding should come from the registry and registrar community as clearly written in Amendment No. 11 to the Cooperative Agreement. I view the proposed \$1.07 fee as part of the cost of doing business similar to the registry fee.

FAIR COMPETITION

As the industry grows and matures, it is becoming increasingly important for the governing bodies to create a level and equal playing field for all registrars. Until a few weeks ago, NSI had maintained a monopoly over domain name registrations. Going forward, NSI, in spite of being a legacy operator, must be obligated to comply with the same terms and conditions as all other registrars. I strongly believe that the following issues will greatly impact the introduction of fair competition into the domain name market:

- *internic.net*
- Contractual obligations
- Prepayment

The internic.net domain name

A key issue in this debate is NSI's claim of ownership to the *internic.net* domain name. *Internic.net* and its corresponding trademark are owned by the U.S. Government. For the past seven years, *internic.net* has been considered a public resource for the entire Internet community. All public documents, programming books, marketing links and pre-programmed computers refer to the government owned

⁴Interim Chairman of ICANN

⁵Interim President & CEO of ICANN

internic.net as the authoritative source for all registration services and domain name registration data. In terms of registration services, NSI has mis-appropriated the *internic.net* domain name and is redirecting traffic to its own registrar site *networksolutions.com*. In doing so, NSI has provided itself with a clear, unfair and unauthorized competitive advantage. In terms of domain name registration data, the *internic.net* database and corresponding WHOIS⁶ services now refer only to domain names registered by NSI, not to those of any other registrars. NSI has thereby caused confusion for consumers, ISPs and many other industry players.

A significant number of customer service issues my Company handles are caused by this issue alone. Twenty percent of all customer inquiries we have received since the launch of our service have been about this issue. Following is a recent example of customer inquiry to my Company regarding this confusion:

"I registered my domain name with register.com very soon after they became able to handle such registrations themselves. I found their service to be very good. The one problem I had is that while their site showed my domain in their whois directory immediately, if you searched through Network Solutions (which is where you get if you start with Internic), they did not show it. Thus, we had problems for our first week with some smaller ISPs not showing our site at all (and blaming it on this directory problem) and (at first) even our web host being leery of this new procedure. However, everything seems to be straightened out now, and I would hope this procedure will get smoother as we go along."

Contractual Obligations

An inequity among registrars revolves around the ICANN accreditation agreement, which all accredited registrars are obligated to sign. The 57 accredited registrars have already signed or have agreed to sign this agreement. To date, NSI has refused to do so, asserting that it does not agree with ICANN's terms. It is imperative, however, that all registrars, including NSI, work under the same contractual rules and obligations.

Prepayment

A major requirement incorporated in the ICANN agreement is that "registrars shall not activate any registration unless and until it is satisfied that it has received payment of its registration fee." I support this prepayment requirement and believe it will control cybersquatting (registering names with the intent to sell them for a much higher price) among abusive registrants who can register, at no cost, a domain name that infringes another party's trademark rights. NSI, because it has not yet signed the ICANN contract, does not require pre-payment. As a result, NSI can give better payment terms to its own resellers (not requiring prepayment from them) thereby giving NSI a significant and unfair competitive advantage over other registrars who are playing by the rules laid out by ICANN.

NEXT STEPS FOR THE INDUSTRY

Mr. Chairman, the process laid out in the White Paper, including the recognition and authorization of ICANN, was intended to create competition in the generic domain name space and to transition the management of Internet names from the U.S. Government to a neutral, not-for-profit, industry developed third party. While we have made great strides, the Department of Commerce must be allowed to finish the deregulation process they have begun. NSI must formally recognize ICANN and its authority. Without such action, the entire process and the further growth, development and stability of the Internet may be in jeopardy.

By empowering the Department of Commerce to authorize ICANN to take responsibility for transitioning the management of Internet names and addresses from the government to industry, the U.S. Government is allowing the Internet to grow and mature into a global resource. If, however, this Committee delays or impedes the process, rather than supporting and correcting its minor flaws, I fear that the U.S. will lose the competitive and economic edge it currently has in the Internet space. For the benefit of the U.S. interests, I believe we should follow our present course, which will accelerate deregulation, innovation and competition.

Mr. Chairman, Members of the Committee—it has been my pleasure to share my thoughts on this subject with you today. I hope it is clear that I have both a professional and personal interest in this vital issue.

Thank you for the opportunity to speak with you today.

Mr. UPTON. Thank you. Mr. Stubbs.

⁶WHOIS is a term that describes both a program and a database used to look up domain name registration information