Staying the Course on Internet Privatization
Comments on ICANN Reform [1]

May 31, 2002

The ICANN board and staff are currently considering major changes to the design of ICANN. These changes were first proposed in President Stuart Lynn’s February Report (the “Lynn Proposal”) [2] and are being elaborated by the ICANN Committee on Evolution and Reform [3,4,5,6].

Computer Professionals for Social Responsibility (CPSR) is the oldest non-profit, mass membership organization working on social impacts of computer technology. CPSR’s Civil Society Democracy Project (CivSoc) has been an active participant in Internet privatization since before the launch of ICANN. CivSoc offers the following comments to ICANN on reform.

• The Lynn Proposal would redefine US policy for Internet privatization. However, such policy redefinition is outside the scope of ICANN’s authority. Modification to the terms of the 1998 Internet privatization should be made by the US Department of Commerce (DoC), in consultation with other parties (including other governments.)

• ICANN does exercise policy authority in DNS matters. While the appropriate breadth of its policy-making power is an object of considerable debate, the fact that it makes policy is no longer contested -- even by ICANN [4]. This exercise of policy-making power creates the need for legitimacy.

• ICANN has not fulfilled the conditions of the 1998 Internet privatization. In particular, ICANN still lacks the required degree of user representation on its Board. Industry control of the ICANN board has created a legitimacy deficit.

• The main mechanism for legitimacy in ICANN has been the election of user representatives to serve as At Large Directors. The Lynn proposal rejects this mechanism. However, elections were successfully conducted in 2000. Moreover, the use of elections to select At Large Directors has been explicitly endorsed by:
  o the European Commission’s Christopher Wilkinson [7]
  o former ICANN Chair Esther Dyson [8]
  o former Swedish Prime Minister Carl Bildt [8]
  o Carter Center official Charles Costello [8]
  o Numerous academic studies [9, 10]
  o Numerous public interest groups [11,12]

• Problems with the At Large elections may have their source more in the opposition of the ICANN staff than from the inherent difficulties of conducting elections. A good faith effort to hold elections again would likely yield even better processes than in 2000.

• The keyword for the Lynn Proposal is “effectiveness.” By that is meant that ICANN should significantly reduce its emphasis on procedural safeguards (legitimacy) and be empowered to act in a more direct and unfettered manner. The Lynn Proposal recommends that ICANN become a more centralized authority with reduced
accountability to outside entities and should be able to impose contracts on registries and other parties and to call on national governments for enforcement. This call for centralized authority with strong power of enforcement is a dramatic departure from established Internet practices of decentralized management and voluntary cooperation.

- The Lynn Proposal’s inclusion of governments in ICANN seems as much motivated by a need for assistance in enforcement as by a concern for the public interest. Greater enforcement powers of ICANN policies by national governments would be a dramatic departure from established Internet practices.

- The ICANN Committee on Evolution and Reform has introduced the term “the ICANN community” where the previous term of reference was “the Internet community” [6]. This manifests a significant narrowing of the vision of input and accountability within ICANN.

- The recently announced resignations of top ICANN staff raise the specter of a sharp drop in organizational effectiveness [13]. The combination of staff turnover and major restructuring could introduce so much simultaneous change into ICANN that it cannot function effectively. ICANN faces a near-term risk of destabilization.

- The Department of Commerce faces a number of choices:
  - DoC could allow ICANN to pursue its current course of redefining itself and of redefining Internet privatization generally. That puts US policy-making in the hands of the private groups on the ICANN board and leaves open the risk of organizational destabilization.
  - DoC could use the upcoming expiration of its ICANN agreements to revise US policy on privatization. Revising the various the ICANN-related agreements (be they MoUs, contracts, or procurements) would allow for an appropriate policy-making process, i.e. a process under the authority of the DoC. A revised Internet privatization policy might embody part or all of the Lynn Proposal. Alternately, it might employ more market mechanisms (as recommended by New.Net [14]) or might seek greater involvement by international treaty organizations (as recommended by the International Telecommunications Union [15]). In any case, the US government and not ICANN would oversee the policy-making process.
  - Alternately, the DoC could stay the course. DoC could reaffirm the terms of the 1998 Internet privatization and require ICANN to implement that policy. In particular, DoC could move ICANN to quickly implement At Large elections, thereby settling a contentious issue that has consumed much of the organization’s attention. As noted above, this would be consistent with recommendations of the European Commission’s leading official in this area and by ICANN’s At Large Study Committee [7,8].

- CPSR’s CivSoc recommends that last option:
  - DoC should stay the course. It should work closely with ICANN to fully implement the original 1998 Internet privatization policy. That policy addressed the inescapable need for legitimacy in ICANN with a mechanism that proved workable in 2000: elections. By avoiding a major restructuring, DoC also avoids the destabilizing combination of organizational change and staff turnover. Finally, by staying with the original privatization policy, DoC would uphold the Internet traditions of private, voluntary, and decentralized management.
  - DoC should use all available means to gain ICANN’s commitment to implement the founding agreements of 1998.
  - ICANN should cooperate with DoC in this process.
References

[1] This document is available online at
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