

**Before the Senate Committee on Commerce, Science & Transportation  
Subcommittee on Trade, Tourism, and Economic Development  
United States Senate**

**Hearing on “Internet Governance: The Future of ICANN”**

**Statement of Christine N. Jones  
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## **Introduction**

Good morning Mr. Chairman and Members of the Committee. I am Christine Jones, General Counsel and Corporate Secretary of The Go Daddy Group, Inc.

First, I would like to thank you, Chairman Smith, for the kind invitation to testify today regarding Internet governance and the future of the Internet Corporation for Assigned Names and Numbers (ICANN). We are thankful for your attention to this important issue and for recognizing that the Internet is a resource significant enough to deserve the attention of the United States Senate. We agree that its secure future is paramount to the overall success of our economy, and that of the global community, as well. The future of ICANN rests with the public that it was formed to benefit. That community's confidence in ICANN has been shaken by the lack of openness and transparency; by the apparent unwillingness of the ICANN Board of Directors to be accountable to anyone but itself; and, the giant step backwards that is now being taken by the introduction of anti-competitive registry agreements that threaten to undo what progress has been made.

The Memorandum of Understanding between ICANN and the Department of Commerce should be extended and modified to stress the need to correct these deficiencies and require a clear roadmap from ICANN as to how it will regain the confidence of the community upon which its existence relies. This Committee's commitment to ensuring ICANN appropriately administer that system is vital.

## **Background**

The Go Daddy Group, Inc. consists of eight ICANN Accredited registrars, including GoDaddy.com. When I joined Go Daddy in early 2002, it was a very small registrar with well under 100 employees. Today, we have over fifteen million domain names under management, and are the number one registrar in the world. That means we register a domain name once every three seconds or less. Go Daddy is also the largest provider of hostnames in the world today. We currently employ over 1200 people and do not utilize offshore outsourcing of any kind.

The Go Daddy Group devotes considerable time and resources to working with law enforcement on preserving the integrity and safety of the Internet by quickly closing down websites and domain names engaged in illegal activities. We work with law enforcement agencies at all levels and routinely assist in a wide variety of criminal and civil investigations. We are also quick to respond to complaints of spam, phishing, pharming, and online fraud and work closely with anti-fraud and security groups such as the Anti-Phishing Working Group, Digital Phish Net, the National Center for Missing and Exploited Children, and CyberTipLine. I personally, and the company in general, have made it a high priority to use our position as a registrar to make the Internet a better and safer place.

The Go Daddy Group has been an active supporter of ICANN processes for over five years. We continue to believe in the validity of the transition of management of the Internet Domain Naming System (DNS) to the private sector, but we have serious concerns regarding the progress of that transition to ICANN.

The *DNS White Paper*, first published in 1998, articulated that principles of accountability, competition, private, bottom-up coordination, and representation are necessary for guiding the transition to private sector management of the Internet DNS. We believe those principles remain relevant, but our testimony will explain why we also believe those principles have not yet been fully accomplished by ICANN, and why the events of the last two years bring into question whether ICANN will be able to accomplish them in the future.

### **Competition**

Significant progress has been made in regards to competition at the registrar level. However, that is only half the equation. The .com extension still maintains overwhelming dominance among the generic top level domain (gTLD) registries. In addition, the new form of registry agreement that has been proposed for the .com registry, as well as the other gTLD registries, threatens to further entrench that dominance and even negate competition at the registrar level:

### ***Proposed .com Registry Agreement***

It's important to first understand the current metrics involved with the .com registry:

- According to the monthly registry reports posted on ICANN's website, .com still accounted for 75% of all gTLD registered domain names at the end of 2005, and accounted for over 80% of the growth in the gTLD name space during 2005.
- The number of registered .com domain names is growing at increasing rates year over year. The .com registry increased by over 16% in 2003, over 25% in 2004, and almost 34% in 2005.
- There are over 56 million .com names registered as of the date of this testimony. That represents a 25% growth so far in 2006 and projects to 35% growth for the year, to over 61 million .com domain names.
- If .com just maintains a 34% growth rate over the life of the proposed agreement, it will grow to over 350 million domain names by the end of 2012.
- As a result, the incremental revenue from the 7% price increases in four of the six years as allowed in the proposed agreements will provide VeriSign a windfall of over \$1.8 billion.
- For example, if you go to [www.GoDaddy.com](http://www.GoDaddy.com) and register the domain name [www.ChairmanSmith.com](http://www.ChairmanSmith.com), you would pay a maximum of \$8.95 per year for that domain name registration. Of that \$8.95, by the current .com contract, \$6.00 goes to VeriSign, \$.25 goes to ICANN as a transaction fee, and the balance of it goes to operating expenses and profit for Go Daddy. Taking this example further, if some portion of the current 56 million .com names are renewed, under the proposed agreement, \$6.00 would still go to VeriSign, plus an automatic increase of 7% in four out of the next six years, an increase without price justification. This is an extraordinary profit and these are just the renewals.

Of course, that windfall will come at the expense of consumers. The increasing costs of .com will result in a leveling effect of .com retail prices. At the same time, it provides VeriSign a marketing fund of gigantic proportions in comparison to its so-called competitors. As a public company with a fiduciary responsibility to its shareholders,

VeriSign will no doubt use these funds to market and innovate at a level with which other gTLDs will not be able to compete. Given the market power that .com continues to hold, allowing VeriSign this windfall is inappropriate for an organization committed to the promotion of competition.

The form of presumptive renewal in the proposed .com agreement is also anti-competitive. It substantially allows a perpetual agreement unless VeriSign breaches its agreement AND fails to cure. It even allows for repeated breaches with only monetary fines as the penalty. This form of renewal eliminates the possibility that .com could ever be re-bid to allow true market mechanisms to set the price for .com. It is important to note that when the .net contract was re-bid, it resulted in a price reduction of over 28%, from \$6.00 per .net domain name to \$3.50, a price appropriate to then existing market conditions.

In addition, this form of presumptive renewal leaves no way ICANN can ever decide to re-bid .com based on VeriSign's performance as a steward of the .com name space. Note the four conditions below (emphasis ours) under which ICANN could decide not to renew .com under Section 25.B of the current agreement. They no longer exist in the proposed COM agreement.

Registry Operator shall be awarded a four-year renewal term **unless ICANN demonstrates that:** (a) Registry Operator is in material breach of this Registry Agreement, (b) **Registry Operator has not provided and will not provide a substantial service to the Internet community** in its performance under this Registry Agreement, (c) **Registry Operator is not qualified to operate the Registry TLD during the renewal term**, or (d) the maximum price for initial and renewal registrations proposed in the Renewal Proposal exceeds the price permitted under Section 22 of this Registry Agreement.

Removing the above requirements is particularly alarming given that under the proposed agreement, VeriSign is not required to make infrastructure investments or demonstrate

that such investments are being made. What are they going to do with the \$1.8 billion windfall? How do they intend to accommodate the projected growth of the .com name space to over 350 million domain names, an increase of almost 600% over the life of the proposed agreement? It is a serious mistake on the part of ICANN to not ensure that appropriate investments in infrastructure will be made, especially considering their overall mission of the security and stability of the Internet. The .com name space is too important to simply assume that a wide open presumptive renewal is enough incentive for the registry operator to make appropriate investments. The proposed .com agreement must, therefore, be refined before it is approved by the NTIA.

### ***Future of new gTLDs***

We believe an effective and objective process for introducing new gTLDs is another important change that needs to take place to increase competition at the registry level. In fact, that is one of the specific tasks set out in section II.C. of Amendment 6 of the Memorandum of Understanding under which ICANN currently operates with the Department of Commerce.:

8. Continue the process of implementing new top level domains (TLDs), which process shall include consideration and evaluation of:
  - a. The potential impact of new TLDs on the Internet root server system and Internet stability;
  - b. The creation and implementation of selection criteria for new and existing TLD registries, including public explanation of the process, selection criteria, and the rationale for selection decisions;
  - c. Potential consumer benefits/costs associated with establishing a competitive environment for TLD registries; and,
  - d. Recommendations from expert advisory panels, bodies, agencies, or organizations regarding economic, competition, trademark, and intellectual property issues.

Define and implement a predictable strategy for selecting new TLDs using straightforward, transparent, and objective procedures that preserve the stability of the Internet (strategy development to be completed by September 30, 2004 and implementation to commence by December 31, 2004).

A successful process for new gTLDs is an important element for introducing competition into the gTLD space. The trickle of new gTLDs we have seen so far has done little to change the market power that .com has maintained since before the initial publication of the *DNS White Paper* in 1998.

The Policy Development Process that will ultimately recommend a process to fulfill the principles stated in task 8 above was initiated by the Generic Names Supporting Organization (GNSO) early in December 2005. The current timeline calls for these recommendations to be presented to the ICANN Board of Directors at the end of this year, a best case scenario. It will be well into 2007 before the evaluation of the success of any resultant process could even begin to be undertaken.

We believe fulfillment of this task is crucial to the future of ICANN and believe it important not to complete the transition of the management of the Internet DNS until a successful and sustainable process for the introduction of new gTLD is firmly in place.

Competition exists at the registrar level only. The .com name space continues to overwhelmingly dominate the gTLD domain name market. The anti-competitive form of registry agreements being contemplated by ICANN and the DOC could very well threaten existing competition even at the registrar level. Promoting competition, and doing so successfully, needs to remain a core task for ICANN if it is to maintain the support of the public it has been formed to benefit.

### **Private, Bottom-up Coordination, and Representation**

- The principles of private, bottom-up coordination, and representation cannot be fully realized without ICANN's commitment to openness, transparency, and

accountability. ICANN is responsible for an important public trust. To succeed, it is vital that all stakeholders have access to those processes;

- Fully understand the reasons for ICANN’s decisions as a result of those processes;
- And have effective and unbiased recourse if they have reason to question those processes and decisions.

Indeed, ICANN’s own bylaws state: “ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness,” and “In carrying out its mission as set out in these Bylaws, ICANN should be accountable to the community for operating in a manner that is consistent with these Bylaws.”

ICANN’s Articles of Incorporation state that ICANN is a nonprofit public benefit corporation and is not organized for the private gain of any person. As such, Directors are bound in the bylaws to act in the best interests of that public benefit and to do so in an open and transparent manner.

However, a number of examples over the last few years demonstrate the failure of the ICANN Board and Staff to follow through on these obligations.

### ***The .net Registry Agreement***

The registry agreement that resulted from the .net re-bid was executed by ICANN before the final draft was posted for public comment. This agreement represented a significant shift in ICANN’s policy regarding the management of the gTLD DNS and name space. The public that ICANN’s actions supposedly benefited cried out loud and hard about these policy changes without due process within the community. The community pointed out several problems with the agreement that they believed benefited only the registry and ICANN’s corporate structure at the community’s expense. Ultimately, some minor compromises were agreed to by the winning registry, and the ICANN Board publicly apologized and committed to do better.

### ***The .com Registry Agreement and Law Suit Settlement***

The ICANN Board's idea of doing better was posting a notice that it had reached a settlement agreement with VeriSign to end a long standing law suit. While it is true that ICANN posted the settlement agreement for public comment, there had been no prior indication of what ICANN was doing in this regard, or that it again was considering changes in long understood policy in order to settle the suit. In fact, these policy changes were the exact same ones that the community had complained about in regards to the .net registry agreement.

Once again, as this Committee well knows, the community that ICANN was supposedly benefiting by this settlement made its displeasure known loud and clear, especially in regards to the unexpected and early renewal of .com registry agreement that was part of the settlement. Ultimately, minor changes to the .com registry agreement were agreed to by ICANN and VeriSign. These changes did little to address the overwhelming concerns of the Internet community. Once again, ICANN chose to benefit itself at the expense of the public as a whole.

### ***Other Registry Agreements***

Most recently, the ICANN Board posted proposed new agreements (not renewals) to the .biz, .info, and .org registry operator agreements. Once again, there was no prior notice that, despite the previous outrage expressed by the Internet community regarding the .com and .net agreements, the ICANN Board was going to implement the exact same policy changes in all new gTLD DNS and name space management agreements. This belies ICANN's promise to do better and is in direct contravention to their obligation to operate an open and transparent manner. in

This fact is even more serious as it relates to these proposed new agreements. After the .net and .com agreement fiascos, the Generic Name Supporting Organization (GNSO), which was appointed by ICANN's bylaws for the specific purpose of recommending policy regarding the gTLD DNS and name space, initiated a Policy Development Process (PDP) to address the concerns raised by the community. It now appears that the ICANN

Board of Directors no longer believes it is bound by its own bylaws and is moving ahead without waiting for the outcome of the GNSO's PDP findings. This is yet another poignant example of why the Department of Commerce must maintain control over ICANN, even after the current Memorandum of Understanding expires on September 30, 2006.

***Lack of Appropriate Accountability and Review Mechanisms***

All of the above is exacerbated by the fact there are no appropriate accountability mechanisms in place to impartially review ICANN Board actions. There are currently two accountability and review mechanisms defined in ICANN's bylaws:

- Reconsideration – This is basically the Board reviewing itself. The criteria the process calls for is restrictive and not useful for most instances where affected stakeholders question an action of the Board. In addition, the fact that transcripts or recordings of Board meetings have never been made available make it difficult if not impossible for those affected by Board actions to effectively evaluate whether their concerns or questions meet the criteria of the bylaws.
- Independent Review – This mechanism is entirely untested and has never been used.

We also invite you to visit ICANN's website and see if you can discover how to take advantage of either of these accountability mechanisms. It is next to impossible to find anything of substance about how to file either a Reconsider Request or a Request for Independent Review, or even who the Independent Review agent actually is.

We believe there needs to be an independent evaluation of how these accountability mechanisms have worked, or will work, and the implementation of any adjustments recommended as a result of that evaluation should be undertaken before any final transition can be contemplated.

The interests and support of the community ICANN is supposed to benefit is shifting. The World Summit on the Information Society (WSIS) and the resultant Internet Governance Forum (IGF) is an outcome of that shift. These failures on the part of ICANN to adhere to the principles espoused in its own bylaws and Articles of Incorporation are accelerating that shift. It is clear that ICANN's Memorandum of Understanding with the Department of Commerce must be extended and modified. Openness and transparency are only hinted at in the current Memorandum of Understanding. We believe the Memorandum of Understanding should be revised to include openness and transparency as overall guiding principles if we are to ever see an effective transition of the Internet DNS management to the private sector through ICANN.

### **Conclusion**

The future of ICANN rests with the public that it was formed to benefit. That community's confidence in ICANN has been shaken by the lack of openness and transparency; by the apparent lack of the ICANN Board of Directors to be accountable to anyone but itself, and the giant step backwards that is now being taken by the introduction of anti-competitive registry agreements that threaten to undo what progress has been made.

The Memorandum of Understanding between the Department of Commerce and ICANN should be extended and modified to stress the need to correct these deficiencies and require a clear roadmap from ICANN as to how it will regain the confidence of the community upon which its existence relies.

Thank you again, Mr. Chairman, for the opportunity to be heard on these important issues. Your commitment, and the commitment of the Members of this Committee, to bringing attention to issues impacting the future of the Internet is sincerely appreciated. I would be happy to answer any questions you may have.