

February 2008

# **ETNO Reflection Document in Response to the Notice of Inquiry from the United States Department of Commerce on the Midterm Review of the Joint Project Agreement with ICANN**

## **Executive Summary**

ETNO<sup>1</sup> reiterates its strong support to the private multi-stakeholder model ICANN is built on.

ETNO believes that ICANN has made significant progress on meeting the terms of the Joint Project Agreement signed on September 29, 2006.

ICANN has matured as an organisation, and should complete the transition to an International Organisation in its own right.

ETNO asks for ICANN, with input from all stakeholders, to review and agree a timetable so that ICANN can adapt its structure to ensure fair and equitable involvement and representation of, and by, all stakeholders in this new context and so complete its transition. ETNO is confident that ICANN, together with its stakeholders, will meet the requirements of the transition, and will actively participate in any evaluation process to ensure that the requirements have been met.

## **1. Introduction**

ETNO welcomes the opportunity to respond to the Request for Comments conducted by the United States Government, Department of Commerce on the midterm review of the Joint Project Agreement with ICANN.

ETNO's primary concern, given the economic potential of ICTs for generating growth, is to disregard any option likely to negatively affect the

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<sup>1</sup> The European Telecommunications Network Operators' Association is representing 41 major companies from 34 European countries, providing electronic communications networks over fixed, mobile or personal communications systems. ETNO's primary purpose is to establish a constructive dialogue between its member companies and actors involved in the development of the European Information Society to the benefit of users. More information on ETNO can be found at: [www.etno.eu](http://www.etno.eu)

global connectivity, security or reliability of the Internet. It is important to maintain a global approach to areas covered by ICANN and to avoid the fragmentation of the Internet.

The purpose of the Joint Project Agreement, in line with the initial 1998 MoU provisions between ICANN and the US Department of Commerce is to transition the Domain Names System and IP addressing management to the private sector<sup>2</sup>.

## 2. Rationale

ETNO reiterates its support to the continued existence of the multi-stakeholder, bottom-up model on which ICANN is built. Given the nature and the dynamics of the Internet, ETNO is of the opinion that this model is the best one to allow adequate and consistent participation of the diverse stakeholders involved in Internet naming and addressing.

The MoU with the United States Government and more recently the Joint Project Agreement signed with ICANN has allowed ICANN to make significant progress to being a mature organisation with clear mission and objectives. In order for the full transition to be completed, ETNO believes that certain remaining issues need to be resolved.

The milestones in the JPA were determined through a process of public engagement and negotiation between the DoC and ICANN management. ETNO notes with satisfaction that the milestones in the JPA were fully accepted by the ICANN Board. We also note that ICANN has made significant progress in working through these issues.

ICANN has made progress on its core mission relating to the strategy for expansion of gTLDs and toward the deployment of Internationalized Domain Names

On IP addressing, ETNO notes that issues related to IP management and IPv4 exhaust were better addressed than before. However, ETNO would not refer to the current situation as satisfactory, as the formal relationship between ICANN and the Regional Internet Registries has not been completed.

During the nine years of its existence, ICANN has been able to adapt itself through reorganisation, to respond to the issues and concerns of its stakeholders. This is a continuing process, and one that needs to be clearly defined for ICANN to complete its transition to a multi-stakeholder bottom up managed organisation.

Instead of mentioning all improvements achieved, ETNO will only point out some significant points of progress over the last two years.

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<sup>2</sup> <http://www.icann.org/general/icann-mou-25nov98.htm>

Significant steps forward were realised in the field of security and stability:

- registry failover plan and best practices,
- registrar data escrow,
- IANA improvement.

Regarding transparency, ETNO cites the improvement of the web site and the publication of news magazine and fact sheets on important issues that facilitate access to information for all stakeholders.

On accountability, the strategic and operational planning processes are now beginning to be well managed in full consultation with stakeholders.

One of the major issues that had to be resolved was the role played by Governments through the Governmental Advisory Committee, specifically regarding the involvement in the Policy Development Process and interaction with other ICANN structures. This is certainly the domain where the most visible progresses have been made, as the GAC is improving its ability to produce principles and policy advice in a timely and coordinated manner with the Policy Development activities. Joint meetings between the GAC and the supporting organisations, have to allow for a better understanding of issues and priorities, although there is still room for improvement and more detailed exchanges to take place.

ICANN has made significant advances in accountability and transparency in the last three years, the relationship between strategic/operational planning and what actually is done by ICANN staff is a key point. ICANN needs to ensure that operational activities and staffing are targeted at the priorities identified by the stakeholders and supporting community -- and not in furtherance of goals identified by ICANN staff and management themselves.

All these examples show significant progress made. Improvement is an ongoing process. Therefore what is essential is to define those areas where ICANN has to improve before it can be an organisation in its own right.

To achieve that goal ICANN must, in conjunction with the participation and agreement of all stakeholders, define and implement clear mechanisms for measuring progress made toward key JPA objectives and implement significant incentives to achieve those additional improvements.

Undertaking a periodic review of ICANN structures is one of the ways to ensure that the existing processes and organisation includes all stakeholders. The processes in support of such reviews need to be better defined, and the manner by which the multi-stakeholder membership of ICANN would, and could, exercise its oversight mandate, fully, be properly defined. The ongoing GNSO review is one of the examples where ETNO expects broadly supported decisions on processes and governance to be made.

Since ICANN's beginning, ETNO has been convinced that network operators are major stakeholders. The Association has actively been participating in ICANN activities and intends to pursue this involvement.

ETNO believes in the principle of fair and equitable involvement of all stakeholders, and that ICANN needs to ensure that the processes are in place to support this principle as it moves towards the completion of the transition. It is essential that the current reform process is concluded in a manner that does not disenfranchise any existing stakeholders.

### **3. Discussion**

An oversight function has previously been justified as a guarantee of stability for the system, from both the economic and the security point of view or as an insurance against a possible drift of the private structure. Such an operational oversight function exercised by a single Government would contradict the Decision made during the WSIS in Tunis<sup>3</sup>, and would be a serious handicap for ICANN to be seen as a International Organisation in its own right for the benefit of the global stakeholders, and to fulfil its mission. The same function from a group of Governments, or intergovernmental body would contradict the initial objective to move ICANN responsibilities to the private sector, and would not appropriately take into account all stakeholders.

We can now consider that ICANN has reached a sufficient maturity so that its strategic orientations and priorities can be defined by a strategic plan elaborated and approved by all the concerned stakeholders.

The way forward is for ICANN to ultimately take responsibility for its own activities. That means to review its organisation, processes, legal status, and to take appropriate measures to ensure, in the long term, that the organisation remains robust, stable and accountable. The criteria which must be met in order for ICANN to fully transition can be expressed as a set of internal mechanisms that reflect fair and equitable stakeholder governance. These must be implemented -- and measures established -- so that the progress made is measurable and that processes and governance exist that make transparency, security, stability, and accountability remain permanent features of the organization.

### **4. Position**

ETNO's position is to urge ICANN, in consultation with its stakeholders to review and adapt its structure and governance, as necessary, before the completion of the transition. ETNO is confident that ICANN, together with its stakeholders, will meet this requirement by the end of the JPA term and will actively contribute to any assessment of whether the requirement has been met.

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<sup>3</sup> Article 68 of WSIS-05/TUNIS/DOC/6(Rev.1)-E