

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE U.S. DEPARTMENT OF COMMERCE
AND
INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS**

This version was created by starting with the November 25, 1998 MOU, making all changes from Amendments 1-6, and incorporating changes from the September 29, 2006 Joint Project Agreement (aka "Amendment 7"). Text from the September 29, 2006 Joint Project Agreement is included in this version of the MOU in blue typeface.

Copies of all documents are available at <http://www.ntia.doc.gov/ntiahome/domainname/icann.htm>

I. PARTIES

This document constitutes an agreement between the U.S. Department of Commerce (DOC or USG) and the Internet Corporation for Assigned Names and Numbers (ICANN), a not-for-profit corporation.

II. PURPOSE

A. Background

On July 1, 1997, as part of the Administration's Framework for Global Electronic Commerce, the President directed the Secretary of Commerce to privatize the management of the domain name system (DNS) in a manner that increases competition and facilitates international participation in its management.

On June 5, 1998, the DOC published its Statement of Policy, Management of Internet Names and Addresses, 63 Fed. Reg. 31741(1998) (Statement of Policy). The Statement of Policy addressed the privatization of the technical management of the DNS in a manner that allows for the development of robust competition in the management of Internet names and addresses. In the Statement of Policy, the DOC stated its intent to enter an agreement with a not-for-profit entity to establish a process to transition current U.S. Government management of the DNS to such an entity based on the principles of stability, competition, bottom-up coordination, and representation.

B. Purpose

Before making a transition to private sector DNS management, the DOC requires assurances that the private sector has the capability and resources to assume the important responsibilities related to the technical management of the DNS. To secure these assurances, the Parties will collaborate on this DNS Project (DNS Project). In the DNS Project, the Parties will jointly design, develop, and test the mechanisms, methods, and procedures that should be in place and the steps necessary to transition management responsibility for DNS functions now performed by, or on behalf of, the U.S. Government to a private-sector not-for-profit entity. Once testing is successfully completed, it is contemplated that management of the DNS will be transitioned to the mechanisms, methods, and procedures designed and developed in the DNS Project.

In the DNS Project, the parties will jointly design, develop, and test the mechanisms, methods, and procedures to carry out the following DNS management functions:

- a. Establishment of policy for and direction of the allocation of IP number blocks;
- b. Oversight of the operation of the authoritative root server system;
- c. Oversight of the policy for determining the circumstances under which new top level domains would be added to the root system;
- d. Coordination of the assignment of other Internet technical parameters as needed to maintain universal connectivity on the Internet; and
- e. Other activities necessary to coordinate the specified DNS management functions, as agreed by the Parties.

The Parties will jointly design, develop, and test the mechanisms, methods, and procedures that will achieve the transition without disrupting the functional operation of the Internet. The Parties will also prepare a joint DNS Project Report that documents the conclusions of the design, development, and testing.

DOC has determined that this project can be done most effectively with the participation of ICANN. ICANN has a stated purpose to perform the described coordinating functions for Internet names and addresses and is the organization that best demonstrated that it can accommodate the broad and diverse interest groups that make up the Internet community.

C. The Principles

The Parties will abide by the following principles:

1. Stability

This Agreement promotes the stability of the Internet and allows the Parties to plan for a deliberate move from the existing structure to a private-sector structure without disruption to the functioning of the DNS. The Agreement calls for the design, development, and testing of a new management system that will not harm current functional operations.

2. Competition

This Agreement promotes the management of the DNS in a manner that will permit market mechanisms to support competition and consumer choice in the technical management of the DNS. This competition will lower costs, promote innovation, and enhance user choice and satisfaction.

3. Private, Bottom-Up Coordination

This Agreement is intended to result in the design, development, and testing of a private coordinating process that is flexible and able to move rapidly enough to meet the changing needs of the Internet and of Internet users. This Agreement is intended to foster the development of a private sector management system that, as far as possible, reflects a system of bottom-up management.

4. Representation.

This Agreement promotes the technical management of the DNS in a manner that reflects the global and functional diversity of Internet users and their needs. This Agreement is intended to promote the design, development, and testing of mechanisms to solicit public input, both domestic and international, into a private-sector decision making process. These mechanisms will promote the flexibility needed to adapt to changes in the composition of the Internet user community and their needs.

III. AUTHORITIES

A. DOC has authority to participate in the DNS Project with ICANN under the following authorities:

(1) 15 U.S.C. § 1525, the DOC's Joint Project Authority, which provides that the DOC may enter into joint projects with nonprofit, research, or public organizations on matters of mutual interest, the cost of which is equitably apportioned;

(2) 15 U.S.C. § 1512, the DOC's authority to foster, promote, and develop foreign and domestic commerce;

(3) 47 U.S.C. § 902, which specifically authorizes the National Telecommunications and Information Administration (NTIA) to coordinate the telecommunications activities of the Executive Branch and assist in the formulation of policies and standards for those activities including, but not limited to, considerations of interoperability, privacy, security, spectrum use, and emergency readiness;

(4) Presidential Memorandum on Electronic Commerce, 33 Weekly Comp. Presidential Documents 1006 (July 1, 1997), which directs the Secretary of Commerce to transition DNS management to the private sector; and

(5) Statement of Policy, Management of Internet Names and Addresses, (63 Fed. Reg. 31741(1998) (Attachment A), which describes the manner in which the Department of Commerce will transition DNS management to the private sector.

B. ICANN has the authority to participate in the DNS Project, as evidenced in its Articles of Incorporation (Attachment B) and Bylaws (Attachment C). Specifically, ICANN has stated that its business purpose is to:

(i) coordinate the assignment of Internet technical parameters as needed to maintain universal connectivity on the Internet;

(ii) perform and oversee functions related to the coordination of the Internet Protocol (IP) address space;

(iii) perform and oversee functions related to the coordination of the Internet domain name system, including the development of policies for determining the circumstances under which new top-level domains are added to the DNS root system;

(iv) oversee operation of the authoritative Internet DNS root server system; and

(v) engage in any other related lawful activity in furtherance of Items (i) through (iv).

IV. MUTUAL INTEREST OF THE PARTIES

Both DOC and ICANN have a mutual interest in a transition that ensures that future technical management of the DNS adheres to the principles of stability, competition, coordination, and representation as published in the Statement of Policy. ICANN has declared its commitment to these principles in its Bylaws. This Agreement is essential for the DOC to ensure continuity and stability in the performance of technical management of the DNS now performed by, or on behalf of, the U.S. Government. Together, the Parties will collaborate on the DNS Project to achieve the transition without disruption.

V. RESPONSIBILITIES OF THE PARTIES

A. General.

1. The Parties agree to jointly participate in the DNS Project for the design, development, and testing of the mechanisms, methods and procedures that should be in place for the private sector to manage the functions delineated in the Statement of Policy in a transparent, non-arbitrary, and reasonable manner.
2. The Parties agree that the mechanisms, methods, and procedures developed under the DNS Project will ensure that private-sector technical management of the DNS shall not apply standards, policies, procedures or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause and will ensure sufficient appeal procedures for adversely affected members of the Internet community.
3. Before the termination of this Agreement, the Parties will collaborate on a DNS Project Report that will document ICANN's test of the policies and procedures designed and developed pursuant to this Agreement.
4. The Parties agree to execute the following responsibilities in accordance with the Principles and Purpose of this Agreement as set forth in section II.

B. Department.

The Department reaffirms its policy goal of transitioning the technical coordination of the DNS to the private sector in a manner that promotes stability and security, competition, bottom-up coordination, and representation. Consistent with this objective, the Department agrees to perform the following activities:

1. **Transparency and Accountability:** Continue to provide expertise and advice on methods and administrative procedures to encourage greater transparency, accountability, and openness in the consideration and adoption of policies related to the technical coordination of the Internet DNS;
2. **Root Server Security:** Continue to consult with the managers of root name servers operated by the U.S. Government and with other responsible U.S. Government agencies with respect to operational and security matters, both physical and network, of such root name servers and recommendations for improvements in those matters;

3. Governmental Advisory Committee: Participate in the Governmental Advisory Committee so as to facilitate effective consideration by ICANN of GAC advice on the public policy aspects of the technical coordination of the Internet DNS; and
4. Monitoring: Continue to monitor the performance of the activities conducted pursuant to this Agreement.

C. ICANN.

ICANN reaffirms its commitment to maintaining security and stability in the coordination of the technical functions related to the management of the DNS and to perform as an organization founded on the principles of stability and security, competition, bottom-up coordination, and representation. In conformity with the ICANN Board-approved mission and core values, ICANN agrees to perform the following activities:

1. Accountability: To take action on the Responsibilities set out in the Affirmation of Responsibilities established by the ICANN Board in ICANN Board Resolution 06.71, dated September 25, 2006, (Responsibilities) and attached hereto as Annex A; and
2. Reporting: To publish, on or before December 31st of each year, an ICANN Annual Report that sets out ICANN's progress against the following:
 - a. ICANN Bylaws;
 - b. ICANN's Responsibilities; and
 - c. ICANN's Strategic and Operating Plans.

D. Prohibitions.

1. ICANN shall not act as a domain name Registry or Registrar or IP Address Registry in competition with entities affected by the plan developed under this Agreement. Nothing, however, in this Agreement is intended to prevent ICANN or the USG from taking reasonable steps that are necessary to protect the operational stability of the Internet in the event of the financial failure of a Registry or Registrar or other emergency.
2. Neither Party, either in the DNS Project or in any act related to the DNS Project, shall act unjustifiably or arbitrarily to injure particular persons or entities or particular categories of persons or entities.
3. Both Parties shall act in a non-arbitrary and reasonable manner with respect to design, development, and testing of the DNS Project and any other activity related to the DNS Project.

VI. EQUITABLE APPORTIONMENT OF COSTS

The costs of this activity are equitably apportioned, and each party shall bear the costs of its own activities under this Agreement. This Agreement contemplates no transfer of funds between the Parties. Each Party's estimated costs for the first six months of this Agreement are attached hereto. The Parties shall review these estimated costs in light of actual expenditures at the completion of the first six month period and will ensure costs will be equitably apportioned.

VII. PERIOD OF AGREEMENT AND MODIFICATION/TERMINATION

This Agreement will become effective upon signature of ICANN and the Department. This Agreement will terminate on September 30, 2009.

B. In furtherance of the objective of this Agreement, and to support the completion of the transition of DNS management to the private sector, the Department will hold regular meetings with ICANN senior management and leadership to assess progress. In addition, the Department will conduct a midterm review of progress achieved on each activity and Responsibility that will include consultation with interested stakeholders.

C. This Agreement may not be amended except upon the mutual written agreement of the Parties. Either Party may terminate this Agreement by providing one hundred twenty (120) days written notice to the other Party. If this Agreement is terminated, each Party shall be solely responsible for the payment of any expenses it has incurred. This Agreement is subject to the availability of funds.

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ADDITIONAL RESPONSIBILITIES UNDER AMENDMENT 1

(TEXT BELOW IS TEXT OF AMENDMENT 1 AS MODIFIED BY AMENDMENT 3)

Pursuant to the Memorandum of Understanding (MOU) between the Department of Commerce (DOC) and the Internet Corporation for Assigned Names and Numbers (ICANN), dated November 25, 1998, the Parties hereby agree to adopt the following terms as contemplated in Section V of the MOU:

1. The agreements entitled ".com Registry Agreement," ".net Registry Agreement," and ".org Registry Agreement" between ICANN and the VeriSign, Inc. and relating to the provision of registry services for the .com, .net, and .org registries are hereby approved by the DOC in substitution for the Registry Agreement between ICANN and Network Solutions, Inc., effective date November 10, 1999. ICANN will not enter into any material amendment of, or substitution for, said agreements, nor will said agreements be assigned by ICANN, without prior approval of the DOC.

2. ICANN shall not enter into any agreement with any successor registry to NSI to operate the .com, .net or .org registries without prior approval of the DOC of such successor registry.

3. ICANN agrees that, in the event of the termination by DOC of Cooperative Agreement NCR-9218742 pursuant to Section I.B.8 of Amendment 19, as amended, to that Cooperative Agreement, ICANN shall (1) exercise its rights under the .com Registry Agreement with VeriSign to terminate VeriSign as the operator of the registry database for the .com registry and (2) cooperate with DOC to facilitate the transfer of those registry operations to a successor registry.

4. In the event that DOC, pursuant to the terms of the Registry Agreement between ICANN and NSI, approves the assignment of that agreement by ICANN to another non-profit entity, that new entity shall also be required to agree to be bound by this MOU, and that entity shall succeed to the duties, obligations and benefits of this Agreement, and shall be recognized by DOC as the

"NewCo" identified in Amendment 11 to the Cooperative Agreement and Section I.B.1 of Amendment 19 of the Cooperative Agreement.

5. If the DOC withdraws its recognition of ICANN or any successor entity by terminating this MOU, ICANN agrees that it will assign to the DOC any rights that ICANN has in all existing contracts with the registries and registrars, including any data escrow agreement(s) between VeriSign and ICANN with respect to the .com, .net, and .org registries.

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ADDITIONAL RESPONSIBILITIES UNDER AMENDMENT 3

V. ICANN agrees that in the event of any inconsistency between the terms of (1) the .com Registry agreement, .net Registry Agreement, or .org Registry Agreement and (2) Cooperative Agreement NCR-9218742 between the DOC and VeriSign, while both the Cooperative Agreement and at least one of the Registry Agreements are in effect, the Cooperative Agreement shall take precedence over the terms of the affected registry agreement.

VI. ICANN agrees to submit to the DOC and the Department of Justice a complete report of the results of each Annual Independent Neutrality Audit pursuant to the terms of the .com Registry Agreement, .net Registry Agreement and .org Registry Agreement, no later than December 7 of each calendar year.