

“A Call for ICANN to Embrace its Inner Regulator”

The necessity of a more-regulatory role, to serve the public interest and address increasing challenges

Just a few decades ago, the "phone book" was likely the only way you could find someone with a telephone. Now almost nobody uses printed directories. Just at the time the number of printed directories increased dramatically, people stopped using them; the heightened complexity presented to both telephone users and advertisers hastened their move to alternative sources.

A similar potential presents itself within ICANN; its current gTLD expansion indicates a massive increase in potential domain names, without a corresponding change in the number of actual Internet destinations. This program ignores the failed experience of previous ICANN expansions (.name, .pro, .info), as well as an increase in country-code TLDs acting as global generics (.me, .sx, .co) which already serves to release the pressure of perceived scarcity.

So where does the demand for expansion come from? Did ICANN ever survey a worldwide public demanding that hundreds of new -- potentially confusing -- top level domains were necessary? Did it ask Internet information providers if they wanted a many-hundred-fold increase in the number of potential new sources of cyber-squatting, brand dilution and redundant names?

The conception of this round of gTLD expansion is but the most glaring symptom of a fundamental flaw in ICANN's design. While envisioned by many as the regulator of a key Internet resource, ICANN actively denies that role and correspondingly becomes susceptible to capture by an internal compact.

The founders of DNS could not possibly have perceived the need to protect, let alone assert, the public interest at a time when domain names were identity rather than commodity. The one-size-fits-all model they created was unable to withstand the cut-throat nature of commercial exploitation. So rather than grow to manage and regulate the DNS in the public interest, ICANN instead became dependent on income supplied by the parties it is supposed to oversee. Such dependence has encouraged a steady supply of (amongst other things) speculative and redundant domain name registrations of no benefit outside ICANN's vested interests. Without direct accountability to the public yet with a financial addiction to the growth of the domain industry, ICANN has allowed -- indeed encouraged -- the inmates to run the asylum.

ICANN's refusal to consider that one of its key roles is akin to that of a regulator -- and thus act like one -- essentially means that there is next to zero effective public oversight over the DNS. What is self-assuredly called "multi-stakeholderism" inside the ICANN bubble is, in this view, seen in the wider world as self-regulation by a compact between domain buyers and domain sellers. In this scheme, public interest representation (diversely expressed by governments, security experts and Internet end-users) is relegated to the edge of policy making, holding the consolation prize of outsider advisor status. And when any of these advisors dares assert itself against the captured direction -- as the GAC has recently done in its Beijing communiqué in relation to the gTLD expansion -- pushback from the compact is predictably outraged.

(Did the GAC overreach in Beijing? Certainly. But given its unique status, the GAC can be forgiven for having taken a very strong stance, consistent with the remit of its members to serve their national public interests.)

That the one regulatory issue which really matters to the outside world -- WHOIS accuracy -- is even controversial, is all the proof needed of ICANN's detachment from basic real-world expectations. Yet other examples are easy to find. Since the compact established an unconstrained approach to gTLD growth as ICANN policy, advocates of the public interest have struggled to contain the excesses. This has resulted in a range of afterthought remedies, which were not devoid of weaknesses. Some examples are worth mentioning:

- the “Public Interest Commitment” filings, whose enforcement status is still unclear;
- the new-gTLD objection process, which was unwieldy and opaque;
- the applicant support program, which was not widely promoted and thus underused;
- and the Trademark Clearinghouse, which may be over-protective of trademarks and does not support internationalized-script variants.

Requests for anything deeper than such superficial fixes elicit a reply that the process is in motion and it is too late for any more meaningful changes.

On the other hand, the needs of the industry compact are designed into the core of ICANN policy; The vested interests have helped craft the expansion rules so as to maximize income, grow ICANN's dependency upon them and inhibit disruptive competition.

As they rail against attempts to assert the global public interest¹, members of ICANN's domain industry compact repeatedly betray an exceptional sense of entitlement and insulation from global user needs. This inevitably stems from a belief that ICANN, stripped of any regulatory authority, ought to just let the industry determine policy (and implementation) exclusively through its unique form of internal infighting. Such an attitude is unsustainable -- and it is under attack on two very different fronts.

From one side, the WCIT conference showed the scale of multilateral opposition by public authority to “business as usual”. ICANN's opening of new offices while maintaining legal status as a California corporation may provide some new global awareness, but will not fix some of its deeply rooted problems. And asking the world to choose between government capture and industry capture is not a gamble ICANN is equipped to make. What WCIT has shown is that the multi stakeholder model is being challenged, and supporters of the model can either demonstrate a willingness and ability to listen and act in the interests of ALL stakeholders - or watch the model be overtaken by others who are prepared to act in their perception of the public interest.

¹ For example, <http://forum.icann.org/lists/comments-base-agreement-29apr13/pdfRSuFNILrUf.pdf>

From the other side, any public demand that ICANN “save the DNS from governments” will itself become less relevant if ICANN succeeds in scaring ordinary end users and information providers away from domain names. The growing success of search engines and corporate portals on social media sites already indicates movement away from the DNS as a primary source of information retrieval. The possibility of massively increasing brand and consumer confusion in domain names, while stifling innovation, has end users and information providers looking for alternatives... and the alternatives are not without their own plans for progress¹. As consumer and provider trust in ICANN and the DNS diminishes, where the ITU has so far failed, the marketplace may succeed.

Yet ICANN’s vested interests appear to prefer ignoring such threats. When asked to develop metrics to gauge the success of the gTLD program, the GNSO sought to measure the relative metrics of the various TLDs to each other rather than to compare the entire DNS against alternatives such as Software Defined Networks and new search technologies. The bubble prefers to remain (publicly) oblivious to outside threats, because such metrics do not point to a successful campaign.

Many in ICANN believe that the organization overcame its most important challenge when it approved the gTLD expansion. In fact we suggest that just the opposite was the case. Succumbing to its captured “community” by proceeding with an expansion that few outside the industry want, ICANN now faces a far bigger challenge to its very legitimacy. The threats are many, and growing; while ICANN has been able to fend off -- for now -- the political and diplomatic threats, it may not be equipped for a widespread consumer abandonment.

In order to overcome these challenges and maintain the relevance of a healthy DNS ecosystem, ICANN’s policy initiatives should primarily derive from public interest needs. That is, policy must be initiated with public interest frames as the central reference, while incorporating substantial input from the domain industry compact. The DNS is best served in an environment where the public interest sets the agenda rather than reacts to it, as a superior and more trustworthy form of multi-stakeholderism.

The first step in solving any problem lies in the admission that a problem exists. The next step is the recognition that ICANN must assume the role analogous to that of a regulator, that it is so well positioned to be.

In its aim to achieve international acceptance as a regulatory body, ICANN must be prepared for significant change that more effectively asserts the public interest as the catalyst of, rather than the response to, ICANN policy. In particular, while the multi-stakeholder model needs to be maintained, its current form should be inverted -- that the public interest bodies initiate policy directions and the industry serves in an advisory function.

¹ <http://www.forbes.com/sites/roberthof/2013/04/29/interview-how-ray-kurzweil-plans-to-revolutionize-search-at-google/>

In summary:

- Denial of regulatory function prevents ICANN from sufficiently serving the public interest;
- In the absence of a regulatory authority, ICANN has been captured by the industry it has the duty to oversee, and has become dependent on its growth regardless of public-interest consequences;
- This situation has isolated ICANN from the public it is supposed to serve, provoking both public authority and the marketplace to actively seek alternatives to an ICANN-managed DNS;
- ICANN must recognize this deficiency and assume a role analogous to that of a regulator -- refocused on the public interest -- if it is to maintain its position of preference amongst the alternatives.
- Such a refocus demands redefining the global public interest as the initiator and driver of ICANN policy rather than its current status of reactive advisor.

Thank you for your attention,

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