Address of the President and CEO of ICANN to the Working Group for Internet Governance

Geneva, 14 June 2005

Chairman Nitin Desai, Markus Kummer, Members of the WGIG, and participants in the WGIG and WSIS process, I would like to thank you for the opportunity to speak here today. I commend you and your secretariat for the thorough and insightful work you are performing.

Let me begin with a few remarks about ICANN's participation in the WSIS and WGIG process, followed by some observations and what we're hearing.

As you know, ICANN staff, Board Members, and members of the ICANN community and its stakeholders have been participating in the WSIS process. This is a wide ranging group, with enormous expertise in many areas of the Internet's functioning – and include ccTLDs, the Regional Internet Registries (RIRs) and the Number Resource Organization, the technical community (including the Internet Architecture Board and the Internet Engineering Task Force), the Internet Society, the business community, the gTLD community, civil society, members of the Governmental Advisory Committee, ICANN staff and ICANN Board members – we've been present, participating and listening.

The purpose of ICANN's participation is four-fold – 1) to provide an improved understanding of ICANN and its limited mandate; 2) to clarify areas of confusion and explain what ICANN is and is not responsible for – including what it does and how it does what it does, 3) to help the WGIG/WSIS discussants appreciate the side-effects of the constraints on the Internet design since these constraints in some ways dictate what is possible in the near term, and 4) to understand to the best of our abilities the concerns of the international community both as regards the overall context of Internet Governance and as concerns the role and functioning of ICANN therein.

ICANN, formed on the truly multi-stakeholder model, with equal participation of all, has had its share of growth pains and experiences – which we're happy to share and learn from. Indeed, a striking aspect of ICANN's Bylaws is that they require very regular review of its internal structures to ensure that they continue to be relevant to the needs of an evolving Internet community. The WSIS process, and the work of the WGIG, has provided us with an opportunity to share our experiences with multistakeholder models, as well as to listen to where ICANN as one of the organizations active in Internet, could improve.

The international community is currently discussing the high benchmarks it feels that need to be attributed to all the organizations that have key roles in the context of Internet Governance. ICANN fully agrees to the need for such high benchmarks: democratic and transparent processes, open participation, avoidance of undue influences or capture,

efficient management, and effective decision-making processes are essential so that the Internet is managed for the global, public benefit. ICANN is committed to live up to those standards and it hopes that all partner organisations will endeavor to do the same.

Although the concerns of the international community are taking clearer shape and the messages about what should not happen are coming through, it is for the moment less clear what expectations there are in moving forward. Views are different within and between the various stakeholder groups. It seems therefore reasonable to us that a continued discussion platform directed to the full range of issues is useful. Should it emerge, it should adopt a genuinely multi-stakeholder and equal partnership approach. In as much as ICANN is interested to understand how certain of the Internet issues are addressed by the competent partner organizations, ICANN can contribute with detailed explanations of the issues it is mandated to address.

Let me try and address some of the issues that have been raised in relation to ICANN and I am interested to hear from partner organizations how they view the issues that have been addressed to them.

Four particular themes relating to ICANN have emerged in the WSIS and WGIG discussions:

- what is the relationship between the US Department of Commerce and ICANN, particularly after the completion of the MoU?
- what should be the role of governments, civil society and other stakeholders?
- What are the effects of ICANN's legal presence in the US and under California legislation?
- What should be the role of governments in the management and redelegation of ccTLDs?

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1. What is the relationship between the US Department of Commerce and ICANN, particularly after the completion of the MoU?

I would like to make a few observations before addressing the MoU specifically.

First, one cannot change history: the Internet research started and was developed largely in the United States. Commercialization occurred earlier there than in most other countries. Its evolution, however, has been powered by contributions outside the US. The Internet has become a truly global phenomenon and continues to be invigorated by contributions from everywhere.

The second is that the United States Government realized in the 1990s that the coordination of the Internet's unique identifier system should be internationalized and responsive to multiple stakeholders – and this initiative itself underwent an international consultation process. This is a fact which should be recognized.

Indeed, ICANN was formed in response to this initiative after broad-based multi-stakeholder consultations with people coming from all regions during meetings in Brussels, Buenos Aires, Geneva, Reston and Singapore.

The MoU between the US Government and ICANN has been an important instrument to support the transition of these coordination functions to an international, multistakeholder environment. Indeed the purpose outlined in the MoU when it was first signed between the United States Department of Commerce and ICANN is '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'. These functions were defined as:

> 'a. Establishment of policy for and direction of the allocation of IP number blocks;
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> b. Oversight of the operation of the authoritative root server system;
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> c. Oversight of the policy for determining the circumstances under which new top level domains would be added to the root system;
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> d. Coordination of the assignment of other Internet technical parameters as needed to maintain universal connectivity on the Internet; and
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> e. Other activities necessary to coordinate the specified DNS management functions, as agreed by the Parties'[1]

We are working towards the completion of the MoU by September 2006 – and to date have completed all milestones on or before the time stipulated. We are confident that not only will the MoU be completed but that by doing so ICANN will have passed important tests related to its independence, its democratic and transparent functioning, efficient management, effective decision-making process and having well-described roles and relationships with all its stakeholders.

As to what will be the relationship between the US Department of Commerce and ICANN after the completion of the MoU, let me be clear that ICANN does not speak on behalf of the United States Government. That said, the roles of **all** governments, including that of the US Government, are important, as they share the same interest as all ICANN's stakeholders, namely a stable and secure Internet. ICANN recognizes the public policy role of governments in the context of Internet Governance.

Much of the WSIS and WGIG discussions center around what the role of governments should be on the issue of Internet governance. In relation to ICANN, this begs the question of what should the role of governments be in the ICANN structure. We understand this need and concern of governments, just as we understand the needs and

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[1] http://www.icann.org/general/icann-mou-25nov98.htm

concerns of civil society, those of the private sector, and those of other stakeholders. For some of these areas we've heard the call for improvement.

2. What should be the role of governments, civil society, and other stakeholders?

In the broader Internet Governance context, Governments have an important role to play, and require a forum for discussions and influence. In the narrower ICANN context, Governments have an important and concrete role in guiding the organization on the public policy aspects intrinsic in many of the technical issues that are considered for decision by ICANN. Depending on the current discussions in WSIS and WGIG, it is perhaps appropriate to revisit the current liaison-role of Governments on the ICANN Board and thus strengthen the Government's role in order to bring it to par to that of other stakeholder groups and fully in line with the multi-stakeholder approach advocated by the WSIS. In such a case, and in support of such a new role for Governments on ICANN's Board, it would seem appropriate – particularly for Governments themselves - to evaluate possible ways for further improvements of the GAC now that the GAC has over 100 Members and Observers and is still growing rather rapidly.

It is important to note that ICANN Board decisions are made after full consultation processes with all its stakeholders, especially the GAC. Significant processes often take over 18 months of fully transparent consultations in which all parties have the opportunity to participate, including governments. Further, any party can raise its concerns directly to the Board or challenge its decisions through ICANN's decision reconsideration processes.

Civil Society has played an important role in ICANN both in the Generic Names Supporting Organization, and in what is referred to as the At Large Advisory Committee. The ALAC has much work to do in setting up its regional community structures (referred to as Regional At Large Organizations). This is critical to ensuring end user involvement. ICANN stands prepared to make this happen.

Additionally, developing country participation – from governments, the private sector, and civil society - is of great importance. The importance of participation by all regions of the world is not only an issue for ICANN, but for any issue of international importance.

3. What are the effects of ICANN's legal presence in the US and under California legislation?

ICANN's establishment in California is a consequence of history. Jon Postel, the long standing coordinator of the IANA functions was based at the University of Southern California. Jon was designated ICANN's first Chief Technology Officer but was preempted from taking the position due to his untimely death. The legal instrument available in California to establish such a public benefit function, including its multi-stakeholder expression, is a not-for-profit, public benefit corporation. I must stress that

the term 'corporation' here does not mean the usual private sector or for-profit company. But the ICANN Board does understand that the term may cause confusion, especially to people not aware of California not-for-profit law.

ICANN's agreements with registries and registrars are based in well-established principles of international private law. Cognizant of the questioning about the reliance on a single legal jurisdiction, ICANN has started amending its generic Top Level Domain agreements to enshrine dispute resolution through compulsory arbitration under the auspices of the International Chamber of Commerce in Paris or other similar international dispute resolution forums.

During the discussions around the WGIG a number of legal models concerning the hosting of coordination functions, have been raised. ICANN has listened to these discussions very carefully.

It is also dedicated to complying with a whole series of good-governance benchmarks now being discussed in the WSIS and WGIG as a requirement for all partner organizations involved in Internet Governance. We are also bound by the high standards of corporate governance required in our Bylaws.

4 What should be the role of governments in the management and redelegation of ccTLDs?

Another topic raised during the WGIG process has been the role of governments or public authorities in relation to their ccTLDs. There are several points worth making on this topic:

1. The operation of a ccTLD involves responsibilities both to a domestic Internet community and to a global user community.
2. The officials dedicated to Internet policy who comprise the ICANN GAC have spent significant effort on refining their view on detailed aspects of the role of governments and other actors in the process of redelegations. I would draw the attention of interested parties to the GAC Principles on Redelegations of ccTLDs first agreed in 2000[2], and recently revised[3].
3. There is a wide spectrum of models for the successful operation of a ccTLD. ccTLDs participate in the ICANN structure through the ccNSO formed as a result of ICANN's last reform.
4. The history of recent redelegations has shown that quite a number of communities have opted for multistakeholder models for the stable operation of the ccTLD
5. It is most important during any redelegation process for the government or public authority to speak with one voice and to foster a clear process domestically
6. The operation of a ccTLD involves much more than an entry in the zone file. Most of the practical operational aspects of running a ccTLD (for instance, the

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[2] http://icann.org/committees/gac/gac-cctldprinciples-23feb00.htm
[3] http://194.78.218.67/web/docs/cctld/ccTLD_Principles_MDP_Final.rtf

operation of customer data bases) are not within the purview of zone file management.

7. Under present processes the US Department of Commerce also plays a role as reviewer in ensuring that ICANN has followed properly the procedural requirements in zone file changes. I am not aware of one instance where the United States Government could be seen to have abused its role and rejected a change to the zone file for political or other reasons. The transparency of the arrangements, coupled to the value system of the Internet's stakeholders, is such that not the US nor any individual, organization, or group of organizations, is able, either now nor in the future, to abuse the editing function of the root zone file. This is particularly important for changes to the root zone file as regards the entries of country-code Top Level Domains.

Conclusion:

So let me conclude with some thoughts – of where we go from here. We've spent 3 years within the WSIS context discussing Internet governance – during these three years ICANN has undergone its first set of reform (including changing the role of the GAC and users/civil society, and ccTLDs), created the ccNSO, completed the MoU with the RIRs and the NRO, recognized LACNIC and AfriNIC, introduced new gTLDs, and recognized new registrars, and in furthering competition in gTLDs promoted hundreds of millions of dollars in savings to consumers. We have work to do and are doing it.

ICANN is a multi-stakeholder model. It was created on this basis. ICANN has learned that this model is not easy to achieve in practice, and to achieve it well, requires continuous assessment of what can and should be done better. As a result, the bylaws require that each supporting organization is reviewed to ensure continued improvements. This means the model will evolve.

We believe that the WSIS and WGIG have provided an important opportunity for dialogue to occur on issues relating to the information society. We believe it's critical that the global community and governments have an understanding of the truths and myths surrounding the Internet. We congratulate the members of the WGIG and its secretariat on a sterling job in listening to a broad range of input and carefully putting the issues on the table.

ICANN is planning for continuous improvement. Therefore we are interested to listen and understand the views of the WGIG and, in a next step, the WSIS. We have a strategic plan which will undergo annual cycles of international consultations and revisions. Of course, accountability in performance to the full stakeholder set, including governments, is important. That is how the present structure is built and further evolution of the accountability processes can be considered. We look forward to continue working with the global Internet community to successfully perform our mandate.