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COMMUNICATION FROM THE COMMISSION
TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

INTERNET GOVERNANCE

MANAGEMENT OF INTERNET NAMES AND ADDRESSES

**ANALYSIS AND ASSESSMENT FROM THE EUROPEAN COMMISSION
OF THE UNITED STATES DEPARTMENT OF COMMERCE WHITE PAPER**

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1. INTRODUCTION

On 16 March 1998, the Council and the Commission addressed a joint reply based on a Proposal from the Commission¹, from the European Union and its Member States to an inquiry initiated by the US Department of Commerce in the form of a Green Paper. The initial policy proposals of the US Green Paper regarding the organisation and management of Internet names and addresses received a number of comments and criticisms from the EU Council and the Commission.

Since then, the Commission has met several times with the competent US officials. More recently, the US Government has finally published a White Paper setting out their policy in this area. As recently announced, US Government policy is substantially different from that which was proposed in the initial Green Paper. In many respects, it now responds to the comments and criticisms of the European Union, and a large number of other commentators, both internationally and even from within the United States.

Consequently, the Commission can now confirm that *the EU should act to participate fully in the process of organisation and management of the Internet* that has been launched by the US White Paper.

2. THE CORE OF THE US PROPOSALS: THE NEW IANA CORPORATION

The core of the US proposals concerns the new IANA Corporation (Internet Addressing and Naming Authority) which will become the central regulatory body for the Internet's naming and addressing system. Although this may appear to be an highly technical area, it is clear that the industry recognises this as an important area. In fact the control over the Root Server system and the IP addresses is critical to the stability and inter-operability of the Internet and the policies for Registries and Registrars and the allocation of domain names have considerable commercial significance for the organisations concerned, users and trademark owners.

¹ COM/1998/111 of 20 February 1998.

Consultations between the existing IANA organisation and other interested parties about the constitution of the new organisation have already begun, particularly in the United States. European responses to the US Green Paper stressed the importance of international participation and more specifically that the regional registration agencies (RIPE) and the national ccTLD Registries should have a direct role in the new organisation.

Furthermore, it is likely that the new organisation will have distinct "Councils" or "Committees" which will deal with Naming policy, Addressing policy and the representation of the views of industry and users, including public sector users. Consequently, the overall membership of the new IANA corporation, the participation of European interests in the respective Councils; and the election process for the Board of Directors itself, are all of importance at this time.

When the private sector "stakeholders" have reached a consensus on the structure and organisation of the new IANA corporation, the US Government proposes to transfer certain responsibilities to it formally.

This transfer of responsibility will also be the subject of international consultations, in which the EU will undoubtedly wish to participate. Although the timing and methodology of this process has not yet been defined, one should be aware of the fact that there will be demands that it be accomplished very quickly, before the end of this year.

3. ASSESSMENT AND OUTSTANDING ISSUES

The Commission's assessment of the US White Paper with respect to the points made in the EU Reply is generally favourable, although there are certain subjects on which further consultations and negotiations are required.²

The principal outstanding issues relate to the applicability of Community and National law to the Internet generally and to the activities of the new Corporation in particular. While the US Government has asserted that the White Paper is not intended to extend US jurisdiction at the expense of other jurisdictions, the effect of incorporating the new Corporation as a not-for-profit US private corporation has to be assessed in detail from the legal point of view.

In this context, the principal concerns relate to Competition law, trademark law, dispute resolution and more generally, international trade law.

Many of these issues can be addressed in the framework of the new IANA Corporation, in WIPO, or in the context of competition policy. Given the private sector nature of the proposed system, a notification to the Commission pursuant to the competition rules will be necessary. In addition, the Commission will discuss these issues with the Department of Justice under the EU/US competition law co-operation agreement.

² Internet Governance, Management of Internet Names and Addresses, United States Department of Commerce White Paper, Analysis and Assessment from the European Commission. 30 June 1998.

The recent US White Paper does not, however, address the taxation problem. The continued application of current taxation systems is likely to be predicated on a sufficient and reliable identification system which should be an integral part of DNS.

4. THE INTERNATIONAL DIMENSION

A wide range of companies and organisations in the private sector in the EU, in the USA and in the world at large, are, or will be, critically interested in the future development of the Internet in general and in the management of the naming and addressing system in particular. In Europe, a sudden acceleration in the size and importance of the Internet has been recently experienced and the relevance of the Internet organisation and management is being given increasing priority. It is to be expected that many other areas of the World, including emerging economies will go through a similar experience in the foreseeable future.

It would consequently be appropriate for the EU to participate fully in encouraging the appropriate multilateral environment for the coordination of international policies in this area, including the necessary contribution of the international organisations. The international community can and should provide an appropriate political and legal framework for the future management of the Internet by the proposed private industry self-regulatory body, in the interests of its own stability.³

The US Government has also recognised that the Internet now has a major international dimension, an important step forward, which the EU can endorse and encourage. Such a realisation has not come lightly in certain US circles which still identify the Internet with US R&D programmes and US-based organisations.

The US White Paper has the merit of recognising that an US-centric approach is increasingly out-dated. Accordingly, there is now an opportunity for European and other international interests to take up the challenge to participate fully in the next phase of Internet development.

5. THE ROLE OF THE PRIVATE SECTOR

In Europe, the Commission and the Member States have a role of information and *sensibilisation* which should be directed towards ensuring that Europe obtains and maintains the influence and participation that is commensurate with our economic and social interests in this field. This must take account of the fact that the Internet is currently growing more rapidly in Europe than anywhere else in the world.

These interests include the European Registries and Registrar organisations. Those European Registrars that have already established their interest in participating in

³ Note that the Joint EU-US Declaration on electronic commerce states that: "The role of government is to provide a clear, consistent and predictable legal framework, to promote a pro-competitive environment in which electronic commerce can flourish and to ensure adequate protection of public interests such as privacy, intellectual property rights, prevention of fraud, consumer-protection and public safety." (Point 3 (ii))

the proposed CORE Registry should, according to the terms of the White Paper, also have early access to the existing gTLD Registry, notably .COM, .NET and .ORG.

The telecommunications operators are already important carriers of Internet traffic and are in most cases, also entering the market as Internet service providers (ISPs). Other European ISPs have established their international identity through the Euro-ISPA organisation.

More generally, European industry will find that it has a critical interest in the economy, efficiency and security of the Internet as increasing proportions of their day-to-day business migrates towards the Internet.

The participation of user groups should also be encouraged, with a view to ensuring that the Internet community at large can play its role in the future organisation and management of the Internet.

To this effect the Commission has already organised an information and consultation meeting with the European private sector interests concerned in Brussels on 7 July 1998.

6. IMPLEMENTATION AND FOLLOW-UP

The problems identified in the EU Reply have been to a large extent addressed by the revised US Policy Statement. The US Government has recognised that the Internet is a global resource, and that the critical world wide web technology was invented and developed by Europeans in Europe⁴. The US Government has also abstained from direct regulation of the Internet DNS and has referred all pending decisions to the new IANA corporation, which is to be created.

However, the window of opportunity is very short: As a result of the delay in concluding the US consultation procedures, there remain in effect barely four months for the new IANA corporation to appoint its interim Board of Directors, become incorporated and to begin the process of taking the regulatory decisions which have been postponed several times during the past two years.

The Commission proposes that the EU should act in the following manner:

- (i) The question of the membership and structure of the new corporation should be addressed with the utmost urgency.
- (ii) In keeping with the belief that a comprehensive multi-lateral process is required in this area, the European Union and the Member States together with the United States and the other international partners concerned, including the appropriate international organisations, should participate in the process of setting up the future organisation, and contribute to defining its basic operating principles. In particular, the Commission considers that it is important to

⁴ "For example, scientists at CERN, in Switzerland, developed software, protocols and conventions that formed the basis of today's vibrant World Wide Web"

ensure that the eventually adopted legal construction is compatible with Community law.

- (iii) The Commission and the Member States should draw *the urgent attention of the private sector* to this matter. Accordingly, the Commission will convene the necessary meetings to facilitate the consultation and information of the private sector organisations concerned.
- (iv) The national ccTLD Registries in the Member States, should become active and organised members of the new IANA corporation and take steps to ensure their appropriate representation in the IANA Names Council and possibly on the IANA Board of Directors.
- (v) The Commission should immediately take up discussions with the US authorities and the international community about the obligation for registries and registrars to provide necessary information to identify operators of Internet domain names for tax purpose
- (vi) The Commission and the Member States should recognise the growing importance of their roles as Internet *users*. Indeed, in the context of a private-sector self-regulatory organisation, the main official input from the public authorities to the long-term Internet management structures will be in their capacities as major *users* of the Internet and providers of information and services to the public

Accordingly the Commission envisages convening a meeting of those responsible for the development of the use of the Internet in the Member States and in the EU Institutions to discuss how their activities and interests will interact with the proposed new organisation.

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The European Parliament and the Council are invited to take note of this Communication and to agree to the proposed EU approach to the implementation of the US White Paper. They are particularly invited to encourage a more international approach to the development of the Internet than has prevailed in the past.

Given the importance of the Internet in the areas of economic, social, and cultural activities, Member States are invited to actively encourage and facilitate the participation of the European private and public sector organisations concerned with the use of the Internet, and their participation in the membership and organisation of the new IANA Corporation.

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6