

Written Statement of The International Congress of Independent Internet Users (ICIIU)

The International Congress of Independent Internet Users thanks this Committee for an opportunity to present its views on ICANN and the so-called Internet privatization process in charge of the U.S. Department of Commerce.

In addition to the comments presented here, the ICIIU has made a formal complaint to the U.S. Government regarding what we believe to be the illicit creation of ICANN by special interests and its ongoing catering to those interests. The complaint can be read at the ICIIU website (<http://www.iciiu.org/Protest.htm>), and a news article on the complaint at http://www.internetnews.com/ec-news/article/0,,4_315131,00.html.

Senators, we users of Internet domain names presently number in the millions. We are not a small group of special interests like some of the other stakeholders involved in the Internet. We belong to all sectors of society, in every country on earth.

We users of Internet domain name registration services should be free to choose with whom and on what terms we contract for those services. But we are being restricted to registration of our domain names with so-called ICANN-accredited registrars, which are companies that have signed an agreement with ICANN in which they have promised to impose many unfair conditions on user-registrants, including the condition that we agree that our domain name can be revoked, suspended, or cancelled by the registrar, the registry (NSI), or ICANN upon the decision of any one of these to do so, without any show of cause, and with no provision for review.

This is the essence of anti-competitive and anti-consumer behavior. ICANN, NSI, and the "accredited" registrars comprise a combine, a trust, that has conspired to deprive companies offering a better service and fairer terms from doing so, and to deprive registrants of due and democratic process, with a perpetual threat of discontinuance of service of our domain name, on which our website and our business depend.

In its contractual relationship with the accredited registrars and with NSI-the-registry (this last giving ICANN power to enforce domain name registrations to its accredited registrars), ICANN has made the businesses of domain name holders, which depend on continuous domain name service, subject to the whim of ICANN, registry, and registrar. This makes it extremely precarious to invest time and money in a website, which can disappear overnight if the domain name which makes the website visible to the world is removed from the root domain name database, controlled by NSI under the aegis of ICANN.

According to the provisions of the registrar/registant agreement (the contract of adhesion between registant and registrar) and the UDRP, ICANN, registry, and registrar may revoke a domain name for any reason, or without a reason. There is no due process, there

is no administrative process controlled by law, there is no judicial review, because ICANN is an administrative agency masquerading as a private non-profit corporation which believes it cannot be made to answer either for violations of the Admin. Proc. Act, on the one hand, or the antitrust violations of a private for-profit corporation, on the other. Yet ICANN, NSI, and the registrars are, in fact, a cartel illicitly (that is, without the requisite legislation and in restraint of free trade) regulating interstate and international commerce.

ICANN itself has been formed, not by the meeting and consensus of all stakeholders - of which we users are a very considerable part - called for by the White Paper issued by the Department of Commerce (http://www.ntia.doc.gov/ntiahome/domainname/6_5_98dns.htm), but by a secret process that has never been revealed (see "The Domain Name System: Hearings Before the Joint Subcommittees of the House of Representatives Committee on Science and Technology - 1998", Congressional Record, U.S. Gov't Printing Office).

The initial Board of ICANN, which still runs it after over two years of existence without a membership, and which is determining all of its policies on domain name usage, was chosen by a small group of persons representing an alliance of big businesses that includes IBM, MCI, and AT&T (see <http://www.cookreport.com/08.10.shtml> [lower part], and <http://www.cookreport.com/icannregulate.shtml>).

No end-user of the Internet, no individual, no small business, nor non-commercial user, has been permitted by ICANN to participate in its policy-making. When individual and independent domain name holders or their spokesmen like the ICIIU, IDNO, CPT, etc., have demanded participation in policy-making committee meetings, we have been thrown out, disconnected, and refused admission. (The ICIIU has first-hand evidence, in the form of a tape recording of a teleconference of the Names Council, the central committee of the Domain Name Supporting Organization of ICANN from which all domain name-related policy is supposed to originate, of persons and organizations being disconnected and excluded, even though these people had a perfect right to participate as domain name registrants and Internet stakeholders.) ICANN knows that, if our participation were permitted, the anti-competitive and anti-consumer contracts and agreements it has engineered with its registrars and with the monopolist registry NSI could not have been effected.

The Constituencies and Names Council of the DNSO of ICANN have all been captured, through the use of undemocratic tactics, by members of CORE, a trade association of registrars illegally incorporated in Switzerland (a complaint in this regard has been filed with the Swiss Department of Justice), or by members of ISOC, the so-called Internet Society, whose officers are predominantly employees of IBM, MCI, AT&T, or other large infrastructure corporations, and which is funded by those corporations (see <http://www.isoc.org/orgs/orgsbylevel.shtml> and <http://www.cookreport.com/isoccontrol.shtml>).

In September, 1999, ICANN signed contracts with NSI and the ICANN-accredited

registrars, establishing the commercial and regulatory relationship between them (<http://www.icann.org/nsi/nsi-agreements.htm>). These Agreements constitute a per se violation of the antitrust laws, since they are, in effect, an arrangement between a producer (NSI), the wholesaler (ICANN), and the retailers (the registrars) to restrain trade.

No consumer representative nor spokesperson of domain name users was permitted to be present at the negotiations of the above Agreements. They were authorized by Beckwith Burr in the name of the Department of Commerce; Ms. Burr was given the job of representing the DOC through lobbying pressure from IBM, MCI, AT&T, and others; she is IBM's operative in the DOC. And IBM, together with its combine partners, is funding ICANN: <http://www.icann.org/correspondence/ibm-letter-24sept99.htm> (\$100,000 contribution from IBM - letter from John Patrick, IBM VP for Internet).

The ICIU asks this Committee to investigate ICANN, its creation and operations, and, if it finds, as we have no doubt it will, that ICANN has not been created in accordance with law and democratic procedure, and is not conducting its policy decision-making for the benefit of all alike, to dissolve ICANN and in its place create a new and proper Internet regulator, responsive to the needs of the millions of Internet domain name users, who petition this Committee to intervene and redress our grievances.

Yours,
Michael Sondow