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North American Regional At Large Organization (NARALO), 2012 Election

Statement of Interest: At-Large Advisory Committee (ALAC) Representative

Background

My ICANN policy work of choice has been extending the scope of “country like” name spaces to self-organized Indigenous and Stateless Peoples and policed communities. In Working Group C (circa 1998) I proposed sponsored registries; in the 2000 round I assisted Louis Touton and the COOP and MUSEUM applicants.

In the 2004 round I assisted in the creation of the first “linguistic and cultural” application of the generic registry model. The policy of CAT did not permit abusive registrations and the project achieved sustainable revenues and costs in its first and all subsequent quarters of operation. In 2007, I consulted to the IANA, creating the reporting mechanism used at present.

During the 2008—2010 years, I advocated for and produced editorial corrections to the series of Draft Applicant Guidebooks for the benefit of linguistic and cultural communities and urban administrations. I assisted the European Cultural and Linguistic Internet Domains (.BZH, .EUS, .GAL and .SCOT), the City of Paris, and the League of Arab States, and contributed comments to the GAC and Board on the rights of public administrations and to the DOC/NTIA on the IANA Contract.

My ICANN policy work of necessity has been in the areas of competition policy and intellectual property – creating innovation rather than imitation, and seeking to correct the current dysfunctional model in which exploitation of trademarks inhibits human rights.

I participated in competitive tenders for the .ORG and .NET re-delegations, three 2000 and 2004 round innovative projects (see above), and in the 2010 Vertical Integration PDP Working Group. I participated in the evolution of the “sponsored” application type to the “community based” application type in the 2007—2011 development of the Applicant Guidebook, and promoted the now adopted view that linguistic and cultural communities and public administrations have the right to operate registries serving their members and residents, as well as prevent predatory capture by speculators.

I retain collegial relations with most of the contracted parties with whom I competed previously when representing NeuStar and CORE and with the principals of most of the non-contracted parties, the principals of the Intellectual Property and Internet Service Provider interest groups in particular. I retain collegial relations with several ccTLD operators and GAC representatives, and with many current and past members of ICANN Staff and Board.

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Policy Summary I

In broad strokes, I view ICANN as a US government contractor, the successor to the original DARPA/ARPA contracts for the IANA (USC/ISI) and NIC (SRI) functions.

I share the view voiced by Professor Michael Froomkin¹ – that ICANN exercises delegated rule-making authority, and is properly subject to the requirements of the Administrative Procedure Act (APA), from which transparency and accountability follow.

I remain unconvinced by the counter-claim advanced by Joe Simms – that ICANN is sui generis and no existing body of law is applicable to “the multi-stakeholder model” generally or to policy specific to the apex zone file edited and published by two government contractors, ICANN and Verisign, several agencies of government, and other parties forming the root servers set of publishers.

I think ICANN is anachronistic, committed to the de-regulation policies of past American administrations now made largely obsolete by market failures. This anachronistic pursuit of “no policy but market policy” prevents policy based admission test (necessity, utility) to the IANA root and prevents meaningful regulation of registrars of existing delegations.

I am concerned that ICANN is also caught by the reality that its principal asset is a service contract with a government, and the illusion that its principal service is to governments in the plural and users, access and transit providers, vendors, and content providers, with limited participation by government.

Policy Summary II

The 2000 and 2004 experiments in adding new gTDs were qualified successes. The relative failures of the PRO, NAME, BIZ and INFO experiments proved the market power of the COM brand could not be reduced by naïve competition. AERO’s failure to obtain airport codes proved that intellectual property disputes could prevent the use of common mnemonics.

NeuStar’s and Afiliat’s continued corporate existence showed that with other sources of revenues, the North American Numbering Plan Administrator contract, and the ORG re-delegation, respectively, new operators of the price-capped unrestricted business model could persist through initial failure to capture sustainable market share from the COM brand manager.

NeuStar also demonstrated that the short-term revenue benefit of opening a registry to bulk registrants (spam registrants) are outweighed by long-term reputational costs, pointing the way towards reputation as a common feature of addresses and names.

¹ <http://osaka.law.miami.edu/~froomkin/articles/icann.pdf>



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The re-delegations of ORG and NET were also qualified successes. Three competent bids were put forward for ORG, the ISC/IMC bid, the SWITCH bid, and the ISOC-Afilias bid. Commercial “evaluation” was shown on both occasions to skew towards commercial form and familiarity rather than technical operational competence, alerting the community to the limitations of acting on “general market principles”.

The 1998 experiment in adding new registrars too was a qualified success. Monopoly was ended in the “front end” of the registrar-registry model. Sustainable operation of the registrar function by an entity committed to the public interest was demonstrated.

The incremental developments are less qualified failures – “choice of registrar” is difficult to distinguish from planned bad-faith transfer of common mnemonics to domainers. Typo-squatting has been industrialized as “domain tasting”, registrar compliance remains de minimus, etc. As a \$0.20 beneficiary of the 30 million names added during the domain tasting period and monetized by the pay-per-click business model, ICANN has had a significant revenue dependency upon the continued existence of bad-faith dealing as the norm and the domainer:registrar:Verisign triad.

Registrant privacy has been eroded by trademark portfolio managers responding to the industrialization of abusive registrations, joined by overblown claims from (mostly) American law enforcement pursuing the chimeras of state enemies and child pornographers.

Policy Summary III

The 2012 new gTLD round remains an experiment with only adverse outcomes demonstrated at present, and few likely beneficial outcomes if prior experiment outcomes are not experimental errors.

Several core policy outcomes have been demonstrated conclusively:

- if limits on for-profit actors are not present, non-profit actors will have diminished access to ICANN’s registry application and evaluation services;
- if limits on existing contracted parties are not present, market entrants will have diminished access to ICANN’s registry application and evaluation services;
- if limits on intellectual property claims are not present, trademark portfolio managers will transform public trusts into private property;
- indeterminate deference of non-speculative applications until speculative application rules are in place created a “speculator-ready” application response, wasting the new applicant outreach budget;
- if limits on the COM brand manager are not present, the COM brand manager will proceed to replicate its 85% market share in the Latin script gTLD market in the non-Latin script gTLD markets.

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Of course, another core policy outcome has also been demonstrated conclusively – GAC advice that new gTLD policy development under the exclusive control of the GNSO was and remained problematic throughout the years of DAG drafting and public comment – when ignored, would have unpredictable outcomes.

Candidate Statement

I offer to serve as the At-Large Advisory Committee (ALAC) Representative. There is an incumbent seeking re-election, so my offer to serve provides the NARALO electorate a choice of representatives.

At Large and the ASO share regional structures, and share the difficulty of reconciling regional policy development with ICANN's general policy development model that is non-local (or local to Marina del Rey). If elected by the NARALO to the office of ALAC Representative I will participate in the ARIN policy development process as an unofficial liaison and encourage the elected RALO representatives from Latin America, Europe, Asia Pacific and Africa to similarly observe and/or participate in regional address policy development processes. The larger goal is to retain a robust regional policy development capacity within at least these two ICANN By Laws entities.

ICANN has an annual, and a multi-year cycle of policy development and issue public comment periods. In 2011, when last I wrote draft comments for ALAC, the work had not yet been organized to take advantage of this – everything appeared to be a surprise, and the comment drafting mostly exercised as a rush in the last few days of each comment period. If elected by the NARALO to the office of ALAC Representative I will provide early drafts of scheduled comments.

Topical examples are the COM and NAME contract renewals – the public interest (competition policy) is clear. Competent alternatives to the incumbent contract holder exist. A change of contract operator while meeting stability and security goals is feasible. The ALAC position statement could have been written any time in the past and re-used in every future comment period until one of the three listed conditions is no longer true. The larger goal is to comment consistently on strategic issues and improve the utilization of the limited human discussion and drafting time.

There are two institutional vehicles for the public interest in ICANN as currently structured,² the Government Advisory Committee and the At Large Advisory Committee. Both are resource limited and hard pressed to keep up with the work load with the available staffing and financial resources. The GAC is limited to the subset of the public interest that is both consistent with their territorial jurisdictions and their ruling elites. At Large is able to identify the public interest that transcends states boundaries, such as gender and preference, and able to identify the public interest that do not benefit elites primarily, such as poverty and access.

² The Protocol Supporting Organization provided a means for members of the ICANN Board to be selected on the basis of technical merit, a fundamental form of the public interest, until 2003.

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If elected by the NARALO to the office of ALAC Representative I will encourage other ALAC members, elected and appointed, to frame the ALAC — GAC relationship as a relationship of peers serving the public interest, and providing the critical advice to an agency of government destructively captured by the industry it was created to regulate and promote.

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July 29th, 2012 at Sipayik – Eastport, Maine

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