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Internet Governance Project Newsletter
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Current events in Internet Governance and the activities of the Internet Governance Project.
<http://www.internetgovernance.org>

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[1] NEW DOT COM AGREEMENT: COMMERCE IS "THE DECIDER"
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ICANN's 8-year experiment in nongovernmental governance of the Internet's domain name system all but came to an end November 30, 2006. The U.S. Department of Commerce announced that it, and not ICANN, would be the ultimate "decider" when it comes to dot com. Dot com is the largest and most valuable Internet top level domain, accounting for about 50% of global domain name registrations.

Several months ago ICANN and VeriSign privately agreed on a new .com registry agreement in the process of settling litigation. The new deal became intensely controversial because it gave VeriSign a renewal expectancy and permitted the company to raise wholesale prices for .com registrations by a maximum of 7 percent a year.

This week the Commerce Department approved that agreement -- and simultaneously asserted broad new regulatory powers for itself. In a potentially fatal blow to ICANN's autonomy, Commerce asserted sweeping approval powers over any future Registry Agreement. From now on the Commerce Department, not ICANN's policy making process, will provide the final word on renewal of the lucrative .com license. This approval power extends into the future indefinitely. Not only will Commerce continue to ensure the Internet root's "security and stability," it will now ensure that the .com agreement provides "reasonable price, terms, and conditions." That leaves ICANN with little substantive power over .com.

VeriSign's competitors and the registrars who sell .com names at retail are sure to howl in pain over VeriSign's success in gaining "renewal expectancy" and its new price-increase capability. But the real story here is the Commerce Department's institutionalization of its regulatory role, and the tacit vote of no confidence in ICANN and its processes. Only two months after the Commerce Department, ICANN, the EU and many media outlets hailed the new "Joint Project Agreement" with ICANN as a big step toward a fully privatized, autonomous global

governance authority, the Commerce Department has basically said that ICANN lacks the legitimacy and authority to act as the steward of the public interest in regulating the world's largest registry. From now on .com operates under US political oversight.

Read the DoC announcement:

http://www.ntia.doc.gov/ntiahome/press/2006/icanncom_fact_113006.htm

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[2] DRAFT GAC PRINCIPLES ON WHOIS/PRIVACY
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Download document here:

<http://internetgovernance.org/pdf/DraftGACWhoisPrinciples.pdf>

European countries pushed back against U.S. Government efforts to stop ICANN from respecting privacy concerns in its handling of domain name registrant contact data, but their efforts were only partially successful. The current draft contains much that is objectionable, including a very broad definition of the purpose of Whois that is inconsistent with the one adopted by ICANN's policy making Council, the GNSO. A U.S.-led Task Force in ICANN's Governmental Advisory Committee (GAC) released version 3 of its "Whois "Principles" in preparation for the ICANN meeting in Brazil, where it will be debated and finalized.

ICANN's registrar contract forces domain name registrars to indiscriminately publish to anyone on the Internet all domain name registrants' name, address, email and telephone number. While that data is convenient to many, it has also led to spammers harvesting the data and various kinds of identity theft and slamming. European data protection experts have made it known for several years that ICANN's current Whois policy conflicts with their national law and with EU data protection principles.

In April, ICANN's GNSO began to seriously consider restricting published Whois data to only the data essential to ICANN's technical coordination purposes. That is when the US Government, in an intervention similar to its action in the .xxx top level domain, started pushing the GAC to develop "policy principles" that would counter the GNSO. The US position was dictated by trademark and copyright interests, who routinely data-mine Whois and insist on open publication of contact information so that it will be easier for their lawyers to serve process on people they accuse of violations. Of course, the GAC's role in ICANN is advisory only...

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[3] TURKEYS COMING HOME TO ROOST?
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Tunis Agenda Used to Reassert ITU's Quest for Internet Authority

At its Plenipotentiary Conference in Turkey, the International Telecommunication Union (ITU) made it clear that it is not going to go away quietly and leave the Internet and its U.S.-dominated governance arrangements alone. It passed a long and wordy resolution on "ITU's role with regard to international public policy issues pertaining to the Internet and the management of Internet resources, including domain names and addresses."

The resolution utilized those aspects of the WSIS Tunis Agenda calling for "enhanced cooperation" to enable governments to develop "globally applicable public policy principles" and asserting that "all governments should have an equal role and responsibility for international Internet governance." The ITU resolved to organize consultations on IG issues among the ITU membership

The ITU initiative can be seen as a predictable effort to fill the vacuum left by the efforts of some governments to prevent the IG Forum from developing any agreed public policy principles, and by the lack of any publicly visible UN response to, much less progress on, the Tunis Agenda's call for "enhanced cooperation" elsewhere. As we claimed almost exactly a year ago, WSIS resolved nothing.

We'd like to provide a link to the resolution but, um, you can't download it on the web unless you're an ITU member.

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[4] US INFLUENCE OVER INTERNET RESOURCES STRENGTHENING
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Several recent developments suggest increasing influence for US institutions in shaping Internet governance. The most obvious one is of course the DoC approval of the .com agreement, which subjected the largest registry, VeriSign, to direct regulatory oversight by the USG. However, two other important legal developments indicate the increasing relevance of US-based law to the property dimensions of Internet resources.

First, ICANN is facing litigation brought by a subsidiary of US-based insurance conglomerate AIG over control of a ccTLD. The plaintiff has been trying to recover \$23 million from the Republic of Congo for the past 15 years and, given the Congo's refusal to remit, is now seeking control of the .cg domain as a creditor garnishing property. ICANN filed to have the suit dismissed but suffered an initial rebuff from the Los Angeles County court. The California legal system will soon decide whether or not the suit will go to trial. ICANN has posted the documents here:
<http://www.icann.org/general/litigation-c-itoh.htm>

The second development concerns the nature of rights to IP-address blocks. Reported on by IGP last April
<http://internetgovernance.org/institutionalarchive.html#arinlawsuit_042806>, arguments were heard October 23rd in US District Court (Northern District of California). At this stage, the Court is considering ARIN's argument that a 2001 order be modified to require that the plaintiff (Kremen) sign a Registration Services Agreement and pay for IP-address resources. In addition, ARIN has requested the suit be dismissed. The financial motive is clear; at stake is the IP-address block Kremen was legally awarded in 2001 and which ARIN refuses to remit. The outcome will clarify the applicability of US law pertaining to IP-address blocks, and more generally the applicability of property concepts to IP addresses.

These developments make it clear why ICANN desires to extract itself from the clutches of national (i.e., US) law, as expressed in its recent strategic plan draft <<http://www.icann.org/psc/psc-draft-29nov06.pdf>>. But according to its own hired expert, the feasibility of

this seems unlikely, simply because ICANN is a creature of private law, not public international law. More importantly, if ICANN did escape US law, would it not also escape formal accountability? This is the quandary created by the ICANN regime's attempt to create a global governance mechanism without any real international agreements.

In the absence of a binding global agreement, ICANN is arguably made more accountable to the Internet community through its subjection to the well established, transparent, and enforceable application of domestic, private law - even if it is in the U.S. We can apologize to our compatriots in other countries for the bias, but private law has to be based somewhere, and until and unless other, equally strong forms of accountability are created we would not like to see ICANN slip away.

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[5] IG FORUM ADVISORY GROUP WILL MEET IN FEBRUARY
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The Internet Governance Forum's Multistakeholder Advisory Group (MAG) will meet on 12 February (tentative date) in Geneva, Switzerland to review and assess the Athens meeting, and there will be open public consultations on the 13th. The open consultations will include translation into the 6 UN languages. According to one diplomat, "part of the Agenda of the February meeting will be...modalities for multi-stakeholder interaction." The Forum Secretariat should also be encouraged to take up the status of the Advisory Group itself: should a new one be created for the next forum? You are invited to provide the Forum with feedback at this site: <http://intgovforum.org/forum/>

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[6] LEAPFROGGING, DEVELOPMENT, ICTs: A CONTRARIAN AFRICAN VIEW
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In his keynote speech to the Caribbean Internet Governance Forum, African civil society participant and Syracuse University doctoral student Mawaki Chango challenges the mindset which views ICTs as a way of "catching up." Download the text of the speech here: <http://internetgovernance.org/pdf/MC-Keynote-Grenada.pdf>