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## United States Senate

COMMITTEE ON COMMERCE, SCIENCE,  
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

WEB SITE: <http://commerce.senate.gov>

ELLEN DONESKI, STAFF DIRECTOR  
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July 31, 2014

Dr. Stephen D. Crocker  
Chairman, Board of Directors  
Internet Corporation for Assigned Names and Numbers  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094-2536

Dear Chairman Crocker:

In March, the National Telecommunications and Information Administration (NTIA) announced its intention to transition key Internet domain name functions to the global multistakeholder community. NTIA asked the Internet Corporation for Assigned Names and Numbers (ICANN) to convene global stakeholders to develop a proposal to transition the role currently played by the U.S. government. NTIA has stated that the transition proposal must have broad Internet community support and address four principles:

- Support and enhance the multistakeholder model;
- Maintain the security, stability, and resiliency of the Internet Domain Name System;
- Meet the needs and expectation of the global customers and partners of the Internet Assigned Numbers Authority (IANA) services; and
- Maintain the openness of the Internet.

NTIA also stated that it would not accept a proposal that replaces the U.S. government's role with a government-led or inter-governmental organization solution. We agree that any transition proposal must—at a minimum—meet these principles, and we will carefully review any proposal to ensure that it complies with them. We also strongly agree with many stakeholders that the “Enhancing ICANN Accountability” process must be completed—and have adopted meaningful reforms—*prior to* the proposed transition of the IANA functions. A robust package of reforms will provide confidence to all stakeholders that ICANN will meet the needs of the Internet community in the absence of U.S. government involvement in the IANA services.

ICANN now has the benefit of many thoughtful comments regarding “Enhancing ICANN Accountability.” We have evaluated these contributions with great interest and believe ICANN should implement reforms in several areas.

First, ICANN must prevent governments from exercising undue influence over Internet governance. In April, we led 33 Senators in a letter to NTIA regarding the IANA transition. We wrote that “[r]eplacing NTIA’s role with another governmental organization would be disastrous, and we would vigorously oppose such a plan.” ICANN should reduce the chances of governments inappropriately inserting themselves into apolitical governance matters. Some ideas to accomplish this include: not permitting representatives of governments to sit on ICANN’s Board; limiting government participation to advisory roles, such as through the Governmental Advisory Committee (GAC); and amending ICANN’s bylaws only to allow receipt of GAC advice if that advice is proffered by consensus. The IANA transition should not provide an opportunity for governments to increase their influence.

Second, it is imperative in the absence of the Commerce Department contract that ICANN’s policy development process continue to be separated from the technical IANA functions. Keeping these two roles distinctly separated, whether functionally or structurally, provides a safeguard against politicization of technical functions and would prevent concentration of power. There is broad Internet community support for the enduring separation of these two roles.

Third, ICANN can increase its accountability through adjustments to the required threshold for Board of Director decisions. As ICANN’s autonomy possibly increases, the threshold for approving major decisions should be increased to four-fifths of all voting members, not just those present. The threshold for changing or replacing the bylaws should also be raised to four-fifths of all voting members. Such changes will ensure stability for all stakeholders and reinforce ICANN’s consensus model.

Fourth, the multistakeholder community must be given additional oversight tools. The multistakeholder community can only fulfill the oversight role currently played by the U.S. government if it has appropriate oversight mechanisms that impart sunlight on ICANN and improve stakeholder participation. For example, ICANN could be required to conduct an annual audit with an internationally recognized auditing firm. An Inspector General’s (IG) office could be established at ICANN that is granted full access to the organization’s finances, documents, and activities. The IG’s reports could be publicly available and not be subject to approval or editing by ICANN’s officials or board. ICANN could establish an open disclosure process equivalent to the U.S. Freedom of Information Act. A Parliamentarian could also be created to advise the Internet community on ICANN processes to maximize stakeholder participation and oversight.

Fifth, ICANN should adopt an independent dispute resolution process to ensure that stakeholders’ claims are adjudicated for matters relating to ICANN’s operation. Meaningful reforms are needed in this area to provide confidence to the community that redress is possible when the Board or staff errs and the fairness of the process is called into question.

Lastly, ICANN’s bylaws should be amended to make the Affirmation of Commitments obligations permanent. The Affirmation, and in particular the periodic reviews by stakeholders, has improved ICANN. Currently, ICANN can terminate the Affirmation with 120 days’ notice. ICANN’s Board should agree not to terminate the Affirmation unless more than four-fifths of the Board vote to do so.

We commend ICANN for undertaking the “Enhancing ICANN Accountability” process. Meaningful reforms to ICANN will strengthen the multistakeholder process and bring credibility to the organization, and it is critical that those reforms are in place before the proposed IANA transition.

Sincerely,



JOHN THUNE  
Ranking Member



MARCO RUBIO  
U.S. Senator