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**Leap of Faith
Financial Services Inc.**

July 15, 2018

Honorable David J. Redl

Assistant Secretary for Communications and Information and Administrator
National Telecommunications and Information Administration
U.S. Department of Commerce
Washington, DC 20230

BY EMAIL ONLY TO: iipp2018@ntia.doc.gov

RE: International Internet Policy Priorities [Docket No. 180124068-8068-01]

Dear Assistant Secretary Redl,

Thank you for the opportunity to provide input into this important topic.

Leap of Faith Financial Services Inc. is a company based in Canada. We own and operate a network of some of the leading websites and domain names in the world, including Math.com and School.com, serving millions of visitors in the US and around the world.

The United States is the envy of the world. The root cause of that envy is not the strong economy or a mighty military, but can instead be traced to one thing — the Constitution. The gap between a nation's potential and actual achievement can often be traced to bad laws or poor governance. The strong laws and generally good governance of the United States flow from its Constitution. The seeds that were planted two centuries ago in that document have blossomed into the greatest nation the world has ever seen.

The Internet is vital to the future of the US, as noted in the first sentence of the Notice of Inquiry. Vital. And vital not just to the US, but to all humanity.

The United States government created the Internet, and protected it in its infancy. There has never been a "Constitution of the Internet" to formalize rights and freedoms. In its early years into early adulthood, it was US law (ultimately from its Constitution) and oversight that shielded the internet from forces that would harm it. Past oversight of the DNS by the US

government was an important element of that protection. Unfortunately, that oversight ceased due to the October 2016 privatization of the management via the IANA Stewardship Transition.

Since then, the destructive forces that were previously held at bay have been unleashed, and the Internet has suffered. ICANN was just not ready to handle the job, and likely never will be ready. Bold action is needed by the US government to unwind that transition, without haste. Many of the functions that were outsourced and privatized should instead be internalized within the US government. The longer the US government delays in taking strong action to restore things to the way they were, the greater the damage that will take place, not just to current users of the internet, but to future generations. The US government is a trusted custodian – ICANN is not. The US involvement in the GAC is not as good as direct oversight. [with direct oversight, one has to actually take action to do something bad; under the GAC, the US has to actually take action to *prevent* something bad from happening; while that might seem like a minor distinction, in practice it can be enormous, action vs inaction, as one needs constant vigilance to prevent bad things from happening if one lacks direct oversight]

I have followed ICANN and its policymaking for over 15 years, and things have been getting worse over time. Among many other policy issues over that time, I was a leader in opposing Verisign's SiteFinder system, and also exposed deep flaws in proposed contracts with registry operators (later changed after huge public outcry). I've been described as "the single most vigilant individual"¹ in the domain name industry when it comes to keeping an eye on ICANN. I also opposed the new gTLDs program (which ICANN approved), and anticipated many of the problems that have resulted from that poor decision by ICANN.

ICANN's problems are too numerous to list, and are systemic. ICANN, despite its veneer as "not-for-profit public-benefit corporation," is instead a bureaucracy that exists and operates for its own sake, to serve itself and its insiders, unlike the NTIA which actually serves the public interest. ICANN was once a small and highly focused technical organization with an annual budget of under \$10 million, but has morphed into an unaccountable monopolistic political monstrosity with a roughly \$140 million annual budget, with hundreds of overpaid employees allocated to too many projects, and doing them poorly. [The salaries can be found in the IRS Form 990² documents for the organization, and likely far surpass similar positions at NTIA - ICANN uses unrealistic and manufactured "comparables" to attempt

1 See: <http://www.dnjournal.com/archive/lowdown/2011/dailyposts/20110601.htm>

2 See: <https://www.icann.org/resources/pages/governance/current-en> (although you'd need to click on prior years, as the Form 990 has lagged reporting)

to justify high salaries. Or, check Glassdoor.com. Even the Glassdoor ratings of their own employees are 2.8 out of 5, compared to 4.2 out of 5 for NTIA, demonstrating how dysfunctional ICANN is even from the perspective of their own past/current employees]

I would be happy to provide you, in future followup correspondence, with concrete examples of ICANN staff performance problems (some brought to the attention of their CEO but ignored) to illustrate the depth of the dysfunction. I suggest you setup a system whereby other observers/stakeholders of ICANN (and perhaps also include their past/current employees, even someone like Esther Dyson, ICANN's first Chair but later a critic) could also provide such input, perhaps anonymously, so that you can understand the enormous extent of their problems. NTIA needs to conduct such analysis directly, rather than rely on self-reporting by ICANN. "Independent" reports commissioned by and paid for by ICANN are never truly independent or trustworthy. [External consultants generally know what the clients want to hear, and deliver it in their reports. If they did otherwise, they'd risk losing repeat business.] Such an analysis can help to justify the unwinding of the IANA transition. The use of the IRS and its broad auditing and investigative powers might also reveal much, not only within ICANN, but also to related parties, contractors, contracted parties, staff, Board members, etc. Follow the money.

The WHOIS system, which identifies the registrant of a domain name, is now a complete disaster due to the European GDPR. My company isn't based in Europe, and doesn't do business with a European registrar or a European registry. Yet, currently a WHOIS lookup for any of our domain names doesn't even display our own information any longer, no longer allowing us to easily prove ownership of our own assets! Imagine having a trademark registry, corporation registry, or land registry with similar blank information. It would be preposterous.

This can all be traced to GDPR's egregious financial penalties, and their attempts to apply European laws worldwide. Registrars, out of an abundance of caution, were forced to take extreme measures, so they too are victims. The US emboldened foreign nations when it completed the IANA transition. A vacuum was created, and European bureaucrats opportunistically stepped in to fill that void, trying to impose their defective ideas and systems worldwide. This was at the expense of US rights and freedoms, and the rights and freedoms of others around the world. They detected US weakness. The US needs to demonstrate strength. The US should pass a Federal law to mandate public WHOIS, to completely solve that problem (and revert the system to its former state), which ICANN will never solve properly left on its own. By doing this, it will give ICANN one less thing to

do. The fewer things ICANN is responsible for, the better the Internet will become.

The ICANN DIDP system, which is supposed to emulate the FOIA system in terms of providing valuable documents to the public and serving as an accountability mechanism, is broken. There are far too many exemptions from required disclosure that allow ICANN to paint a pretty picture, because the truth can never come to light unless it's either leaked by disgruntled staff, or is compelled via lawsuit. Few have standing to even bring such lawsuits. You can view examples on ICANN's website³ to see the broken DIDP system, with many unjustifiable denials of documents to protect ICANN from scrutiny.

ICANN's Board member selection system is also troubling. There are too many protections to prevent the "wrong people" from becoming Board members ("wrong people" being ones that would shake things up, be vigilant, and compel ICANN to serve the public, rather than serve itself and its insiders). Elections were eliminated, replaced with selection procedures that ensure that insiders are protected and perpetuated. Board members even gave themselves compensation, a self-serving act. Karl Auerbach⁴ was the last elected US-based Board member, more than a decade ago, and did more than most to hold ICANN accountable (even suing ICANN for documents), as an unpaid Board member. While I might have disagreed with Mr. Auerbach on specific policy matters, he was much more open, transparent, vigilant, and receptive to external input than most ICANN Board members before or since.

ICANN maintains a document listing "Domain Name Registrants' Rights"⁵ which are minimal, and pale in comparison to the rights of registrars and registry operators. The multistakeholder model of ICANN is broken because registrants have no real seat at the table, despite registrants ultimately paying for the entire show (all ICANN revenues ultimately come, directly or indirectly, from registrants). This is taxation without representation. The ALAC structure never really works for registrants, and is ultimately a distraction. The Business Constituency and the IP Constituency are merely one and the same for most purposes, and really exclude the interests of most typical registrants (as opposed to huge multinationals).

There is a "revolving door" between ICANN staff, and registrars, registry operators, and other beneficiaries of policymaking. That needs to stop.

3 See: <https://www.icann.org/resources/pages/governance/transparency-en>

4 See: https://en.wikipedia.org/wiki/Karl_Auerbach and <http://www.cavebear.com/>

5 See: <https://www.icann.org/resources/pages/benefits-2013-09-16-en>

The new gTLDs program has been another fiasco from ICANN. Rather than recognize it as a failure, ICANN intends to expand upon it even further. Imagine ICANN as a restaurant group, having a handful of very successful locations (.com, .net, .org). They decide to launch a few more (.info, .biz, .mobi, .pro, .travel many years back) with disappointing results. Despite this, they then open up a huge franchise expansion in a short period (1000+ new locations). As most should have foreseen (and I and many others predicted correctly beforehand), it's been a bust. The "franchisees" (new registry operators) now want lower fees, essentially a corporate welfare scheme "socializing the losses" of those who made bad decisions. The "customers" (registrants of new gTLD domain names), relatively few that there are, have faced higher fees and generally poor reception from end-users. And the "neighbors" have also suffered (e.g. more spam and other malevolent behaviour for the rest of society, from Spamhaus stats⁶). With an unwound IANA Transition, ICANN's unsound plans to launch more new gTLDs can be halted, and even rolled back through attrition over time.

The EU's Article 11 and Article 13 proposed legislation (which didn't pass recently, but might in the future) is also a danger. The EU's so-called "Right To Be Forgotten" (more accurately a "Right To Delist") is also causing problems for free speech. I'm sure others (Google, etc.) will provide detailed input to NTIA on such topics, but I did want to mention them too, lest NTIA incorrectly conclude that just because only a few groups mentioned those topics, that they're not of concern to many others, both inside and outside the US. [hopefully once all comments are published, NTIA will be able to organize them all, and have further open discussions and opportunities for input on prioritizing them]

My own country, Canada, caused similar issues with the Google v. Equustek decision⁷ in the Supreme Court of Canada. A US court later negated its effects on Google and its users, but it still demonstrates the dangers even from a country with similar values as the United States, attempting to apply its laws globally. One can imagine how less friendly countries might be emboldened by these kinds of decisions.

The USTR currently maintains a "Priority Watch List" for Intellectual Property Rights. It should create a similar list to monitor trading partners whose laws threaten fundamental rights and freedoms on the internet (e.g. freedom of expression, a free press, due process, etc.), and take appropriate measures (sanctions, etc.) if need be. If the carrot doesn't work, it's time for the stick.

In addition to unwinding the IANA Transition, I recommend that NTIA do

6 See: <https://www.spamhaus.org/statistics/tlds/>

7 See: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16701/index.do>

whatever it takes (legislation, "soft power", treaties, or more drastic measures) to ensure that the rights and protections of the US Constitution apply to the entire Internet, with expediency and with permanent effect. It's regulatory and legal uncertainty that is often a cause of problems, and the US government can reduce that uncertainty. This will propel economic growth and innovation to new heights, not just in the US, but globally. Without swift action, other nations will simply wait for US hegemony to decline, and impose their deviant value systems, at odds with the principles in the US Constitution, globally. The time to act is now.

Sincerely,

George Kirikos

President

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