



UNITED STATES DEPARTMENT OF COMMERCE  
The Assistant Secretary for Communications  
and Information  
Washington, D.C. 20230

JUN 9 2016

The Honorable John Thune  
United States Senate  
Washington, DC 20510

The Honorable Marco Rubio  
United States Senate  
Washington, DC 20510

Dear Senators Thune and Rubio:

Thank you for your ongoing engagement on the important issues raised by the transition of the U.S. Government's stewardship of key Internet domain name functions. Today, the National Telecommunications and Information Administration (NTIA) released its evaluation of the global Internet community's proposal developed over the last two years to transition the U.S. Government's stewardship of these technical functions, known as the Internet Assigned Numbers Authority (IANA) functions. Our report concludes that the plan meets the criteria that NTIA established in 2014 and which were included in the DOTCOM Act legislation considered in the Senate Commerce Committee last year.

This letter separately addresses recommendations you made in a July 31, 2014 letter to Internet Corporation for Assigned Names and Numbers (ICANN) Board Chair Dr. Stephen Crocker. Although not all of your recommendations directly relate to our assessment criteria, we felt that these are all good points and, as we reviewed the plan, we assessed the extent to which it incorporated your suggestions. I am pleased to report that NTIA believes that all of your suggestions have been incorporated into the multistakeholder community's transition plan. Here is our analysis to support that conclusion:

First, you recommended that *"ICANN should adopt an independent dispute resolution process to ensure that stakeholders' claims are adjudicated for matters relating to ICANN's operation."* The proposal does that and more. It enhances the existing independent review process by creating a standing panel of experts to adjudicate challenges to ICANN decisions. In the case of independent review processes initiated by the empowered community, ICANN will be required to pay the community's legal fees, ensuring that cost will never prevent the community from exercising this accountability mechanism. The determinations of independent review panels will be binding on ICANN. The community will have the ability enforce outcomes from the independent review process through court action as a last resort.

Second, you recommended that *“ICANN should reduce the chances of governments inappropriately inserting themselves into apolitical governance matters [by, e.g.,] 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 proposal is consistent with each element of your recommendation. ICANN’s bylaws retain the prohibition on government officials serving as voting Board members. The role of governments will remain advisory through the GAC. ICANN’s bylaws have now codified the current practice under which the Board gives special deference only to consensus GAC advice, defined in the bylaws as advice to which no country formally objects.

Third, you recommended that *“ICANN’s policy development process [should] continue to be separated from the technical IANA functions.”* This principle, which is current practice today, is more concretely established by the transition plan through the creation of the Post-Transition IANA organization, a structurally separate entity which will perform the technical IANA functions.

Fourth, you recommended that *“the threshold for approving major decisions should be increased to four-fifths of all voting [ICANN Board] members.”* The proposal contains new supermajority voting provisions. ICANN’s existing structure, mission, and values have been codified in “Fundamental Bylaws,” whose creation, change, or removal requires the express approval of three-fourths of the ICANN Board as well as the community.

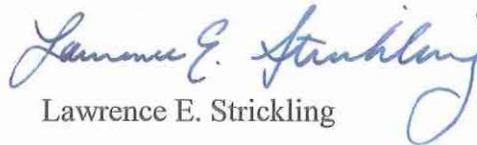
Fifth, you recommended that *“the multistakeholder community must be given additional oversight tools.”* The proposal both enhances existing oversight mechanisms and creates new ones. Existing tools, focused on accountability and transparency, are codified in ICANN’s bylaws. The creation of the “empowered community” and its new processes will provide powerful new oversight capabilities for the multistakeholder community. There are also new ICANN bylaw provisions that will expand the scope of existing organizational reviews to ensure that ICANN’s organizations, councils, and committees are accountable to their respective constituencies.

Finally, you recommended that *“ICANN’s bylaws should be amended to make the Affirmation of Commitments obligations permanent.”* The proposal does this. The central elements of the Affirmation of Commitments between NTIA and ICANN are codified directly into ICANN’s bylaws. These commitments will continue to strengthen ICANN’s fidelity to the multistakeholder model.

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Thank you again for your engagement and your commitment to the multistakeholder process. Your support for the bottom-up, multistakeholder model has ensured the Internet's success and helped safeguard it for the future. Your letter was a helpful perspective as we reviewed the proposal. I look forward to continuing to work with you and the multistakeholder community to ensure the Internet remains stable and secure and that it continues to be an engine for economic growth and innovation around the world.

Sincerely,

  
Lawrence E. Strickling