

July 13, 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

Via email to [iipp2018@ntia.doc.gov](mailto:iipp2018@ntia.doc.gov)

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

Dear Assistant Secretary Redl:

The Board of Directors of the Internet Corporation of Assigned Names and Numbers (ICANN) is pleased to submit these comments in reply to the Notice of Inquiry (NOI) issued by the National Telecommunications and Information Administration (NTIA) on its International Internet Policy Priorities for 2018 and beyond.<sup>1</sup>

The ICANN Board is selected by and works on behalf of the ICANN multistakeholder community, which is made up of domain name registries, registrars and registrants, businesses, technical experts, intellectual property holders, governments, civil societies, academics, and end users. The Board oversees the strategy and operations of the ICANN organization, and it ensures that the organization executes the policies and procedures adopted by the ICANN community. These include numerous enhancements adopted and implemented as a result of the Internet Assigned Numbers Authority (IANA) stewardship transition to ICANN's multistakeholder oversight and accountability mechanisms, as described below.

### Introduction

The United States Government (USG) has played a pivotal leadership role in the Domain Name System (DNS) since its inception in the early 1980s, through initial research, funding, development, and outreach. The USG continued to provide leadership for DNS innovation when, as part of the commercialization of the Internet, it called for the creation of a private sector-led organization to coordinate the DNS and some of the Internet's unique identifiers (the

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<sup>1</sup> Notice of Inquiry, National Telecommunications and Information Administration, U.S. Department of Commerce, Docket No. 180124068–8068–01, 83 FR 26036 (June 5, 2018); comment period extended, 83 FR 27313 (June 12, 2018).

“IANA functions”<sup>2</sup>). As a condition for transferring management of the IANA functions from government contractors to the global private sector, the USG required that the new organization, which would eventually become ICANN, operate on the basis of a bottom up, consensus-based governance model. Leaders in business, technology, and civil society came together to answer the USG’s call by creating ICANN in 1998, which today coordinates the IANA functions, and is held accountable by a multistakeholder community.

Under ICANN’s multistakeholder model, the ICANN community has the power and institutional structure to make any necessary changes to the management of the IANA functions and ICANN policies. Under the new Bylaws, which were enacted as part of the IANA stewardship transition, (“transition”), there are accountability structures and mechanisms now in place that the multistakeholder community can leverage to ensure that the IANA functions are delivered effectively and that policy development within ICANN follows the bottom-up, consensus-driven model. Naturally, over the years, there have also been a number of alternatives to the DNS considered by various actors and interests. None has succeeded in becoming a viable alternative for the global DNS that is coordinated by ICANN.

We are happy to report that at this time, Internet stakeholders continue to rely heavily on the IANA functions and participate actively in ICANN in furtherance of its mission to ensure the stable and secure operation of the Internet's unique identifier systems. Under the stewardship of the multistakeholder community, there is only one global DNS. The remainder of these comments will focus on the performance of the IANA functions and ICANN’s multistakeholder model since the transition.

### The IANA functions

To understand ICANN’s technical role, it is important to first recognize a fundamental fact about the global Internet: it is a voluntary arrangement among private actors operating on the basis of trust. ICANN, in its performance of the IANA functions and its role of coordinating the DNS, is just one part of that machine, allowing the Internet to operate as a single, interoperable, global network. ICANN plays a small but significant role working together with other organizations, such as the Internet Engineering Task Force; Regional Internet Registries; Internet service providers; and many more, to make the Internet work. We know that the IANA functions work well because network operators and Internet users around the globe voluntarily choose to rely on it.

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<sup>2</sup> The IANA functions include the management of protocol parameters, Internet number resources and domain names. The Internet Corporation for Assigned Names and Numbers (ICANN) performs these functions on behalf of the global Internet community.

## The ICANN multistakeholder model

Since ICANN's inception, stakeholders representing the business community, domain name registries, registrars and registrants, businesses, technical experts, intellectual property holders, governments, civil societies, academics, and end users have been responsible for developing policies and holding the ICANN organization accountable for its activities. The ICANN multistakeholder community organizes itself into Supporting Organizations and Advisory Committees. These structures, along with a Nominating Committee, select members to serve on the ICANN Board. The Board has a global composition as a result of a bylaw that requires all of ICANN's five geographical regions to be represented on the Board and prohibits more than five members from any one region to serve on the Board.

As part of the transition proposal development process initiated in response to the USG's 2014 decision to complete the transition commenced in 1998, ICANN's multistakeholder community developed consensus recommendations to significantly enhance ICANN's oversight and accountability.

First, the IANA Stewardship Transition Coordination Group (ICG), representing the interests of 13 stakeholder groups, strengthened the oversight and accountability mechanisms for the performance of the IANA functions. It also created enhanced service level agreements and expectations between the IANA functions operator, which are performed by ICANN's affiliate Public Technical Identifiers (PTI), and customers of the IANA functions. PTI is responsible for the operation of the IANA functions.<sup>3</sup> Finally, the ICG created mechanisms by which the customers of the IANA functions can replace PTI if it ever becomes necessary.

There are a number of data points that measure PTI's performance. One measurement is the [annual customer survey](#), conducted for the sixth time this year. This year's results demonstrate that the IANA functions continue to be delivered to high satisfaction levels. These results are consistent with the comprehensive service level reporting collected and posted publicly, with many community-defined metrics of performance reported either [in real time](#), or through [monthly reports](#). These metrics show consistent and reliable service delivery and a strong commitment to the community's defined service level targets. Since these reports were developed, PTI has continued to meet the satisfaction of each of its customer groups.

Secondly, a much larger group of ICANN stakeholders collaborated on the other part of the transition proposal addressing ICANN's overall accountability. The Cross Community Working Group on Enhancing ICANN Accountability (CCWG), comprised of representatives from each of

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<sup>3</sup> Public Technical Identifiers (PTI) was incorporated in August 2016 as an affiliate of ICANN, and, through contracts and subcontracts with ICANN, began performing the IANA functions on behalf of ICANN in October 2016.

ICANN's Supporting Organizations and Advisory Committees, developed consensus recommendations that significantly enhance the ability of the ICANN multistakeholder community to hold the ICANN Board accountable and ensure that Board's actions and decisions are at all times consistent with the ICANN Mission and Bylaws. Among other things, the CCWG expanded and refined the ICANN Mission and Bylaws to include new provisions empowering the community to:

- Reject ICANN's strategic plans and budgets, including the PTI budget;
- Approve changes to the ICANN fundamental bylaws and reject changes to other Bylaws;
- Remove individual Board Directors;
- Recall the entire ICANN Board;
- Initiate binding independent review processes; and
- Reject ICANN Board decisions related to reviews of PTI;

In addition, the post-transition Bylaws:

- Maintain the advisory status of the Governmental Advisory Committee (GAC); and
- Enhance ICANN's accountability mechanisms, including the specific accountability reviews first required by the Affirmation of Commitments between ICANN and NTIA prior to the transition, which are now embedded into ICANN's Bylaws.

Since the transition, the ICANN Board, community, and organization have gained experience with the new oversight and accountability mechanisms. For example, the Empowered Community (the multistakeholder group responsible for exercising rights under the Bylaws on behalf of the ICANN community) has:

- For two years in a row, reviewed, without objection, proposed annual budgets for ICANN and the IANA functions;
- Approved a fundamental bylaw change;
- Considered a standard bylaw change without objection; and
- Initiated the reviews first required by the Affirmation of Commitments and now incorporated into the Bylaws.

While ICANN's broad multistakeholder community has and will always have voices that are not satisfied with some aspect of ICANN's work, ICANN and its Board of Directors continue to ensure that the organization operates within its mission and remains accountable to the new Empowered Community through the tools created in the post-transition Bylaws.

Another indicator of the health of ICANN’s multistakeholder model is the high level of participation in ICANN’s public meetings and policy development efforts. US businesses have remained highly active and retained a leadership role in ICANN stakeholder groups. Similarly, the USG, led by NTIA with the participation of other agencies, including the Departments of State and Justice; the Patent and Trademark Office; and the Federal Trade Commission, maintains a strong voice within the Governmental Advisory Committee (GAC). The GAC is now made up of over 170 governments, demonstrating the global relevance of ICANN’s role in coordinating the DNS.

Since the transition, ICANN has held six meetings in five regions of the world, including in Puerto Rico in March 2018, in which the ICANN meeting was the first major conference held on the island following Hurricane Maria. Each of these meetings was attended in person by between 1000 and 4000 stakeholders and by many more through remote participation. Over 200 sessions took place at each meeting. Bottom-up policy development efforts were taking place both during and between the meetings on a wide range of topics including new generic top-level domains (gTLDs), data privacy, rights protection mechanisms, organizational and specific reviews, and additional accountability mechanisms (CCWG-Workstream 2), among others.

ICANN’s multistakeholder community continues to work together as it addresses the impact of the Global Data Protection Regulation (GDPR) on the bylaws-mandated WHOIS services. ICANN’s goal is to comply with the law while maintaining the current WHOIS to the greatest extent possible and helping to ensure a secure, stable, and interoperable Internet. To that end, it has solicited input from across its multistakeholder community to develop a model for compliance with the law that balances privacy rights with the need for information transparency. Community input was critical to the development of the new and temporary contractual requirements that resulted in changes to WHOIS outputs after May 25, 2018.

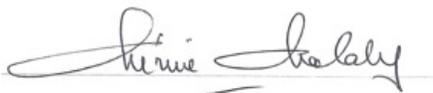
Moving forward, the organization is working closely with the multistakeholder community to develop a unified access model to allow for those with legitimate interests – such as law enforcement, the operational security community, and intellectual property rights holders – to access non-public WHOIS data. In parallel, the multistakeholder community is working to determine how to evolve the temporary contractual changes into permanent policy for future registration directory services. ICANN will facilitate discussions with the data protection authorities (DPAs) to confirm, where possible, that the community’s consensus policy and a proposed access model are compliant with the GDPR.

## Conclusion

The continued vibrancy of voluntary stakeholder participation in ICANN demonstrates the success of the transition and ICANN's multistakeholder model. Should ICANN fail to deliver the IANA functions consistent with stakeholder expectations, the customers of those functions are free to go elsewhere or to rely instead on different technologies. Similarly, should ICANN become unaccountable to stakeholders or no longer serve as an effective convener and facilitator of policy development, the multistakeholder community will stop participating. Neither of these has happened in the nearly two years since the transition took place. The IANA functions continue to meet the needs of the technical community. The ICANN multistakeholder community continues to perform oversight and policy development activities with passion and commitment.

The USG's decision to invest in the Internet reflected a vision of networked communication technology that has transformed the way we live, work, and interact. The USG's decision in 1998 to ensure that coordination of the Internet's unique identifiers remained in the private sector furthered the Internet evolution and empowered Internet stakeholders to govern themselves. The USG's decision in 2014 to complete the privatization of the IANA functions continued that evolution and demonstrated the power of the multistakeholder model for non-governmental management of global resources. The vision of the USG at each stage of this process has delivered enormous benefits in the form of a single, global, interoperable, and open Internet. While ICANN's multistakeholder model of governance will no doubt continue to grow and evolve, the IANA stewardship transition has demonstrated the model's resiliency and flexibility to face and respond to new challenges.

Sincerely,



Cherine Chalaby  
Chair, ICANN Board of Directors