JUNE 20, 2018

National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue NW, Room 4725
        Attn: Fiona Alexander, Washington, DC 20230

Re: International Internet Policy Priorities
        RIN 0660–XC041

Dear Mr. Redl and Ms. Alexander:

Thank you for the opportunity to comment on the US Government's International Internet Policy Priorities (RIN 0660–XC041). This letter responds to some of the questions posted in the Notice of Inquiry.

As background, LegitScript is an internet and payments compliance firm. We employ about 100 people, mostly in Portland, Oregon. Our clients include Google, Bing, Amazon, Visa, Pinterest, and numerous other payments and internet companies. We also investigate and monitor cybercrime. As part of our compliance, investigative, and monitoring activities, we interact closely with registrars and registries, and with ICANN. We make extensive use of Whois and other DNS information to identify and prevent money laundering and other criminal activity.

Thank you for the opportunity to respond to select questions below. Please do not hesitate to contact me should you have questions or require clarification.

II. Multistakeholder Approach to Internet Governance

A. Does the multistakeholder approach continue to support an environment for the internet to grow and thrive? If so, why? If not, why not?

No. The multi-stakeholder approach may initially sound terrific: anyone can participate, and it's a ground-up approach. The voices of the community are listened to and balance out "voices of power."

However, the reality is different, and it is not an effective model.

Participating in ICANN policy is, realistically, not something that a person or company can do unless it is their full-time job. This is for a couple of reasons. First is the time involved: participating effectively in a policy development group requires hours. Second is the expertise required: understanding ICANN policy and DNS from a technical perspective is not something a layperson typically brings to the table. The policies and rules are arcane enough that they constitute a significant barrier to effective participation.

As a result, as nice as the multi-stakeholder model sounds, the only persons or entities who can effectively participate in it are those who are paid to do so by entities with a financial (or, sometimes, policy) interest in it. This includes, most predominantly, registrars and registries, who seek to bend ICANN policy to their own commercial interests. It also includes IP rights holders as well as others. Although there is a non-commercial internet users' group, it has mostly been taken over by persons and entities with views on privacy that probably do not reflect the average internet user.

Moreover, the policy development process is broken. I recently participated in two working groups, both related to Whois. The process simply broke down in both cases and little to nothing was accomplished.

It is important that various parties be given a voice in internet policy. But ICANN, and the policy-making process, have become dominated by select entities, chiefly registrars and registries. As good as the multi-stakeholder model sounds, it is simply not effective.

C. Are the existing accountability structures within multi-stakeholder internet governance sufficient? If not, why not? What improvements can be made?

No. In particular, ICANN Compliance is a major concern. ICANN is supposed to hold registrars accountable to adhere to the Registrar Accreditation Agreement. When a complaint against a registrar is lodged with ICANN, the Compliance department will resort to an "informal" process in which it typically dismisses the complaint despite no remediation having been taken by the registrar. ICANN then refuses to publicly disclose how the registrar was found to be in compliance. There is an absence of transparency and accountability. Given the fact that ICANN's funding comes via registrars and registries, this is accurately seen as a corrupt system designed to protect and coddle registrars and registries.

D. Should the IANA Stewardship Transition be unwound? If yes, why and how? If not, why not?

<u>Yes. Both the IANA transition and the 2009 ICANN transition should be unwound.</u> Both were grave policy errors on the US government's part.

I have testified before both the US House and Senate about how and why ICANN has become an unaccountable institution that, instead of serving the needs of average internet users, is being used by the registrar and registry community for its own commercial priorities, and in fact has served to help some registrars and registries shield and perpetuate criminal activity.

We recognize that setting the internet "free" to be "governed" by average internet users through the multi-stakeholder model sounds tempting. But ICANN is a weak institution that is beholden not to average internet users, but to the commercial interests with time to invest in the byzantine policy development process. Returning ICANN and IANA to contractor status with the US Government — a country founded on the principles of freedom — is the best way to ensure that ICANN is actually accountable and follows through on prior promises such as continued availability of Whois data.

<u>How to do it</u>. Under the Fifth Amendment to the US Constitution, the US Government may be able to seize ICANN under a theory of eminent domain, based on the theory that internet policy and governance are inherently an important public function, not one best left to an unaccountable corporation beholden to commercial interests.

E. What should be NTIA's priorities within ICANN and the GAC?

The number one priority of NTIA should be to support legislation requiring the publication of Whois data via both web forms and Port 43.