

# United States Senate

WASHINGTON, DC 20510

May 24, 2016

The Honorable Lawrence E. Strickling  
Assistant Secretary for Communications and Information  
National Telecommunications and Information Administration  
U.S. Department of Commerce  
1401 Constitution Ave., NW  
Washington, DC 20230

Dear Assistant Secretary Strickling:

We are writing to express our concerns as the National Telecommunications and Information Administration (NTIA) reviews the proposal from the Internet Corporation for Assigned Names and Numbers (ICANN) to transfer its role regarding Internet Assigned Number Authority (IANA) functionality to a global multi-stakeholder community.

We commend the work of the current multi-stakeholder community to develop a transition proposal that would maintain the security, stability, and resiliency of the Internet's Domain Name System (DNS). In the absence of the historical role played by the United States in the IANA functions process, it is important that any new system enhance accountability and transparency measures to bolster the multi-stakeholder model and ensure that ICANN continues to meet the needs and expectations of customers and partners of the IANA services.

The care and dedication of the community in developing this proposal is clear and there are many positive aspects to the proposal. However, the Internet is too important to allow the transition to occur without certainty that the proposed accountability measures are adequate and that ICANN's new governance structure works properly. Therefore, we respectfully request that you consider an extension of the NTIA contract with ICANN to ensure that the many changes in the transition proposal are implemented, operate as envisioned, and do not contain unforeseen problems, oversights, or complications that could undermine the multi-stakeholder model or threaten the openness, security, stability, or resiliency of the Internet.

The transition proposal would create a radically different governance structure for ICANN. Specifically, it would establish an "Empowered Community" that would possess key powers, including dismissal of Board members and approval or disapproval of bylaw changes, designed to hold ICANN and the Board accountable. Although promising in theory, this structure and authority remains untested and it is unclear if the Empowered Community would actually be able to exercise these powers with reasonable facility.

We are also concerned about the expanded role of governments in the transition proposal. Under the proposal, the Government Advisory Committee (GAC) would retain its privileged advisory role of being able to send advice directly to the ICANN Board. However, governments would also be granted new power and authority that they have never possessed in ICANN through the full voting participation of the GAC in the Empowered Community. The integrity of the bottom-up stakeholder process is one of the pillars of the transition and ICANN must prevent governments from exercising undue influence over the Internet. We are concerned that the increased influence of the GAC could be used by governments to pressure ICANN to act or impede multi-stakeholder efforts to block actions supported by governments. The IANA transition should not provide an opportunity for governments to increase their influence; their role should remain advisory.

Finally, there are many details of the proposal that have yet to be developed, much less finalized. For instance, significant transparency measures have been deferred to “work Stream 2” and will not be developed or be in place before September 2016. Another outstanding issue is ICANN’s undefined commitment to human rights. We firmly support human rights, but we are concerned that including this commitment into the ICANN bylaws could encourage the organization to adopt decisions or consider activities outside of ICANN’s core competency. There is also the concern that, absent the pressure of the transition, the commitment of ICANN to these matters could be weakened.

Currently, ICANN and Verisign are engaged in a 90 day parallel testing period of the new IANA process.<sup>1</sup> This test is being conducted alongside the usual process to make sure that the new technical process that would be in place after the transition does not result in errors that could threaten the security, stability, or resiliency of the DNS. This verification is so important that, if any “unexplained differences” arise, both ICANN and Verisign have announced that they would restart the test period.

The accountability and governance of ICANN is just as important as the technical and procedural changes of the transition proposal. Indeed, failings or weaknesses in the accountability mechanisms or governance structure would pose additional potential challenges to the openness of the Internet and the multi-stakeholder model.

The new governance model that ICANN will transition to is unproven and should also undergo parallel testing. Indeed, the ICANN Board itself suggested last year when considering an early draft of the transition proposal it would be prudent to delay the transition until the new governance structure is in place and “ICANN has demonstrated its experience operating the model and ensuring that the model works in a stable manner.” Although the current proposal is substantially different than that earlier draft, the radically different governance structure currently proposed for ICANN should elicit similar caution.

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<sup>1</sup>ICANN, “ICANN and Verisign Announce Start of 90-day Root Zone Management System “Parallel Testing” Period,” April 8, 2016, <https://www.icann.org/news/announcement-2016-04-08-en>.

In finalizing your review of this proposal, we request you consider an extension of the NTIA contract with ICANN with the goal of ensuring that the transition establishes a stable system that reinforces the multi-stakeholder model and does not contain unforeseen problems or consequences that could jeopardize the security, stability, and openness of the Internet.

Thank you for your attention to this matter. We look forward to hearing from you.

Sincerely,



MARCO RUBIO  
U.S. Senator



RON JOHNSON  
U.S. Senator



ROY BLUNT  
U.S. Senator



DEAN HELLER  
U.S. Senator



DAN SULLIVAN  
U.S. Senator