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United States Senate
Committee on Commerce, Science, and Transportation
Washington, D.C. 20510-6125

MEMORANDUM

Date: March 30, 2015

To: Mr. Fade Chehadé

Date of Hearing: February 25, 2015

Hearing Title: "Preserving the Multistakeholder Model of Internet Governance."

Thank you for your recent testimony before the Senate Committee on Commerce, Science, and Transportation. The information you provided is greatly appreciated.

Attached are **post-hearing questions** pertaining to the above-mentioned hearing. As a courtesy, please submit a single document consolidating the posed questions followed by your answers for insertion in the printed hearing record. They should be mailed electronically to the Committee via the Internet to docs_commerce@commerce.senate.gov and Matthew.Plaster@commerce.senate.gov.

Should the Committee not receive your response within this time frame or if the Committee staffer assigned to the hearing is not notified of any delay, the Committee reserves the right to print the posed questions in the formal hearing record noting your response was not received at the time the record was published.

Committee staffer assigned to the hearing: Matthew Plaster

Phone: (202) 224-8712

Date material should be returned: April 13, 2015

Thank you for your assistance and, again, thank you for your testimony.

JOHN THUNE

Chairman

Chairman John Thune
Written Questions for the Record to
Mr. Fade Chehadé
“Preserving the Multistakeholder Model of Internet Governance.”
Senate Committee on Commerce, Science, and Transportation
Monday, March 30, 2015

Question 1: It seems a plurality of the Internet community wants ICANN to stay in the United States, and I am not aware of consensus support for moving to a particular country. Under what circumstances would ICANN move its headquarters outside the United States? Do you need consensus of the community to move to a particular location?

Question 2: I understand ICANN recently commissioned a legal opinion to examine whether California law permits certain accountability reforms. I am concerned this legal opinion may be used to discourage community recommendations on accountability. Will you commit to facilitating the community in getting its own, independent legal opinion?

Senator Roy Blunt
Written Questions for the Record to
Mr. Fade Chehadé
“Preserving the Multistakeholder Model of Internet Governance.”
Senate Committee on Commerce, Science, and Transportation
Day, Month Date, Year

Question 1: Many in the United States fear that once the current relationship with the U.S. government ends that ICANN will seek to move its headquarters to another jurisdiction under pressure from foreign governments – one not subject to 1st Amendment Rights. Such a move would be exceptionally destabilizing to Internet governance, and would pose a serious threat to free speech.

Can you pledge that ICANN will remain incorporated in the United States?

Question 2: Over the past few months, ICANN has been criticized for how it’s evaluating community-based applications. Just one example involves the accounting industry’s interest in applying for the .CPA domain. It appears ICANN is denying information on how applications are being reviewed, and has rejected most of the reconsideration requests submitted by applicants.

This one example raises questions of whether ICANN is committed to transparency and accountability. The ideas exist on paper, but they aren’t functional or accessible to actual applicants.

Can you explain how you are working with applicants generally, and accountants specifically, to understand the process and how you deal with them as you change your internal criteria?

Question 3: In January, at an inter-sessional ICANN meeting, you stated that a contract is an “enforceable instrument,” and that ICANN must do more to enforce various contractual provisions with registrars and registries. I agree that ICANN must do more to prohibit illegality online, whether it take the form of illegal drug sales, illegal counterfeit activity, or illegal distributions of copyrighted materials.

What is ICANN doing to ensure registrars and registries take action to deter illegal activity over domains they sponsor?

Question 4: Your new gTLD agreements obligate registries to ensure that registrars have a provision in their agreements that prohibits domain name operators from engaging in "piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law," and providing (consistent with

applicable law) that registrars include "consequences for such activities including suspension of the domain name."

Has ICANN seen procedures from registries or registrars to ensure such illegal activity does not occur, and what consequences do they have in place should such activity occur?

Question 5: The community group that's designing enhanced accountability measures for ICANN is looking for independent legal advice on how to empower the community to override board decisions and budget proposals.

Is it true that ICANN's legal counsel wrote a memo saying the community could not override board decisions?

Follow Up: Would it be appropriate for the community to seek a second opinion?

Question 6: Earlier this month, the Senate unanimously passed a resolution Senator Hatch and I spearheaded to draw public attention to the very reason you're here today – the transition of key Internet functions away from U.S. oversight. The resolution set forth a series of reforms that should be made before any transfer.

I want to ask you a series of yes or no questions about those reforms -- and please limit your answer to yes or no.

Do you agree that ICANN's authority is and should be limited to the coordination of Internet unique identifiers in order to avoid "mission creep?"

Do you agree that there should be a separation of the functions of policy-making, implementation and an independent adjudication or arbitration for dispute resolution?

Do you agree that policy making must remain with the broad multistakeholder community?

Do you agree that ICANN actions must reflect true, if rough, consensus?

Do you agree that the Board of Directors is responsible for policy implementation?

Do you agree that the dispute resolution function must necessarily involve the power to order remedial action?

Do you agree that today there is no truly independent adjudication or arbitration authority with this power?

Do you agree that it is essential ICANN undertake structural reforms to ensure that it is protected against undue influence or capture by one or more governments, multilateral organizations, or a single set of commercial or noncommercial stakeholders?

Do you agree that in the absence of the Affirmation agreement with the US Government that structural changes to reinforce and expand ICANN's transparency and accountability are necessary?

Do you agree that before the transfer occurs all necessary reforms are embedded in ICANN's articles of incorporation and bylaws and subject to independent adjudication or arbitration for dispute resolution?

Senator Steve Daines
Written Questions for the Record to
Mr. Fade Chehadé
“Preserving the Multistakeholder Model of Internet Governance.”
Senate Committee on Commerce, Science, and Transportation
Day, Month Date, Year

Question 1: As you mentioned in your testimony, ICANN has contracts with registrars that prohibit illegal activity. Specifically, under section 3.18 of the 2013 registrar accreditation agreement, section registrars must take “reasonable and prompt steps to investigate and respond appropriately to any reports of illegal activity.” Please explain what ICANN is doing to ensure registrars abide by this provision, and explain what processes and analysis ICANN performs when it receives a complaint that a registrar has not complied with this obligation.