

Questions for the Record from Senator Marco Rubio

To

Mr. Michael Beckerman

**Question 1.** *The revised by-laws include provisions that ensure that ICANN maintains the ability to enter into and enforce contracts with registries and registrars, as well as include provisions that protect from ultra vires challenge Public Interest Commitments (PICs) agreed to by certain registries and registrars operating in the new gTLD marketplace. Such PICs are meant to mitigate DNS abuse in the new gTLD market, which is especially important as we see illegal behavior now taking place, including the prevalence of child abuse imagery cropping up for the first time in new gTLDs in 2015.*

- *To what extent is the ICANN community, including the Board, committed to ICANN's role in mitigating DNS abuse through contract enforcement?*
- *Does the accountability proposal put forward sufficiently ensure that ICANN will enforce its contracts with registries and registrars in this regard?*

*Answer:* The Internet Association firmly supports the ability of ICANN to enforce its contracts with registries and registrars. As a group of companies entirely reliant on a stable and trustworthy internet, it is in our interest to prevent abusive behavior in the Domain Name System (DNS). Critical to that safe environment is a system in which all stakeholders do their part to ensure illicit activity is minimized. We believe that the community, through the provisions you reference in your question, has preserved ICANN's ability to enforce existing contracts. Notably, because the ICANN community is now empowered to challenge action or inaction by the Board and is developing additional accountability mechanisms as part of our "IANA Transition Work Stream 2" efforts, it will be possible to ensure that the Board is exercising oversight that results in ICANN's proper execution of its enforcement role according to ICANN's bylaws.

At the same time, it is important to note that ICANN has a narrow technical remit and, as ICANN CEO Göran Marby recently pledged, does not have the authority or capability to "interpret or enforce laws regulating websites or website content." The internet industry is committed to working closely with ICANN to keep the internet free and open, while working within ICANN's remit to address illicit online activity. This includes helping to ensure that Registry Agreements and the Registrar Accreditation Agreement (RAA) are properly implemented. Contrary to some misinterpretations, the RAA only requires domain name registrars to "take reasonable and prompt steps to investigate and respond appropriately to any reports of abuse." This agreement does not mandate that a registrar remove or delete domains; but rather that it receive and investigate the abuse before determining the appropriate next steps. Registrars are not equipped with the appropriate enforcement tools to control, monitor, or remove specific content or specific users who post unauthorized works to a domain.

In addition to working closely with ICANN, the internet industry also supports various industry-led efforts to develop guidelines and best practices to prevent a range of illicit activity online.