

Questions for the Record from Chairman John Thune  
To  
The Honorable David A. Gross

**Question 1.** *Ambassador Gross, how should Senators assess the fact that Russia, China, France, and Brazil all believe that this transition proposal reduces the power of governments?*

*Answer:* Some governments have expressed concerns that the transition proposal limits governments' ability to participate in the ICANN community on equal terms with other stakeholders. This is because, post-transition, government participation in ICANN policy development will be limited to a purely advisory role within the Governmental Advisory Committee ("GAC"). The new ICANN bylaws confine the GAC in two important ways. First, GAC "advice" to the ICANN Board requires "consensus," defined as general agreement in the absence of any formal objection by any government, including the United States. Second, GAC advice can be rejected by a 60 percent vote of the Board, and government representatives cannot serve on the Board. Thus, in order for governments to dictate Board action, they would first need to obtain consensus (unanimous agreement) within the GAC, an organization in which the United States and other like-minded countries take an active role. Thereafter, any advisory decision still could be rejected by a 60 percent vote of the Board.

The consequence of these developments is that governments that failed to capture ICANN during the transition process now are refocusing their efforts on other venues, including the United Nation's International Telecommunication Union ("ITU"). In June, the presidents of China and Russia issued a joint statement supporting a multilateral global Internet governance system and "maintain[ing] [the] UN's important role in setting up global Internet governance mechanisms." Russia, China, Saudi Arabia, and others also are focusing on the ITU's upcoming World Telecommunication Standardization Assembly ("WTSA"), which will address several important Internet public policy issues. The ITU will be an important setting for post-ICANN debates about the appropriate role for governments in Internet policy.

Questions for the Record from Senator Marco Rubio

To

The Honorable David A. Gross

**Question 1.** *The revised bylaws 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:* I appreciate receiving the question about the important issue of mitigating DNS abuse. The final report of the Cross Community Working Group on Enhancing ICANN Accountability (“CCWG-Accountability”) and the revised bylaws make it clear that the Public Interest Commitments (“PICs”) and the registry contracts that contain them are deemed within ICANN’s mission. The multistakeholder community as a whole is engaged in activity to mitigate DNS abuse and, in a June letter from ICANN CEO Göran Marby to the Coalition for Online Accountability, ICANN again commits to enforce the PICs contained in the Registry Agreements. The Internet Governance Coalition appreciates these statements from the ICANN CEO and believes that ICANN and the multistakeholder community should continue to work collaboratively to mitigate DNS abuse within the confines of ICANN’s mission.

**Question 2.** *The expansion of government authority in the ICANN transition proposal is concerning, but it clearly falls short of what governments like China, Russia, Iran, and France would like to achieve. A joint statement by several foreign ministries was quoted at the hearing saying that they were dissatisfied with the proposal and would like to see more power for governments. This raises doubts about assertions made by you and Mr. DelBianco that this proposal will blunt efforts of these governments to pursue their goals in the ITU. Why would these governments discontinue their efforts to expand government authority over the Internet in the ITU or anywhere else?*

*Answer:* Thank you for your question. There appears to be a misunderstanding regarding my testimony at the hearing. As noted in my response to Senator Thune’s question above, post-transition, government participation in ICANN policy development will be limited to a purely advisory role within the Governmental Advisory Committee (“GAC”), and the GAC itself is further confined by the new bylaws. However, deliberations about the appropriate role for governments regarding Internet governance are ongoing and shifting to other venues.

Governments that failed to gain influence over ICANN are turning their attention back to the ITU. In June, the presidents of China and Russia issued a joint statement supporting a multilateral global Internet governance system and “maintain[ing] [the] UN’s important role in setting up global Internet governance mechanisms.” In October, the ITU’s World Telecommunication Standardization Assembly (“WTS”) will convene, with an agenda likely to include a wide range of Internet-related issues. Governments like Russia, Saudi Arabia, China, and others are trying to expand the ITU’s activities at

WTSA further into Internet public policy-related issues. As a result, I do not believe that governments will discontinue their efforts to expand government authority over the Internet—rather, those efforts are shifting to the ITU and other venues.

Promoting and protecting a thriving Internet will require continued engagement in the global debate and ensuring that Internet governance mechanisms remain open, transparent, and representative of all relevant stakeholders. The transition will ensure that non-governmental stakeholders, including U.S. industry, will have front row seats in discussions about the Internet's future – making it easier, though no less challenging, to keep it free and open for future generations.