June 3, 2015

Dear Cross Community Working Group on Enhancing ICANN Accountability:

I have been observing with interest the multi-stakeholder community process to develop a proposal for a transition in Internet governance, particularly the work of the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability), and I support your efforts to enhance accountability within ICANN in the absence of U.S. oversight.

With respect, I submit the attached legislation as a public comment to the CCWG-Accountability Initial Draft Proposal for Public Comment that complements and supports your efforts. The attached legislation is H.R. 2251, the Defending Internet Freedom Act of 2015, a bill which I introduced in the United States House of Representatives, in the 114th Congress, on May 12, 2015.

Sincerely,

Mike Kelly  
Member of Congress
114TH CONGRESS
1ST SESSION

H. R. 2251

To prohibit the National Telecommunications and Information Administration from relinquishing responsibilities with respect to Internet domain name functions unless it certifies that it has received a proposal for such relinquishment that meets certain criteria, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 12, 2015

Mr. KELLY of Pennsylvania (for himself, Mr. MCCAUL, and Mr. JONES) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To prohibit the National Telecommunications and Information Administration from relinquishing responsibilities with respect to Internet domain name functions unless it certifies that it has received a proposal for such relinquishment that meets certain criteria, and for other purposes.

1  Be it enacted by the Senate and House of Representa-
2  tives of the United States of America in Congress assembled,
3  SECTION 1. SHORT TITLE.
4  This Act may be cited as the “Defending Internet
5  Freedom Act of 2015”.

SEC. 2. REQUIREMENTS FOR NTIA RELINQUISHMENT OF DNS RESPONSIBILITIES.

(a) IN GENERAL.—Unless the Assistant Secretary submits the certification described in subsection (b) to the appropriate congressional committees—

(1) the Assistant Secretary may not relinquish the responsibilities of the NTIA with respect to Internet domain name functions, including responsibility with respect to the authoritative root zone file, the IANA functions, or the related root zone management functions; and

(2) the Assistant Secretary shall exercise the first option period described in paragraph I.70(b) of the IANA functions contract to extend such contract through September 30, 2017.

(b) CERTIFICATION DESCRIBED.—The certification described in this subsection is a written certification that the Assistant Secretary has received a final proposal for relinquishing the responsibilities of the NTIA with respect to Internet domain name functions that ensures the following:

(1) Control over the management of the Internet domain name system will not be exercised by a governmental or intergovernmental body.

(2) The bylaws of ICANN have been amended to provide for the following:
(A) No director or officer of ICANN may be selected by or represent a governmental or intergovernmental body.

(B) The board of directors of ICANN is prohibited from voting on advice or a policy proposal offered by the Governmental Advisory Committee unless such Committee reaches consensus regarding such advice or proposal. For purposes of the preceding sentence, the term “consensus” means general agreement in the absence of any formal objection.

(C) ICANN is committed to upholding freedom of speech, freedom of the press, freedom of assembly, and freedom of association and has adopted and implemented standards that are at least as protective of such freedoms as is the First Amendment to the Constitution.

(D) The term “supermajority” is defined for purposes of the bylaws of ICANN to mean, with respect to a vote of the board of directors, an affirmative vote by at least four-fifths of all directors.

(E) A change in the bylaws of ICANN requires a vote of a supermajority of the board of directors.
(F) ICANN has an external, independent process for reviewing and resolving disputes between ICANN and external parties, including members of the multistakeholder community, in all matters related to the operations and policy decisions of ICANN. Such process includes the ability to reverse decisions of the board of directors.

(G) ICANN shall remain subject to United States law (including State law) and to the jurisdiction of United States courts (including State courts).

(H) ICANN is prohibited from engaging in activities unrelated to ICANN’s core mission or entering into an agreement or modifying an existing agreement to impose on a registrar or registry with which ICANN conducts business any condition (such as a condition relating to the regulation of content) that is unrelated to ICANN’s core mission.

(3) ICANN has adopted policies and procedures for disclosing to the public records and other information that are at least as protective of public access as the policies and procedures required by section 552 of title 5, United States Code (commonly
known as the Freedom of Information Act). The policies and procedures adopted include a means by which the denial of a request for access to records or other information may be appealed through the independent dispute resolution process described in paragraph (2)(F).

(4) The United States Government has been granted ownership of the .gov and .mil top-level domains.

(5) ICANN has adopted, if necessary through amendment to its bylaws, all additional measures recommended by the multistakeholder community through the IANA Stewardship Transition Coordination Group, the Cross Community Working Group on Enhancing ICANN Accountability, and the Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions.

c) DEFINITIONS.—In this section:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.
(2) ASSISTANT SECRETARY.—The term “Assistant Secretary” means the Assistant Secretary of Commerce for Communications and Information.

(3) IANA FUNCTIONS.—The term “IANA functions” means the Internet Assigned Numbers Authority functions, as described in the IANA functions contract.

(4) IANA FUNCTIONS CONTRACT.—The term “IANA functions contract” means the contract between the NTIA and ICANN that became effective on October 1, 2012, under which ICANN is required to perform the IANA functions (Contract No. SA1301–12–CN–0035).

(5) ICANN.—The term “ICANN” means the Internet Corporation for Assigned Names and Numbers.

(6) ICANN’S CORE MISSION.—The term “ICANN’s core mission” means managing the IANA functions and proposing and overseeing policy decisions central to coordinating the global interoperability and uniqueness of Internet domain names.

(7) NTIA.—The term “NTIA” means the National Telecommunications and Information Administration.
(8) STATE.—The term "State" means each of the several States, the District of Columbia, each commonwealth, territory, or possession of the United States, and each federally recognized Indian tribe.