Ms. Samantha Eisner   October 6, 2014
Senior Counsel
ICANN
samantha.eisner@icann.org
Re: Proposed ICANN Board Bylaw Changes for
Consideration of GAC Advice

Dear Ms. Eisner:

The Software & Information Industry Association (SIIA) appreciates the opportunity to provide comments on the proposed change to ICANN's bylaws, which would require two thirds of the Board to reject Government Advisory Council (GAC) advice. Our views are informed by the Business Constituency (BC) and Intellectual Property Constituency (IPC) submissions. SIIA is a member of both the BC and the IPC, and we support their views. Our comments supplement BC and IPC suggestions and perspectives.

The Software & Information Industry Association (SIIA), based in Washington, D.C., is the principal trade association for the software and digital content industries. SIIA provides global services in government relations, business development, corporate education and intellectual property protection to the leading companies that are setting the pace for the digital age. The following link provides information on SIIA's membership. We represent companies that are leaders in education technology, software, data analytics, cognitive computing, and publishing (both scientific and cultural). Our members depend on the ability to transfer data across borders through an open, secure, and stable Internet.

The GAC was created with the following purpose.

>   a. *The Governmental Advisory Committee should consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.*

The GAC's role is particularly significant with respect to matters where "there may be an interaction between ICANN's policies and various laws and international agreements." Since ICANN was created, the GAC has normally assumed this responsibility in a constructive fashion. SIIA is therefore open to considering changes in the relative weight of GAC advice. However, before changes in ICANN's bylaws on this matter are made, the following conditions should be met.

First, the ICANN accountability process should conclude. This is because this broad exercise will most likely culminate in recommendations affecting many of ICANN's "checks and balances." It is not possible to evaluate how the GAC bylaw change would be affected by still-to-be determined accountability changes.

Second, there should be assurances with respect to GAC transparency. The Board and ICANN stakeholders should have an opportunity to review the rationale behind GAC recommendations. This "checks and balances" approach is consistent with SIIA's views on accountability in general. Those to whom additional advisory weight is conferred owe it to the broad ICANN community to provide timely, relevant and candid information on how they have arrived at their recommendations.

Third, should stakeholders agree to raise the threshold for Board rejection of full consensus GAC advice, there should be a discussion of whether all advice or just certain kinds of advice should be subject to the higher rejection threshold. The GAC's core function is to provide advice where there is an interaction between ICANN policies and various laws and international agreements. This is an area where the GAC has expertise other advisory bodies do not possess. Therefore, it is appropriate to consider a higher rejection threshold for full consensus advice in this area. Full consensus advice from the GAC on appropriate topics of expertise should be the determinants for higher weight for GAC advice. Full consensus advice incentivizes discussion on the merits, rather than politics, of issues and helps ensure that subsets of governments are not able to upset carefully developed, bottom-up, multistakeholder consensus solutions for challenges affecting the functioning of the Internet.

Once again, we appreciate the opportunity to comment on this important matter.

Sincerely,

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