



LEADERSHIP AND  
MARKETING EXCELLENCE

## **COMMENTS OF THE ASSOCIATION OF NATIONAL ADVERTISERS (ANA) ON THE PROPOSED BYLAWS CHANGES REGARDING CONSIDERATION OF GAC ADVICE**

On behalf of the Association of National Advertisers, I write to urge that this proposed change in ICANN's by-laws to dramatically increase the powers of the Governmental Advisory Committee (GAC) within the ICANN structure be strongly rejected. The proposal is clearly premature. ICANN has failed to analyze or provide a rationale for the potential effects of this very significant and potentially radical change in its operations. Furthermore, the Internet community – which will have to live with any by-laws change – has not adequate information or time, due to the short comment period, to appropriately consider a change of this magnitude.

Previously, ANA has criticized ICANN for not being inclusive and representative of the entire Internet community. In particular, we have noted that ICANN too often has failed to provide adequate safeguards for brand holder trademark rights. While claiming to be a “bottom-up” organization, ICANN all too frequently is influenced and its decisions controlled by discrete and powerful internal constituencies that attempt to advance their own interests and do not always represent the views and concerns of the majority of Internet users.

ANA has urged that ICANN modify its internal processes to ensure wider, more diversified input and participation. This proposed by-laws change would severely exacerbate this lack of robust bottom-up participation that ANA has observed and experienced. Indeed, the change would institutionalize dramatically increased authority for one group (the GAC), by giving governmental entities the inappropriate potential in all cases to have an inordinate voice in either overturning or initiating policies in the multi-stakeholder process.

There may be limited instances (e.g., in the security area) where governments have particular expertise that may in fact be more extensive and specialized than that of other members of the Internet community. In those cases, it may be valuable for the GAC's expertise to be accorded special consideration. But this proposal goes far beyond that to vest the GAC with an *across-the-board* preference, without making the case for why that broad grant of authority should be imposed. From an important advisory group that rightfully receives significant cognizance, the GAC will now have a powerful decision making role that can only be overcome by a 2/3rds majority vote of non-conflicted ICANN Board members. ICANN should have assessed the potential impacts on the Internet ecosystem of this very substantial modification and fully explained the reasons for its recommendation before advancing this proposal.

The sweeping by-laws change could well result in national governments dictating the management of critical Internet policies. Some of these governments are democratic and respect freedom of expression and commercial rights; others are authoritarian and seek to limit the free use of the Internet – or worse, seek to use the Internet to advance their own repressive policies. The Internet and its applications are far too important to the global economy and to freedom of expression to permit governmental entities to use this technology for their own parochial or ideological purposes, as surely could happen if this change were adopted.

Today, the GAC's internal procedures are at best difficult to discern. Many have observed over the years that the GAC lacks transparency and has little accountability to ICANN's members. While it is already difficult to discern the GAC's deliberations and to understand the bases for its recommendations, at least currently there are *some* constraints on the GAC's recommendations becoming effective without involvement by the Internet community. As we understand (though it is by no means clear because of the limited explanation of its proposal that ICANN's board has provided), with the by-laws change the GAC's determinations could take effect quickly and without the opportunity for review and comment by Internet users.

ANA does not believe that the GAC should be accorded such substantial ability to dictate policy. Given the very real number of existing conflicts (not to mention additional conflicts that could be raised by the GAC's determination), it is quite possible that a very small number of ICANN board members could be making decisions that would affect the entire Internet environment without the participation of those who will be forced to live with the outcome.

It is also contrary to ICANN's purported method of operations to provide the GAC with the ability to undo proposals developed by working groups within ICANN (even with the limited and controlled participation that exists today). This by-laws change can only further deter participation by interested parties, something that is already insufficient and that clearly undermines the bottom-up approach that ICANN always has stated is the heart of the ICANN system. These are extremely significant proposed changes in the way ICANN operates. Nevertheless, the time period permitted for comment (and reply comments) is wholly insufficient to permit the kind of thoughtful consideration that should precede any change of this magnitude. Rather than empower the GAC in the way suggested by this proposal, ANA recommends that ICANN withdraw the proposal, analyze the potential implications of the change through full discussion with the ICANN community, and – if it makes a subsequent proposal -- establish a sufficient time period for review and comment concerning any proposed change. ICANN's board should work to strengthen (rather than limit) greater participation, transparency and accountability, and should redouble its efforts to improve the multi-stakeholder process so as to make it truly representative and inclusive. ANA supports an important government role within ICANN, as governments have important expertise and interests in the health and maintenance of the Internet, but the existing structure already provides an enhanced role

for the GAC and any further alterations need to be extremely carefully constructed. Turning over unilateral and non-collaborative decision making to the GAC is ill-advised, and should be rejected.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. L. Jaffe". The signature is fluid and cursive, with the first name "Daniel" and last name "Jaffe" clearly distinguishable.

Daniel L. Jaffe  
Group Executive Vice President, Government Relations  
Association of National Advertisers (ANA)