

United States Senate

WASHINGTON, DC 20510

March 3, 2016

Dr. Stephen D. Crocker
Chairman of the Board of Directors
Internet Corporation for Assigned Names and Numbers (ICANN)
12025 Waterfront Drive, Suite 30
Los Angeles, CA 90094-2536

Dear Dr. Crocker,

Last month, we sent you a letter stating our concerns regarding ICANN CEO Fadi Chehadé's participation in the Chinese-government-sponsored World Internet Conference. Mr. Chehadé's participation resulted in an agreement to co-chair a high-level advisory committee for the conference, which could make ICANN complicit in the Chinese censorship regime. Since sending our letter, additional evidence has come to light suggesting that ICANN's relationship with the Chinese government may be a systemic problem within the organization itself and not limited to a single individual.

A review of the past few years reveals that ICANN may have a direct operational relationship with the Chinese government. As you know, in April 2013, ICANN hosted its 46th public meeting in Beijing. According to your remarks, one of the hosts of ICANN's meeting was Mr. Shang Bing, Vice Minister of the Ministry of Industry and Information Technology. As you must be aware, the Chinese government's Ministry of Industry and Information Technology (MIIT) is not only a central component of China's censorship regime, but it has pressured American companies such as IBM, Microsoft, and Apple to reveal their products' proprietary source code to ministry officials.¹ Just recently, MIIT issued new regulations that will restrict foreign companies, including those based in the United States, from sharing digital content ranging from text to games to video.²

Nevertheless, ICANN CEO Fadi Chehadé stated in his opening remarks, "China is going to be a central part of where the Internet community, as we know it, is heading. And, therefore, in my clear discussions with the local responsible ministers, that from ICANN's standpoint, engagement with China is not an option. It is not an option. If we

¹ Moon, Mariella. "WSJ: IBM Gives Chinese Officials (limited) Access to Its Source Code." Engadget. 18 Oct. 2015. Web.

² Chang, LuLu. "China's Newest Rules on Foreign Content Are Stricter than Ever." Digital Trends, 21 Feb. 2016. Web.

do not engage with China at every level of our community, we, frankly, lose a part of our global legitimacy. We must and we will. And that's why we're here today."³

In addition, ICANN announced during the meeting that it would open its first global engagement office in Beijing, which would be undertaken by the China Internet Network Information Center (CNNIC)—an organization that has not only helped implement Chinese censorship but is led by the Director of the Bureau of Telecommunications Regulation which is a part of MIIT.⁴ At the time of the announcement, Madame HU Qiheng, Honorary Chairman of CNNIC's Steering Committee stated that the "ICANN Engagement Center-Beijing would be not only a new link for ICANN to better develop and promote China's Internet community, but also a new platform for China's Internet community to better contribute to the development of the global Internet."⁵

The establishment of an official ICANN office in Beijing is extremely concerning and should have raised red flags within the United States Government. Especially considering CNNIC's statement that it would "invest necessary human and material resources in the construction of the center and actively carry out its functions including the coordination, communication, as well as operation in order to provide effective, long-term and stable services for ICANN to serve China's Internet industry."⁶

To further put this decision into context, at the time of the announcement, Freedom House, an independent watchdog organization dedicated to the expansion of freedom and democracy around the world, ranked China in their report "Freedom on the Net 2013" just above Iran and Cuba on Internet freedom.⁷ And since ICANN opened its Engagement Center in Beijing, China's record on Internet freedom has declined and was ranked last in the world in 2015.⁸

The following year, in June 2014, just three months after the Obama Administration announced its intent to transition key Internet domain name functions away from United States oversight, ICANN held its 50th public meeting in London, England.⁹ During the meeting, ICANN invited Lu Wei, Minister of the Cyberspace Administration of China, to provide an address during the opening ceremony. According to his official resume, Lu Wei also serves as the vice chair of the Central Propaganda Department."¹⁰ The Chinese

³ Fadi Chehadé Opening Speech (Part 1) | ICANN 46 | Beijing | 8 Apr 2013. Perf. Fadi Chehadé. Dotsub.com, 24 Apr. 2013. Web.

⁴ Smith, Charlie. "Apple and Microsoft Trust Chinese Government to Protect Your Communication." Web log post. *GreatFire.org*. N.p., 28 Oct. 2014. Web.

⁵ China Internet Network Information Center. *The First ICANN Global Engagement Center to Open in Beijing*. N.p., 15 Apr. 2013. Web.

⁶ China Internet Network Information Center. *The First ICANN Global Engagement Center to Open in Beijing*. N.p., 15 Apr. 2013. Web.

⁷ *Freedom on the Net 2013*. Rep. Freedom House, 3 Oct. 2013. Web.

⁸ *Freedom on the Net 2015*. Rep. Freedom House, 27 Oct. 2015. Web.

⁹ The Internet Corporation for Assigned Names and Numbers. *Largest Ever ICANN Meeting Convenes in London | Affirmation of Multistakeholder Model for Internet Governance by World Leaders*. N.p., 23 June 2014. Web.

¹⁰ Smith, Charlie. "CNNIC Leadership Change Coincides with Blocking of GMAIL." Web log post. *GreatFire.org*. N.p., 31 Dec. 2014. Web.

government also announced in December 2014 that Lu Wei would become the new chairperson of CNNIC—the very organization that had claimed to be operating ICANN’s global engagement office in Beijing.¹¹ Given Wei’s central role within the Chinese government, it is not surprising that he supports the Obama Administration’s plan to end United States Government oversight and further globalize ICANN.¹²

Repeating a similar pattern to the 2013 meeting in Beijing, ICANN once again chose to further align itself with the Chinese government. During the London meeting, ICANN announced that it had signed a Memorandum of Understanding with the China Academy of Telecommunication Research (CATR), which is a unit of MIIT and is the official think tank of the Chinese government.¹³ In the announcement, ICANN CEO Fadi Chehadé stated, “This marks another milestone in ICANN’s globalization efforts after we established our first engagement center in Beijing last April. . . . This partnership is a testament to how China—a country with over one fifth of the global Internet population and a vibrant Internet industry—can engage and contribute in the ICANN global community.”¹⁴ A few of the stated objectives of the Memorandum of Understanding are to promote the Chinese community’s participation in ICANN, align academic and public research, and improve ICANN’s communication with Chinese communities and deepen the understanding of ICANN by the Chinese government, media and, industry.¹⁵

This history leads us to a more recent issue that is currently under consideration by ICANN. XYZ.COM LLC (“XYZ”), a U.S. based registry operator, has submitted a Registry Services Evaluation Policy (RSEP) request to ICANN seeking approval to become the first foreign registry to operate within China.¹⁶ If ICANN’s Board of Directors approves this request, it will allow XYZ to become a complicit actor with China’s censorship regime.

For example, XYZ will have to comply with Article 27 of Chinese Internet domain name regulations, China’s Constitution, and all other applicable laws, rules, and administrative regulations pertaining to Internet domain names. According to Article 27, any domain name registered or used by any organization or individual shall not include content that

¹¹ Arellano, Juan, Ellery Roberts Biddle, Lisa Ferguson, Oiwan Lam, Weiping Li, Rebecca Mackinnon, Lokman Tsui, and Sarah Myers West. *Netizen Report: China Adds Yet Another Layer of Control to the Internet*. Rep. Global Voices Advocacy, 8 Jan. 2015. Web.

¹² *ICANN50 in London: Lu Wei, Minister of Cyberspace Affairs Administration of China*. Perf. Lu Wei. N.p., 23 June 2014. Web.

¹³ The Internet Corporation for Assigned Names and Numbers. *ICANN and CATR Signs Memorandum of Understanding to Enhance Collaboration Between ICANN and Chinese Stakeholders*. N.p., 24 June 2014. Web.

¹⁴ The Internet Corporation for Assigned Names and Numbers. *ICANN and CATR Signs Memorandum of Understanding to Enhance Collaboration Between ICANN and Chinese Stakeholders*. N.p., 24 June 2014. Web.

¹⁵ *Memorandum of Understanding between the China Academy of Telecommunication Research of MIIT and the Internet Corporation for Assigned Names and Numbers*. Rep. N.p.: n.p., n.d. Internet Corporation for Assigned Names and Numbers, 22 June 2014. Web.

¹⁶ “Launch of Supplementary Registration Proxy Service for GTLDs Operated by XYZ.COM LLC.” Internet Corporation for Assigned Names and Numbers, 10 Dec. 2015. Web.

<<https://www.icann.org/public-comments/supplemental-registration-proxy-2015-12-10-en>>.

“are against the basic principles prescribed in the Constitution; jeopardize national security, leak state secrets, intend to overturn the government or disrupt of state integrity; harm national honor and national interests; instigate hostility or discrimination between different nationalities, or disrupt the national solidarity; violate the state religion policies or propagate cult and feudal superstition; spread rumors, disturb public order or disrupt social stability; spread pornography, obscenity, gambling, violence, homicide, terror or instigate crimes; insult, libel against others and infringe other people’s legal rights and interests; or other contents prohibited in laws, rules and administrative regulations.”¹⁷

Furthermore, XYZ will also have to comply with Article 34 and Article 35 of the Chinese Internet domain name regulations. Article 34 states that, “[i]n case the domain name is in violation of the provisions and the relevant laws and regulations,” XYZ “shall delete it and notify the domain name holder in written form.” Additionally, Article 35 states the requirement that “Domain Name Registry and Domain Name Registrars have the obligation of conducting website inspection in concert with the national governing departments, and request to suspend or cease the resolution service of the domain name concerned.”

There is additional concern within ICANN’s Generic Names Supporting Organization (“Business Constituency”), the business constituency group which represents commercial users of the Internet within ICANN. The Business Constituency has raised concerns that aspects of XYZ’s RSEP are too vague and need additional clarification.¹⁸ For example, the term “Chinese registrant” is too broad and could be interpreted to allow the extraterritorial application of Chinese censorship law to include residents of Hong Kong, a special administrative region within the People’s Republic of China. The Business Constituency also emphasized that “government-sponsored censorship of domain names for political purposes undermines a stable Internet ecosystem that promotes end-user confidence as a safe place to conduct business. It also limits the free flow of data and information, on which business users of the Internet rely in delivering services to end users.”

We know that XYZ will comply with Chinese law. Indeed, it affirmed this commitment in its initial RSEP, which was filed with ICANN on October 9, 2015. Even though this RSEP was pulled at a later date, it described how a registry operator must comply with foreign laws. In the RSEP, XYZ stated, “if we receive a specific notification that the registration of the name is illegal in China, we will treat it the same as we treat any notification from any other government that a registration is illegal. Specifically, we will cancel the registration pursuant to our anti-abuse policies which allow us to ‘cancel, ...any registration or transaction ... to comply with any applicable laws, government rules or requirements, requests of law enforcement, or any dispute resolution process.’ This is

¹⁷ China Internet Domain Name Regulations, China Internet Network Information Center *et seq.* (2004). Print.

¹⁸ *Comment on Proposed Supplementary Registration Proxy Service for GTLDs Operated by XYZ.COM*. The ICANN GNSO “Business Constituency”, 22 Jan. 2016. Web.

identical to our current treatment of complaints from governments about illegal domain name registrations.”¹⁹

It is deeply troubling that ICANN would put registry operators in a position of becoming an actor within the Chinese censorship regime. There is concern that this action could be an example of ICANN’s desire to build a close relationship with the Chinese government which could continue to move in a troubling direction once the United States Government ends its oversight. These concerns were recently confirmed by a member of the Non-Connected Party House’s (NCPH) Commercial Stakeholder Group who participated in a meeting with ICANN in February 2016 and stated, “The ICANN board wants to engage more with China and India following the IANA transition, which somewhat explains the board’s decision not to take action against Chehadé.”²⁰

In order to gain a better understanding of the potential implications of ICANN’s relationship with the Chinese government and its impact on the Internet Assigned Numbers Authority (IANA) transition, we request that you provide a response to the following questions as soon as possible, but **no later than 9:00 a.m. on Friday, March 11, 2016.**

1. Please state when you first learned that ICANN CEO Fadi Chehadé had agreed to co-chair a high-level advisory committee for the Chinese government’s state-sponsored World Internet Conference.
 - a. Please provide a yes-or-no answer to the following question: Did you agree with Fadi Chehadé’s decision to co-chair a high level advisory committee for the World Internet Conference?
 - b. Did ICANN’s Board of Directors approve of Fadi Chehadé’s decision to co-chair a high level advisory committee for the World Internet Conference?
 - c. Did any member of ICANN’s Board of Directors ask Fadi Chehadé to step down from his position as CEO and President of ICANN?
 - d. Please provide the meeting minutes, attendance records, and all other documents associated with ICANN’s Board of Directors’ meeting(s) with Fadi Chehadé in which his commitment to co-chair a high level advisory committee for the World Internet Conference was discussed.
2. Please provide a yes-or-no answer to the following question: It has been reported that ICANN’s Board of Directors took no action against Fadi Chehadé because “[t]he view eventually prevailed that no reactive action should be taken lest China

¹⁹ XYZ.COM LLC. *ICANN Registry Request Service*. 9 Oct. 2015. Ticket ID: M7Q8M-4D2T5.

²⁰ Phillips, Jimm. "ICANN CEO Tells Senators He Didn't Violate Conflict of Interest Rules With China Forum." *Communications Daily*. Warren Communications News, Inc, 23 Feb. 2016. Web.

lose face.” Did ICANN refrain from taking action against Fadi Chehadé due to concern that China may lose face?

3. Fadi Chehadé has been called on to recuse himself from all discussions and negotiations pertaining to the IANA transition given a confirmed personal conflict of interest with the Chinese government. Has ICANN taken any action to ensure that Fadi Chade will recuse himself from the IANA transition? If no, please describe the reason for ICANN’s inaction.
4. During ICANN’s 46th public meeting in Beijing, Fadi Chehadé stated, “China is going to be a central part of where the Internet community, as we know it, is heading. And, therefore, in my clear discussions with the local responsible ministers, that from ICANN’s standpoint, engagement with China is not an option. It is not an option. If we do not engage with China at every level of our community, we, frankly, lose a part of our global legitimacy. We must and we will. And that’s why we’re here today.” Do you agree with the statement that ICANN will lose part of its global legitimacy if it does not engage with China at every level of the community?
5. When ICANN announced it was opening its first global engagement office in Beijing, the China Internet Network Information Center (CNNIC) stated that it would “invest necessary human and material resources in the construction of the center and actively carry out its functions including the coordination, communication, as well as operation in order to provide effective, long-term and stable services for ICANN to serve China’s Internet industry.” Please provide yes-or-no answers to the following questions:
 - a. Did CNNIC invest human and material resources in the construction of ICANN’s global engagement office in Beijing?
 - b. Is CNNIC actively carrying out the functions, coordination, communication, or operation of ICANN’s global engagement office in Beijing?
 - c. Do any individuals associated with CNNIC or the Chinese government have a formal or informal role in ICANN’s global engagement office in Beijing?
6. ICANN currently lists the address for each hub office and engagement office on its website except for the engagement office in Beijing.²¹ Please provide the address of ICANN’s engagement office in Beijing.
7. When Lu Wei, Minister of the Cyberspace Administration of China and Incumbent Vice Minister of the Central Propaganda Department, assumed the role

²¹ *Contact*. Internet Corporation for Assigned Names and Numbers, n.d. Web. <<https://www.icann.org/resources/pages/contact-2012-02-06-en>>.

of the Chairperson of CNNIC in December 2014, did ICANN take any action to ensure that its global engagement office in Beijing was not being used to carry out censorship for the Chinese government?

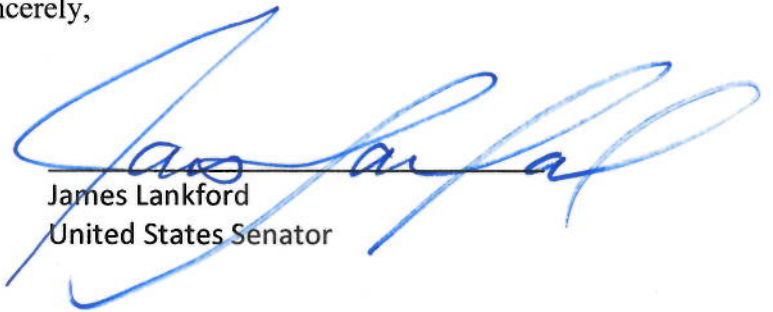
8. Do you agree with the Business Constituency's concern that the term "Chinese registrant" in XYZ's RSEP is too broad and could be interpreted to allow the extraterritorial application of Chinese censorship law to include residents of Hong Kong?
9. Do you agree that approval of XYZ's RSEP will place XYZ in a position of having to comply with government-sponsored censorship of domain names for political purposes, which will undermine a stable Internet ecosystem?
10. A member of the Non-Connected Party House's (NCPH) Commercial Stakeholder Group recently stated, "The ICANN board wants to engage more with China and India following the IANA transition, which somewhat explains the board's decision not to take action against Chehadé."
 - a. Please describe ICANN's plans for engagement with China following a potential IANA transition.
 - b. Did ICANN's post IANA transition plans with China play any role in the decision not to take action against Fadi Chehadé?

We appreciate your cooperation in this very important matter and look forward to your response at the stated date and time. Please contact Sean McLean (Senator Cruz), Sarah Seitz (Senator Lankford), and Christy Knese (Senator Lee) of our staffs if there are any questions regarding this request.

Sincerely,



Ted Cruz
United States Senator



James Lankford
United States Senator



Michael S. Lee
United States Senator

cc: Mr. Fadi Chehadé, Chief Executive Officer, Internet Corporation for Assigned Names and Numbers

The Honorable Lawrence E. Strickling, Assistant Secretary for Communications and Information, U.S. Department of Commerce