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SHOULD THE DEPARTMENT OF COMMERCE RELINQUISH DIRECT OVERSIGHT OVER ICANN?

HEARING

BEFORE THE

SUBCOMMITTEE ON
COURTS, INTELLECTUAL PROPERTY,
AND THE INTERNET

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

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SHOULD THE DEPARTMENT OF COMMERCE RELINQUISH DIRECT OVERSIGHT OVER ICANN?

THURSDAY, APRIL 10, 2014

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, AND THE INTERNET

COMMITTEE ON THE JUDICIARY

Washington, DC.

The Subcommittee met, pursuant to call, at 9:05 a.m., in room 2141, Rayburn House Office Building, the Honorable Tom Marino (Vice-Chairman of the Subcommittee) presiding.

Present: Representatives Marino, Goodlatte, Sensenbrenner, Holding, Collins, Nadler, Conyers, Chu, Deutch, Bass, Richmond, DelBene, Lofgren, Jackson Lee, Cohen.

Staff Present: (Majority) David Whitney, Counsel; Olivia Lee, Clerk; (Minority) Stephanie Moore, Minority Counsel; Jason Everett, Counsel; Heather Sawyer, Counsel.

Mr. MARINO. The Subcommittee on Courts, Intellectual Property, and the Internet will come to order.

Without objection, the Chair is authorized to declare a recess of the Subcommittee at any time. And we welcome all the witnesses today.

This is going to be a unique series of strategy today. We have three series of votes. We have two panels of distinguished experts.

So we are going to be manipulating this testimony as best we can so the witnesses are not sitting around waiting for us. We will get to the floor and vote and then we will shoot back. Okay? Just a warning.

Good morning, everyone, and welcome to the House Judiciary Committee.

This morning, the Subcommittee on Courts, Intellectual Property, and the Internet will commence aggressive oversight over an extraordinarily significant matter, the future of the Internet.

Throughout the world, there are competing visions for what the Internet is and what it will become. The path we choose to follow will impact not only the course of our own individual lives and fortunes, but, also, those of future generations in the U.S. and abroad.

The proper course to follow must be determined after a very judicious process in which we rationally discuss the details with all the stakeholders in the community, including the users.

Our focus in this initial hearing is a topic that may sound like an arcane subject, the relationship between the U.S. Department of Commerce and the Internet Corporation for Assigned Names and Numbers, otherwise known as ICANN, which, among other things, manages certain key functions of the Internet under a longstanding contractual relationship with the Department.

However, this relationship is key to ensuring the Internet continues to be free and open for years to come. According to a published report in The Hill on February 8, ICANN betrayed broader ambitions last year when it endorsed a statement calling for the globalization of ICANN and other domain name technical work that is currently managed by the United States.

The report continued—and I quote—"The statement, which was issued with nine other Internet infrastructure organizations, suggested that the domain work of the Internet Assigned Numbers Authority, known as IANA, be handed over to ICANN." The report went on to note, "Those duties are now contracted out by the Commerce Department."

Further, the report stated some of the tech industry saw the statement as a direct challenge to the U.S. role in Internet governance, which is already being called into question after the revelation about global snooping at the National Security Agency, or the NSA.

Less than 5 weeks later, late on the afternoon of Friday, March 14, a shocking announcement from the Department of Commerce's National Telecommunication and Information Administration, NTIA, which is charged with oversight over the IANA contract, was issued.

The former CEO of ICANN, Rod Beckstrom, described the release by stating—and I quote—"Last Friday the U.S. Government effectively surrendered its historic authority over the Internet with its surprise announcement of its intention to pass this responsibility to the global multi-stakeholder community."

Beckstrom continued, "Why did the U.S. Government do this now? Because they face the serious risk of losing even more at the upcoming Net Mundial conference on Internet governance in Brazil, a conference that it is reportedly organized in substantial part by ICANN itself.

Beckstrom opined—and I quote—"With the suddenness of the announcement, we are entering a new risky and chaotic process without a clear plan, and nothing less than the future of the Internet is at stake."

Those who are paying attention will no doubt agree with Beckstrom's last point. The sudden and surprise nature of the NTIA's announcement on March 14 stunned many. The fact it was timed for release when Members of Congress were traveling back to their districts for a work period is undoubtedly not a coincidence.

The future of the Internet is at stake and this Administration and the NTIA are attempting to take matters into their own hands without consultation with Congress.

When asked about the sudden change in policy and asked to justify their decisions and processes, they point to unrelated resolutions that do not address oversight over the IANA functions.

They ignore congressional resolve that explicitly provides that the Secretary of Commerce should continue to exercise oversight over ICANN, and they attempt to cite papers from the late 1990's to justify the reversal of course today.

Even our liberal friend, President Bill Clinton, has made it clear that he disagrees with the decision of the NTIA and those that could pose significant dangers to the free and open Internet.

While he noted he understood the arguments being made for the multi-stakeholder process, he stated, "A lot of these so-called multi-stakeholders are really governments that want to gag people and restrict access to the Internet."

Given that Mr. Clinton was the executive under whose authority these department papers were created, I believe we should give considerable credence to his opinions on the subject.

There is a lot of ground to cover today, and I have barely scratched the surface. Nevertheless, I am pleased that today we have with us an outstanding panel of witnesses who can direct our attention to the relationship between the Department of Commerce and NTIA and, also, help educate us on matters that pertain to this decision to surrender control of the IANA function to ICANN in as soon as 18 months.

I welcome our witnesses, our audience today. And, with that, I recognize the Subcommittee Ranking Member, the distinguished gentleman, Representative Nadler of New York, for his opening remarks.

Mr. NADLER. Thank you, Mr. Chairman.

Last month the Department of Commerce announced that it will begin a process for transitioning key Internet domain name functions to the global multi-stakeholder community.

This announcement continues the privatization process first started in 1998, continued through the Bush Administration, and that has been supported by various Congresses. Despite this, some of my Republican colleagues have now accused the Obama Administration of wanting to surrender control of the Internet to foreigners.

This type of alarmist assertion misunderstands a core fact. There is not now nor will there ever be one party, whether government or private sector, that controls the Internet. The Internet is and will remain a decentralized network of networks that run smoothly only through the voluntary cooperation and coordination of all its participants.

Ensuring effective private-sector management of these networks and transitioning functions served by the United States Government has been a goal shared by Republicans and Democrats alike for the past 16 years.

And, frankly, I am surprised that some of my Republican colleagues now seem to oppose the next step in the ongoing privatization process. It cannot be that Republicans support private industry and oppose government control in everything except this. So why the outrage now?

I am hopeful that behind some of the overheated rhetoric surrounding NTIA's announcement there is a sincere desire to take a clear look at the facts.

There is, of course, a need to ensure that the transition process and the model developed through that process produces a management structure that supports a secure, open, and truly global Internet.

NTIA has established criteria to help ensure that this occurs, and I am confident that NTIA and ICANN will agree to update us periodically as this process progresses.

We need not pass legislation that further complicates this process, and there is no reason to make this a partisan battle now.

Today's Internet has its origins in the network developed by the United States Department of Defense and other Federal agencies to connect universities and research labs conducting projects for the government.

Since then, the Internet has become a remarkable platform for commerce, social discourse, and innovation across the globe.

Since the late 1990's, of course, Democratic and Republican administrations and with the full support of various Congresses, including a 413 to nothing vote only 2 years ago, our government has embraced the principle that core Internet domain name systems functions should be managed by the private sector, not by this or any other government.

Private-sector interests formed ICANN in the late 1990's for this purpose, and NTIA has been working with ICANN since that time to transition technical DNS coordination and management functions to the private sector.

NTIA's recent announcement that it would begin the process for transitioning its oversight of the technical functions necessary to assign numbers and registered domain names, known as the Internet Assigned Number Authority, or IANA, to ICANN in the multi-stakeholder model that has been developed into the technical coordination represents the final step in a 16-year transition process and, far from being a surprise, was an expected announcement, the only question being the timing.

The IANA functions include management of the DNS root zone top-level domain names and coordination of the allocation of IP addresses.

For the last 2 decades, the IANA functions have been performed under successive contracts between the Department of Commerce and ICANN.

During that time, the U.S. Government has simultaneously exercised oversight over ICANN through the IANA contract while remaining steadfast in its commitment to turn over DNS management to the multi-stakeholder private sector model.

Congress has long supported this commitment, often doing so in response to other governments around the world, urging intergovernmental control of the Internet through, for example, proposals for control by the United Nations International Telecommunications Union, the ITU.

Just last Congress we responded to this possibility by passing a bipartisan, bicameral resolution providing that, "It is the policy of the United States to preserve and advance the successful multi-

stakeholder model that governs the Internet." H.Con.Resolution 127 passed the House by a unanimous 413 to nothing vote.

This latest announcement by IANA—I am sorry—by NTIA follows in that tradition and was warmly welcomed, was warmly welcomed, by American corporations such as AT&T, Cisco, Google, Microsoft, Neustar, and Verizon, as well as by the Chamber of Commerce, the Internet technical community, and our global allies.

By inviting the multi-stakeholder community to present proposals for administration of IANA functions that have brought support and that preserve the security, stability, resiliency, and openness of the Internet, NTIA has reinforced our longstanding dedication to transitioning to private-sector management in a responsible and successful manner.

Exactly how we accomplish this is yet to be determined through the process initiated by NTIA's announcement, but the time to initiate the process for that transition has come.

Congress, together with the world community, should now focus on developing plans that ensure transparency, accountability, and robust safeguards to enable the continued efficient operation of the Internet.

I want to thank each of the witnesses for their testimony and yield back the balance of my time.

Mr. MARINO. Thank you, Congressman Nadler.

I would now like to recognize the full Committee Chairman, the distinguished gentleman from Virginia, Chairman Bob Goodlatte, for his opening statement.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. Chairman, the title of today's hearing vastly understates its importance. All hyperbole aside, this hearing is about nothing less than the future of the Internet and, significantly, who has the right, the ability, and the authority to determine it.

Should it be decided by a few people in Washington, Beijing, Moscow, Sao Paolo, or even Silicon Valley, or should it be determined by those who use and stand to benefit from it?

In determining the United States' role, should we have a process where a few officials in the Administration make decisions in a bubble without consulting or seeking meaningful input from the American people and their elected representatives, or should we have an open, transparent, and accountable process before decisions are made that impact all our futures?

To be clear, the process and the manner in which the Obama Administration and, specifically, the National Telecommunications and Information Administration, or NTIA, arrived at and announced their decision to transition oversight over the critical Internet Assigned Names and Numbers authority function in as early as 18 months has not been fully transparent.

For example, NTIA announced its decision late on a Friday afternoon as Americans were beginning their weekends and Members were returning to their districts. NTIA implied that the House and Senate passage of resolutions in 2012 in support of a multi-stakeholder model of Internet governance somehow provided an advanced endorsement, but, in truth, those resolutions nowhere mention the IANA contract.

Furthermore, to assert that, in the late 1990's, the Department of Commerce stated its intent to phase out its oversight role and, thus, no one has a right now to question why the Obama Administration has decided to do this is sophistry. Indeed, it is an attempt to shut down discussion.

As a result, an enormous number of questions have been raised that the American people and this Subcommittee deserve to have answered publicly in a responsible, professional, honest and forthright manner.

There are good reasons why the United States has maintained oversight over the IANA function contract. Indeed, in 2005, the House passed a resolution that explicitly stated that it is the sense of Congress that the Secretary of Commerce shall maintain oversight of ICANN so that ICANN can continue to manage the day-to-day operation of the Internet's domain name and addressing system well, remain responsive to all Internet stakeholders worldwide, and otherwise fulfill its core technical mission.

The Obama Administration should bear the burden of proof for why it wants to make this significant public policy change and whether it is in the best interests of U.S. citizens and Internet users around the globe.

One of the reasons given by many for relinquishing this contract is to improve the U.S. image internationally. As a result of the public revelation of certain U.S. intelligence-gathering practices, it is true that U.S.-based companies are under enormous pressure to place operations overseas in order to do business there and are facing increased competition from their foreign competitors.

This is because the President and his team have failed to effectively engage and inspire confidence among those countries and citizens who traditionally viewed Americans as allies.

We must address this concern, but the most direct way to do so is by reforming our Nation's surveillance laws to better protect civil liberties.

While I see both sides of the proposal to ultimately transfer the IANA function to the private sector, it is clear that the U.S. has served as a critical and responsible backstop against censorship and as a promoter of openness and free speech on the Internet.

The reality is that, once we surrender our unique position, it will be impossible to take it back if something goes awry. This is an important point that needs to be seriously discussed as we determine our future role.

All this leads back to today's hearing. With all due respect to our Administration witness, many Americans are past the point of being satisfied with vague assurances when hard answers, evidence, and sober judgment are needed.

I look forward to a robust discussion today about this important issue, and I yield back to the Chairman.

Mr. MARINO. Thank you, Mr. Chairman.

I would now like to recognize the full Committee Ranking Member, the gentleman from Michigan, Congressman Conyers, for his opening statement.

Mr. CONYERS. Thank you, Mr. Chairman, and Members of the Committee and our distinguished witness.

What we are doing this morning is examining the National Telecommunications and Information Administration's recent announcement of their intent to transition key Internet domain name functions to the global multi-stakeholder community. So I want to try to allay some of the alarm and fears that seem to be moving around this issue.

I would try to administer some medicine that doesn't require a prescription or some other tactic other than the usual arguments that we will put up, but I want you to understand and I think we should agree on that this move will not lead to control of the Internet by foreign governments. I suppose that is always a concern that a lot of people have.

But opponents of this transition have raised concerns about whether there is sufficient safeguards in place to prevent foreign government intrusion during the transition. The criticism has also included inaccurate statements about concerns about threats from foreign governments who seek control or tax or censor the Internet.

These concerns are misplaced because this transition reaffirms the United States' commitment to a multi-stakeholder approach, which will work to improve the security and stability of the Internet.

And NTIA has fully confirmed that it will not transition to any management model that is government led. So I hope we will begin to feel better as this discussion unfolds with our distinguished witnesses.

Now, with this proposed transition, NTIA is putting into place the final phase of privatization, which the United States has long supported and which I trust our conservative colleagues are in support of, and this will be accomplished by transitioning key Internet domain name functions to the global multi-stakeholder community.

There have also been a concern or two raised about whether the multi-stakeholder model is an appropriate approach.

Congress itself has expressly stated its support of the private multi-stakeholder model of Internet governance by passing bipartisan resolutions in both the House and the Senate during the last Congress. Last session we passed Concurrent Resolution 127, which supported the multi-stakeholder model for governance of the Internet by an overwhelming unanimous vote, 414 to 0.

Now, the NTIA has developed core principles to guide this process. Some argue that there are no core principles that will guide this process, but NTIA has put in place core principles to assure successful transition and the long-term viability of this plan.

Indeed, any proposal for transition of the domain name system must meet certain core principles before it can be approved and finalized by NTIA.

If the proposal does not meet fully these criteria, the NTIA may seek additional time to work through the process to develop an acceptable transition proposal.

These principles, which must be met, ensure that the United States will succeed in maintaining freedom, openness, security, and stability of the network.

And in addition to specific criteria that must be met, NTIA has also confirmed that any transition cannot be controlled by a government entity.

The transition must maintain security and stability of Internet DNS, support the multi-stakeholder process, meet global needs and demands, and maintain an open interest.

And I believe that there is sufficient time for stakeholders to work through the process to develop an acceptable transition proposal.

Now, this Committee has historically exercised its role to address the problems of cyber squatting, competition, and copyright infringement with respect to generic top-level domain names.

That oversight has included concerns about the effectiveness of the multi-stakeholder model that led to the expansion of the top-level domain names.

And I, along with a number of my colleagues on both sides of the aisle of this Committee, along with our counterparts on the Senate Judiciary Committee, wrote a letter to ICANN describing these safeguards, including whether that multi-stakeholder process provided trademark owners, consumers, and law enforcement community a meaningful opportunity to voice their concerns, and I am going to put that letter in the record.

[The information referred to follows:]

Congress of the United States
Washington, DC 20515

August 7, 2012

Mr. Akram Atallah, Interim CEO and President
Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601

Dear Mr. Atallah,

In December 2011, we wrote regarding ICANN's program to expand the number of generic top level domains (gTLDs) from the 22 existing gTLDs (such as ".com") to potentially thousands of new extensions. Since then, brand-owners, consumers, and members of the law enforcement community have continued to voice concerns about the adequacy of ICANN's proposed steps to protect against increased risks of cyber-squatting, fraud, and abuse in the new gTLDs. We are in a critical phase as ICANN determines which gTLDs to authorize and what policies to implement in the new registries. We therefore ask that you provide us with further details about the steps ICANN is taking to fulfill its commitment to ensure that the New gTLD process will provide "a secure, stable marketplace" with input from "the community as a whole."

In the response to our December 2011 letter, ICANN emphasized that the New gTLD program "includes robust processes to assure that the community as a whole – with particular opportunities for governments and rights holders – has the opportunity to raise objections that could lead to the rejection of applications," including because of user confusion, infringement of legal rights, and misappropriation of community names or labels. Despite this assurance, many members of the public outside the ICANN community are unaware that the New gTLD program is underway. Of those who are aware, few know about the public comment process or comprehend that their opportunity to participate in this forum is scheduled to end in less than a week.

With potentially sensitive names like ".church", ".kids", and ".sucks" proposed, the more than "two billion (and growing) Internet users around the globe" that ICANN has stated the program is "designed to benefit" should both be aware of their right to comment on the new gTLDs and have a full and meaningful opportunity to do so. As a practical matter, the public comments forum is the only mechanism for most users to comment directly on applications without pursuing formal action before an arbitrator – a process that would require them to establish standing and bear legal expenses. Specifically, we ask:

- What steps has ICANN taken to inform members of the public outside the ICANN community about the New gTLD public comment process, and to ensure the public's maximum and meaningful consideration and participation?
- ICANN has appointed an Independent Objector to review gTLD applications, but ICANN's Guidebook states that he may only raise objections that have been previously voiced by the public. Given this restriction, what steps is the Independent Objector taking

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to encourage and maximize public input? What role will the Independent Objector play in articulating and representing public concerns about specific gTLD applications?

- Will ICANN confirm that it will keep open the New gTLD public comment forum so that the broader public can comment on applications, and the Independent Objector can receive their views? If not, then what is the justification for refusing to accept and consider such material comments from the public?

As discussed in our December 2011 letter, we are also concerned that inadequate protections may provide increased opportunities for cyber-squatters and other rogue actors to mislead consumers by registering fraudulent websites that incorporate familiar trademarks. To counter this threat, ICANN created a Trademark Clearinghouse that can notify trademark holders when someone registers a second-level domain name that uses their trademark. However, ICANN's current policy only requires the Clearinghouse to be available for the first 60 days after a registry launches. Moreover, the Clearinghouse will only give notice when someone registers a website that is *identical* to a trademark; not when the website contains the trademark in a varied form. As an example, this means that a nonprofit such as the YMCA will receive notice only if a user registers a website such as www.ymca.give or www.ymca.charity within the first 60 days of the ".give" or ".charity" registry. The YMCA would not receive notice if a person registers those names after 60 days, or if someone registers a closely related name such as www.ymcaDC.charity.

Businesses and consumers remain concerned that these policies insufficiently defend against the heightened risks of fraudulent activity in the new gTLDs. They assert that ICANN's policies easily could be strengthened by requiring registries to use the Trademark Clearinghouse for more than 60 days, and by allowing trademark holders to sign up for Clearinghouse notices of website registrations that contain their trademark in varied form (such as the trademark plus a generic term). Please tell us:

- Is there anything that prevents ICANN from requiring registries to make the Trademark Clearinghouse available as a permanent service, extending it beyond the first 60-day period? Have Clearinghouse operators analyzed the feasibility of providing more meaningful and comprehensive trademark notifications, instead of only providing notice when users register identical terms?
- In the response to our December 2011 letter, ICANN suggested that the Government Advisory Committee agreed to the current Clearinghouse policies based on ICANN's commitment to review those policies "post-launch." When does ICANN intend to conduct this review? Is ICANN committed to making changes in response to specific suggestions and comments received as part of the "post-launch" review? In what ways might ICANN enhance its Clearinghouse policies after the new gTLDs launch?
- A further rights protection mechanism ICANN highlights is the availability of a "sunrise period" when certain trademark holders may reserve names in a new gTLD before it opens. Some are concerned that registries may use strategic pricing to take advantage of businesses and individuals who feel compelled to defensively register their names. What policies, if any, does ICANN have in place to discourage this activity and allay these concerns?

Finally, we understand that ICANN is currently working to expand its compliance capabilities to monitor and investigate cases of abuse. We are encouraged by this news, but are interested in receiving further details, including whether ICANN will dedicate a portion of the nearly $350 million in gTLD application fees it has received to this initiative. We are also interested in receiving details about ICANN's ongoing negotiations to renew the Registrar Accreditation Agreement, including what additional security and anti-fraud measures the new agreement may contain.

ICANN has stated its commitment to create, through its New gTLD program, "a secure, stable marketplace through the implementation of enhanced rights protection mechanisms, malicious conduct mitigation measures and other consumer protections." We hope that ICANN will take every step to honor that commitment during the review and delegation process, and look forward to working closely with you on issues of mutual concern in the upcoming months.

Thank you, in advance, for providing information about ICANN's past and ongoing efforts to implement its commitments. We look forward to your response.

Sincerely,

PATRICK LEAHY
Chairman
Senate Judiciary Committee

LAMAR SMITH
Chairman
House Judiciary Committee

CHARLES E. GRASSLEY
Ranking Member
Senate Judiciary Committee

JOHN CONYERS, JR.
Ranking Member
House Judiciary Committee

CC:

Mr. Steve Crocker, Chairman, Board of Directors
Mr. Kurt Pritz, Senior Vice President, Acting New gTLD Program Director
Mr. Fadi Chehadé, Incoming President and CEO
The Honorable Rebecca M. Blank, Acting U.S. Secretary of Commerce
The Honorable Lawrence E. Strickling, Assistant Secretary for Communications and Information, National Telecommunications and Information Administration, U.S. Department of Commerce
The Honorable Victoria A. Espinel, U.S. Intellectual Property Enforcement Coordinator
The Honorable Jon Leibowitz, Chairman, U.S. Federal Trade Commission

Mr. CONYERS. I look forward to hearing today about how we can ensure that ICANN remains responsive to our concerns as well as those of other key stakeholders over the next 18 months as this process unfolds.

So, finally, a truly effective transition must and can ensure that the criteria for transition remain in place long after that transition occurs.

Some of the critics of the NTIA's announcement have expressed concern that, by relinquishing its contract with ICANN, the United States will be unable to prevent subsequent changes and it might undermine Internet security, stability, and openness. This is not exactly accurate because the process itself can and should result in enforceable principles that the United States can support.

Again, this is the start of a transition process that there will be plenty of opportunity to make sure it is going well. And, if not, NTIA has the option to renew the contract with ICANN for a total of four additional years through 2019.

Stakeholders should all work together to be involved in the process announced by NTIA on March 14 so that ICANN and the Internet community can develop constructive proposals that will meet NTIA's criteria.

To this point, there has been a broad group of stakeholders who have expressed support for the NTIA announcement, including AT&T, Verizon, Microsoft, Google, Public Knowledge, and the Chamber of Commerce. The process should continue to be open, transparent, and obtain international stakeholder consensus and support.

We should have more hearings to review this issue to see how it develops and evaluate the process as it moves forward. These hearings will provide us with the opportunity to examine whether sufficient safeguards are being put in place during the next steps of the transition of NTIA's role, and the Committee should consider sending designated representatives to attend and monitor the meetings held in compliance with NTIA's announcement. This would facilitate meaningful oversight by Congress.

These are some suggestions that I have. And I thank the Chairman. I yield back the balance of my time and look forward to hearing from the witnesses.

Mr. MARINO. Thank you, Congressman Conyers.

Without objection, other Members' opening statements will be made part of the record.

I want to explain who I am. My name is Tom Marino. I am the Vice-Chair of the Intellectual Property Subcommittee.

My colleague, the Chairman and my mentor, Howard Coble, the gentleman from North Carolina, has a conflicting schedule this morning, but will attempt to get here as soon as possible.

We have two very distinguished panels today. I will begin by swearing in our first witness before introducing him.

If you would please rise, sir, and raise your right hand.

[Witness sworn.]

Mr. MARINO. Let the record reflect that the witness has answered in the affirmative.

And, Mr. Secretary, you may be seated.

The witness's written statement will be entered into the record in its entirety.

I ask that the witness summarize his testimony in 5 minutes or less. We are on a very tight schedule today. So when you get to 5 minutes, I will politely tap the hammer just to give you an indication because those lights are to the sides of you and you know how they work.

And to help stay within the time, these are timing lights on your table. They make no sense to me because I am colorblind and I can't tell what they are.

When the light switches from so-called green to yellow—and I have no idea what that is—you will have 1 minute to conclude your statement. When the light turns red, it signals that the witness's 5 minutes has expired. So I will politely nudge you, if you don't mind

Our first witness this morning is the Honorable Lawrence Strickling, Assistant Secretary for Communications and Information at the United States Department of Commerce, a very important position.

In his position, Mr. Strickling serves as Administrator of the National Telecommunications and Information Administration, the executive branch agency that is responsible for advising the President on communications and information policies.

Mr. Strickling earned his juris doctorate from Harvard Law School and his bachelor of science in economics from the University of Maryland.

Welcome, Mr. Strickling.

TESTIMONY OF THE HONORABLE LAWRENCE E. STRICKLING, ASSISTANT SECRETARY FOR COMMUNICATIONS AND INFORMATION, NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, UNITED STATES DEPARTMENT OF COMMERCE

Mr. STRICKLING. Thank you, Chairman Marino.

And I want to acknowledge Ranking Member Nadler, Chairman Goodlatte, and Ranking Member Conyers.

I am pleased to be here today to testify about NTIA's role working with ICANN and the domain name system as well as our March 14th release announcing our intent to transition key Internet domain name functions to the global multi-stakeholder community.

And, Chairman Goodlatte, I want to assure you I am not here to shut down discussion about this issue. My hope is that these issues are fully debated not just here, but among all of the global Internet stakeholders.

For 16 years, it has been the clear and unquestioned policy of the United States Government that the private sector should lead the management of the domain name system.

In its 1998 policy statement, the Department of Commerce stated that the U.S. Government is committed to a transition that will allow the private sector to take leadership for DNS management.

Since then, the Department, through NTIA, has entered into a series of agreements with ICANN under which it performs what are known as the IANA functions. These include assigning Internet

protocol numbers to regional registries, who then assign them to Internet service providers.

Another function is the maintenance and updating of the root zone file of top-level domain names, the so-called address book. And I brought a copy if anybody wants to look at it. This is necessary for the rooting of Internet communications.

ICANN performs these tasks at no cost to the U.S. Government. Our role in this process is simply to verify changes and updates proposed by ICANN to the root zone file before passing the changes on to VeriSign, which actually maintains and updates the root zone file.

ICANN develops its policies through a bottom-up multi-stakeholder process. These efforts are open to all stakeholders, whether they are businesses, civil society organizations, technical experts or governments, who work in concert to reach consensus agreement on Internet policies.

I want to emphasize that NTIA does not exercise any control or oversight over policymaking at ICANN. Rather, it is the global multi-stakeholder community that makes Internet policy today, whether it be setting domain name policy at ICANN or developing Internet technical standards at the Internet Engineering Task Force.

The U.S. Government has been a vigorous supporter of the multi-stakeholder model of Internet governance from the start. Both Republican and Democratic administrations have consistently emphasized that the multi-stakeholder process is the best mechanism for making Internet policy. Congress agrees.

In 2012, both houses of Congress unanimously passed resolutions stating that it was the consistent and unequivocal policy of the United States to promote a global Internet free from government control and to preserve and advance the successful multi-stakeholder model that governs the Internet today.

In furtherance of this clear congressional statement, on March 14, NTIA announced the final phase of the privatization of the domain name system. We asked ICANN to convene global stakeholders to develop a proposal to transition the current role played by NTIA in the coordination of the domain name system.

In making this announcement, we stated that the transition proposal must have broad community support and must address four principles.

It must support and enhance the multi-stakeholder model. It must maintain the security, stability, and resiliency of the Internet domain name system. It must meet the needs and expectations of the global customers and partners of the IANA services. And it must maintain the openness of the Internet.

And we made crystal clear that we will not accept a proposal that replaces the NTIA role with a government-led or intergovernmental solution.

We asked ICANN to convene the multi-stakeholder process because it is the current IANA functions contractor and the global coordinator for DNS.

We informed ICANN that we expected it to work collaboratively with the other Internet technical organizations, including the Inter-

net Society, the IETF, the Internet Architecture Board, and the regional Internet registries.

At its recent meeting in Singapore, ICANN convened two public sessions in association with these organizations to obtain stakeholder input on how to design the process to develop the transition plan.

The Internet community has responded to our announcement with strong statements of support, and many of the Members have referred to them.

Among the business community, Microsoft hailed the announcement as a significant and welcome development. Cisco stated that it has long supported an open and innovative multi-stakeholder Internet governance process in this next step in this evolution.

Our announcement in the process that is now underway to develop a transition plan benefits American interests. We depend on a growing and innovative Internet and, despite the symbolic role the U.S. Government has played over the years, the fact is that no country controls the Internet.

Its continued growth and innovation depends on building trust among all users worldwide and strengthening the engagement of all stakeholders. Taking this action is the best measure to prevent authoritarian regimes from expanding their restrictive policies beyond their own borders.

I am confident that the global Internet community will work diligently to develop a plan that has the support of the community and that meets the four conditions we laid out on March 14.

And I want to assure all Members that, before any transition takes place, the businesses, civil society organizations, and technical experts of the Internet must present a plan that ensures the uninterrupted stable functioning of the Internet and preserves its openness. Until such time, there will be no change in our current role.

Similarly, we have not set any deadline for action. The current contract expires on September 30th, 2015, but we can extend it for up to 4 years if the community needs more time to develop its proposal.

I also want to assure all Members that, even as the United States looks to transition out of this clerical role that we play, we will remain strong and vigorous advocates for Internet freedom, growth, and innovation.

We will continue to play a major role on ICANN's governmental advisory committee where governments develop consensus advice to ICANN on public policy matters, and we will continue in our role to enhance the accountability and transparency of ICANN through our participation in the accountability and transparency review teams established by the affirmation of commitments we signed in 2009.

Our commitment to preserving the Internet as a platform for economic growth and innovation remains steadfast and, by this action, we are simply enlisting others to step up and join us in supporting the free and open Internet.

Thank you. And I look forward to answering your questions this morning.

Mr. MARINO. Thank you, Secretary. And once again, your full statement will be made part of the record.

[The prepared statement of Mr. Strickling follows:]

Testimony of

The Honorable Lawrence E. Strickling
Assistant Secretary for Communications and Information
National Telecommunications and Information Administration
United States Department of Commerce

Before the
Subcommittee on Courts, Intellectual Property, and the Internet
Committee on the Judiciary
United States House of Representatives

Hearing Entitled
"Should the Department of Commerce Relinquish Direct Oversight Over ICANN?"

April 10, 2014

Chairman Coble, Ranking Member Nadler, and members of the Subcommittee, thank you for this opportunity to testify on behalf of the National Telecommunications and Information Administration (NTIA) regarding NTIA's role and relationship with the Internet Corporation for Assigned Names and Numbers (ICANN), in particular NTIA's recent announcement of our intent to transition key Internet domain name functions to the global multistakeholder community.

NTIA's Relationship with ICANN and the DNS

The Domain Name System (DNS) is a critical component of the Internet infrastructure. It allows users to identify websites, mail servers and other Internet destinations using easy-to-understand names (e.g.,www.ntia.doc.gov) rather than the numeric network addresses (e.g., 170.110.225.163) necessary to retrieve information on the Internet. A July 1, 1997, Executive Memorandum directed the Secretary of Commerce to privatize the Internet DNS in a manner that increases competition and facilitates international participation in its management. In June 1998,

NTIA issued a statement of policy on the privatization of the Internet DNS, known as the DNS White Paper.[1] The White Paper concluded that the core functions relevant to the DNS should be primarily performed through private sector management. To this end, NTIA stated that it was prepared to enter into an agreement with a new not-for-profit corporation formed by private sector Internet stakeholders to coordinate and manage policy for the Internet DNS. Private sector interests formed ICANN for this purpose, and, in the fall of 1998, NTIA entered into a Memorandum of Understanding (MOU) with ICANN to transition technical DNS coordination and management functions to the private sector.

The MOU did not simply turn over management of the DNS to ICANN. Rather, the purpose of this agreement was to design, develop, and test mechanisms, methods, and procedures to ensure that the private sector had the capability and resources to assume important responsibilities related to the technical coordination and management of the DNS. The MOU evolved through several iterations and revisions as ICANN tested these principles, learned valuable lessons, and matured as an organization.

The MOU culminated in 2009 with the *Affirmation of Commitments (Affirmation)*. The *Affirmation* signified a critical step in the successful transition to a multistakeholder, private-sector led model for DNS technical coordination, while also establishing an accountability framework of ongoing multistakeholder reviews of ICANN's performance. To date, two iterations of the Accountability and Transparency Review Team (ATRT) have occurred. These teams, on which NTIA has participated actively with a broad array of international stakeholders from industry, civil society, the Internet technical community and other governments, have served as a key accountability tool for ICANN – evaluating progress and recommending

[1] "Statement of Policy, Management of Internet Names and Addresses," 63 Fed. Reg. 31741(1998).

improvements. We have seen marked improvements in ICANN's performance with the implementation of the 27 recommendations made by ATRT1 and have full confidence this maturation will continue with the ongoing implementation of the 12 recommendations of ATRT2.

Throughout the various iterations of NTIA's relationship with ICANN, NTIA has played no role in the internal governance or day-to-day operations of ICANN. NTIA has never had the contractual authority to exercise traditional regulatory oversight over ICANN.

The Internet Assigned Numbers Authority (IANA) Functions

In the DNS White Paper, NTIA announced its intent to assure the continued secure and stable performance of certain DNS functions, initially through contracts, until the transition was complete. Specifically, this included the performance of the Internet Assigned Numbers Authority (IANA) functions. The IANA functions are a set of interdependent technical functions that enable the continued efficient operation of the Internet. The IANA functions include: (1) the coordination of the assignment of technical Internet protocol parameters; (2) the processing of change requests to the authoritative root zone file of the DNS and root key signing key (KSK) management; (3) the allocation of Internet numbering resources; and (4) other services related to the management of the .ARPA and .INT top-level domains (TLDs).

The IANA functions were initially performed under a series of contracts between the Department of Defense's Advanced Research Projects Agency (DARPA) and the University of Southern California (USC), as part of a research project known as the Terranode Network Technology (TNT). As the TNT project neared completion and the DARPA/USC contract neared expiration, USC entered into a transition agreement with ICANN under which ICANN

secured directly from USC all necessary resources, including key personnel, intellectual property, and computer facility access critical to the continued performance of the IANA functions. In 2000, NTIA then entered into a sole-source, no-cost-to-the-government contract with ICANN for the performance of these functions.

NTIA and ICANN have subsequently entered into contracts for the performance of the IANA functions in 2001, 2003, and 2006. On July 2, 2012, NTIA awarded ICANN, via a full and open competitive procurement process, the current IANA functions contract. The base period of performance for this contract is October 1, 2012 to September 30, 2015, and includes two separate, two-year option periods. If both option periods are exercised the contract would expire on September 30, 2019. All five contracts have been at no cost to the U.S. Government.

As the IANA functions operator, ICANN maintains, updates and makes publicly available registries related to the three IANA functions. First, ICANN is the central repository for protocol name and number registries used in many Internet protocols. It reviews and assigns unique values based on established policies and guidelines as developed by the Internet Engineering Task Force (IETF). Second, it coordinates allocations of IP (Internet Protocol) and AS (Autonomous System) numbers to the Regional Internet Registries (RIR) who then distribute IP and AS numbers to Internet Service Providers and others within their geographic regions. Third, ICANN processes root zone change requests for Top Level Domains (TLDs) and makes publicly available a Root Zone WHOIS database with current and verified contact information for all TLD registry operators. In all three cases ICANN as the IANA functions operator applies the policies developed by the interested parties when completing requests related to the various IANA functions customers.

NTIA's role in the IANA functions includes the clerical role of administering changes to the authoritative root zone file and, more generally, serving as the historic steward of the DNS via the administration of the IANA functions contract. The NTIA role does not involve the exercise of discretion or judgment with respect to such change requests. From the inception of ICANN, the U.S. Government and Internet stakeholders envisioned that the U. S. Government's role in the IANA functions would be temporary. The DNS White Paper stated that "agreement must be reached between the U.S. Government and the new corporation (ICANN) relating to the transfer of the functions currently performed by IANA."[2]

Next Steps in the Continued Transition of the NTIA Role

On March 14, 2014, NTIA announced its intent to transition key Internet domain name functions to the global multistakeholder community. This marks a milestone toward the final phase of the privatization of the DNS first outlined by the U. S. Government in 1998. To accomplish this, we have called upon ICANN to convene a multistakeholder process to develop the transition plan. While looking to stakeholders and those most directly served by the IANA functions to work through the technical details, NTIA deliberately established a clear framework to guide the discussion. Specifically, we communicated to ICANN that the transition proposal must have broad community support and address four principles.

First, the transition proposal must support and enhance the multistakeholder model. Specifically, the process used to develop the proposal should be open, transparent, bottom-up, and garner broad, international stakeholder consensus support. In addition, the proposal should include measures to ensure that changes made to any of the three IANA administered databases

[2] *Id.*

are consistent with the publicly documented IANA functions customer and partner accepted procedures which are developed through the multistakeholder model.

Second, the transition proposal must maintain the security, stability, and resiliency of the Internet DNS. For example, the decentralized distributed authority structure of the DNS needs to be preserved so as to avoid single points of failure, manipulation or capture. In addition, the integrity, transparency, and accountability of IP numbers, domain names, and Internet protocol assignments must be preserved. The IANA services also need to be resistant to attacks and data corruption, be able to fully recover from degradation, if it occurs, and be performed in a stable legal environment.

Third, the transition proposal must meet the needs and expectations of the global customers and partners of the IANA services. For example, mechanisms for the adherence to and development of customer service levels, including timeliness and reliability, should be clear, as should processes for transparency, accountability, and auditability. Consistent with the current system, the separation of policy development and operational activities should continue.

Fourth, the transition proposal must maintain the openness of the Internet. The neutral and judgment free administration of the technical DNS and IANA functions has created an environment in which the technical architecture has not been used to interfere with the exercise of free expression or the free flow of information. Any transition of the NTIA role must maintain this neutral and judgment free administration, thereby maintaining the global interoperability of the Internet.

In addition, NTIA explicitly stated that we would not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution. This condition is consistent with the clear policy expressed in bipartisan resolutions unanimously adopted of the

U.S. Senate and House of Representatives (S.Con.Res.50 and H.Con.Res.127) during the 112th Congress, which affirmed the U. S. support for the multistakeholder model of Internet governance.

While the current IANA functions contract expires September 30, 2015, there are two separate two-year option periods that would extend the contract for up to four years. Accordingly, NTIA believes there is sufficient time for stakeholders to work through the ICANN-convened process to develop an acceptable transition proposal. NTIA has made clear that the transition proposal must have broad multistakeholder support and reflect the four key principles we outlined in our announcement. Before any transition takes place, the businesses, civil society and technical experts of the Internet must present a plan that has broad multistakeholder support and reflects the four key principles we outlined in our announcement.

Why Take this Step Now

We believe the timing is right for this next step as the Internet technical organizations, including ICANN, have matured, with ICANN having taken steps in recent years to improve its accountability, transparency, and technical competence. At the same time, international support continues to grow for the multistakeholder model of Internet governance, in some quarters, as evidenced by the continued success of the Internet Governance Forum and the resilient stewardship of the various Internet institutions.

We need to ensure that the broad Internet community – companies, technical groups, civil society and governments – continue to work together as equal partners in crafting the rules of the road for the Internet through the multistakeholder model. Some authoritarian regimes however do not accept this model and seek to move Internet governance issues, including the DNS, into

the United Nations system in order to exert influence and control over the Internet. This played out during the 2012 World Conference on International Telecommunications in Dubai where the world split on fundamental issues of Internet governance. This issue will likely resurface at the October 2014 International Telecommunication Union Plenipotentiary Conference, where we expect some countries to once again attempt to insert themselves in the middle of decisions impacting the Internet.

Some have argued that what NTIA is doing is tantamount to "giving away the Internet". That could not be further from the truth. There is no one party – government or industry, including the U. S. Government – that controls the Internet. The Internet is a decentralized network of networks. What we have in fact done, is demonstrate leadership and strategic vision by laying out a framework with clear conditions to finalize a process that has been ongoing for 16 years. The ICANN-convened process that is currently underway will help prevent authoritarian countries from exerting too much influence over the Internet by promoting the multistakeholder model that has made the Internet the success it is today. This is why a broad group of stakeholders have expressed their support for NTIA's announcement. These include Internet technical community leaders, U.S. companies such as AT&T, Verizon, Microsoft, Google, Cisco, and Comcast, and associations like the Chamber of Commerce, USTelecom, the Internet Association, the Computer and Communications Industry Association, and the Software and Information Industry Association. Human rights and Internet freedom organizations, including Freedom House, Human Rights Watch, the Center for Democracy and Technology, and Public Knowledge, also released statements of support. And bipartisan leaders in Congress have provided thoughtful comments that demonstrate clear support for the multistakeholder model of Internet governance.

Conclusion

With the March 14 announcement, NTIA has taken the next step in the 16–year process to privatize the coordination and management of the DNS. ICANN last month began the process of convening stakeholders for the first of many public discussions on this topic. During this period, NTIA's role will remain unchanged. As we have said repeatedly, we will not accept a transition plan that would replace the NTIA role with one led by governments or an inter-governmental organization and we have established a framework of four principles that the process must address. This must be a careful and thoughtful process. If a plan that meets these criteria cannot be implemented by September 30, 2015, we can extend the contract for up to four years.

NTIA fully supports the need to ensure the continued growth, innovation and openness of the Internet to support economic development. This latest step, an important demonstration of the U.S. Government's commitment and confidence in the multistakeholder model, will help support these goals.

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Mr. MARINO. We will now proceed under the 5-minute rule with questions, and I will begin by recognizing the Chairman of the full Committee, Chairman Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Secretary Strickling, welcome, and I very much appreciate your remarks, and they are helpful in this process.

My first question is: Do you agree that the authority that NTIA has over ICANN under the IANA contract has never been abused?

Mr. STRICKLING. That we have not abused our authority?

Mr. GOODLATTE. Correct.

Mr. STRICKLING. Yes.

Mr. GOODLATTE. Do you agree that this authority and the functions performed under this agreement have absolutely nothing to do with the surveillance techniques that were allegedly revealed by Edward Snowden?

Mr. STRICKLING. Yes.

Mr. GOODLATTE. Nevertheless, it is hard to imagine that this is a subject that never came up in interdepartmental discussions.

Did this issue ever come up in the discussion surrounding this decision?

Mr. STRICKLING. Yes. But it was never a primary reason for our action. Our action that we are taking today was fueled much more by the fact that we felt Internet had matured as an organization to the point where it was time for—to do this final transition.

And it was also, I think, fueled by the increasing international acceptance of the multi-stakeholder model of governance that we are seeing in the developing world as reflected in the Brazil undertaking of the global multi-stakeholder meeting they are hosting in Brazil later this month.

Mr. GOODLATTE. Mr. Castro states that, without U.S. oversight, ICANN has the potential to become the world's largest unregulated monopoly.

Do you agree or disagree with his statement, and why?

Mr. STRICKLING. Well, if we are referring to IANA functions, I strongly disagree. I think that totally misapprehends exactly what our role is under IANA functions.

Mr. GOODLATTE. I would have to say that you have a point to the extent that, while a number of concerns were raised in this Committee and elsewhere in the Congress and elsewhere in interested groups, that had no effect on the decision by ICANN to undertake the dramatic expansion of the top-level domain name program that has quite a bit of concern on many parts, quite a bit of cost to some entities, and contains the, I would say, evidence that this is an organization that can, maybe even now under the existing contract—but certainly would be able to, without such a contractual relationship with the United States, expand itself and expand its powers with regard to the Internet.

Would you agree with that statement?

Mr. STRICKLING. No.

Mr. GOODLATTE. Explain yourself.

Mr. STRICKLING. Well, let's take the example of the expansion of top-level domains. ICANN didn't do that in terms of ICANN, the employees and the board members. That was a decision taken after 6 years of multi-stakeholder discussion.

Many people were involved in debating the pros and cons of doing that. It actually goes back to the origination of ICANN.

I mean, one of the purposes of putting this to the private sector was to increase competition among domain names. So this has long been contemplated, going back to 1998, when ICANN was created.

And I think people tend to conflate ICANN with the output of the multi-stakeholder process that is conducted within the ICANN sphere.

And so I think the idea that ICANN as an organization is going to turn into some unregulated monopoly totally disregards the presence of hundreds of stakeholders—thousands of stakeholders who actually set the policies for ICANN.

And if you are saying that AT&T, Verizon, Cisco, Microsoft, Freedom House, Public Knowledge, Center for Democracy and Technology are all going to allow that to happen, then, you are basically saying you don't believe in the multi-stakeholder model, because I don't think they will let that happen.

Mr. GOODLATTE. No. I am not saying that I believe that at all.

But I will say that I am concerned that the actions taken by the entity are the genesis of the problems that we have with countries that do not respect the freedom that exists on the Internet, do not respect individual liberty, and will always—unless they change their own perspective of the world and their own perspective of civil liberties, will always be looking for excuses to take control of the Internet. I am talking about countries like Brazil undertaking the initiative that they have right now.

So I understand the concern about this remaining link to the United States, which, in my opinion, notwithstanding the challenges that we and any other representative democracy face, still is a beacon in the world for freedom.

And I think that we can rightly take credit for the freedom that exists on the Internet today in the manner in which we have worked to unfold it.

The question and concern that I have and many others have is: When we let go of that final link, will that institution that I support in terms of how it is expected to operate—will that institution be safer from those efforts to regulate the Internet or will it be more exposed because it no longer has the protection of the United States?

Mr. STRICKLING. Well, Chairman, I am a little flummoxed by your question because it is not the last link. As I said in my statement, we continue to have a tremendous amount of engagement with ICANN. We are an active and vigorous participant in the Government Advisory Committee, and that is public policy.

Mr. GOODLATTE. No question. No question. But is the last contractual relationship.

Mr. STRICKLING. Well, but we also have the affirmation of commitments with ICANN under which they have committed things that are basically in their bylaws in terms of increasing their accountability and transparency not just to us, but the entire worldwide community.

And it has set up a series of review teams, one of which, the accountability and review team, I sit as a member on. So I have devoted a tremendous amount of my own time both in 2010 and

again last year, 2013, for the first two iterations of that team that does a very in-depth examination of the accountability mechanisms at ICANN and makes recommendations to the board in terms of how to improve that.

We are joined in that effort by governments of Denmark, Australia, Costa Rica in the last iteration, as well as from experts from around the globe, technical experts and then members of the representatives of the various supporting organizations. So there are a number of ways that we provide input and guidance and oversight into how ICANN operates.

The IANA function really is primarily a symbolic role that we have played. We got involved in this in 1998 because, when the government wanted to get out of this role, when it was performing these functions itself, we had to find a mechanism by which to get a private entity to do it.

That was the purpose of the IANA functions contract. It was basically a one-time opportunity for the United States to move from doing it itself to finding someone else to do it.

And, since then, they have been performing these roles. Policies have been set by stakeholders and, literally, our role has been to do that final verification of accuracy of changes before they are made.

And I think people are blowing totally out of proportion this function that we perform with respect to IANA functions and they are ignoring the many other ways in which—that we participate through the multi-stakeholder process to ensure that American interests are furthered through ICANN and through any of the other Internet technical organizations.

Mr. GOODLATTE. I get that. And I thank you. Your comments are helpful.

Thank you, Mr. Chairman. My time is expired.

Mr. MARINO. Thank you, Chairman.

The Chair now recognizes the Ranking Member, Congressman Nadler.

Mr. NADLER. Thank you, Mr. Chairman.

Before beginning my questions, I ask unanimous consent to enter an article from 2011 titled, "Beckstrom Calls for ICANN's Independence," in which Mr. Beckstrom expressed the belief—the "clear belief that the U.S. Government should live up to its 1998 white paper commitment to transfer management of the IANA functions to the private sector-led organization enlisted to manage DNS, which is ICANN."

Given representations of Mr. Beckstrom's opposition to this transition now, I think it is important that the hearing record reflects a more complete record of his position.

Mr. MARINO. Without objection.

[The information referred to follows:]

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Beckstrom calls for ICANN's independence

Kevin Murphy, March 15, 2011 01:26:23 (UTC), Domain Policy

ICANN president Rod Beckstrom has called for the organization to be allowed to further loosen its ties to the US government.

The two-hour opening ceremony of its 40th public meeting, here in San Francisco this morning, had a heavy focus on ICANN's relationship with governments, and looked as much to its roots in the Clinton administration as it addressed more immediate concerns internationally.

Beckstrom and others tackled the renewal of the soon-to-expire IANA contract, with which the US grants ICANN many of its powers over the domain name system, head-on.

Beckstrom said some have expressed "a belief that the US government should live up to its 1998 White Paper commitment to transfer management of the IANA functions to the private sector-led organization entrusted to manage the DNS, which is ICANN."

That would mean severing one of the most frequently criticized links between ICANN and the USA.

In a press conference later, he confirmed that this is in fact his belief, saying that internet governance is "evolving behind the curve" as internet usage grows internationally.

The US handing the keys to the internet over to ICANN doesn't appear to be immediately likely, however. But there may be some ways to continue to phase out the US special relationship on a shorter term basis.

Beckstrom took the stage shortly after Lawrence Strickling, head of the National Telecommunications and Information Administration, part of the US Department of Commerce, made some frank criticisms.

While stressing the Obama administration's commitment to what he called "multistakeholderism" in internet governance, he had a few pointed remarks to make about ICANN's decision-making process.

He accused the ICANN board of directors of "picking winners and losers" by making decisions in situations where the community has been unable to reach a consensus policy.

He singled out two recent policies where he believes ICANN has failed to sufficiently rationalize its decisions: registry-registrar integration and economic studies into new TLDs.

The criticisms are not new, and many of them may well go away if and when ICANN implements the recommendations of its Accountability and Transparency Review Team.

My initial sense is that the fact Strickling was able to speak so frankly and so publicly about the administration's feelings is an encouraging sign of ICANN's maturity.

And Beckstrom's response was equally ballsy, urging ICANN's supporters to lobby the NTIA for a loosening of US-ICANN ties.

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Music industry gets its ass handed to it by gTLD panel

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Freenom adds .gq to free African ccTLD roster

.nz second-level names now available

"Frustrated" Morocco denies it supported .tata gTLD

OVH to give away 50,000 new gTLD names for free

.bayern starts GA with almost 20,000 names

Phishers prefer free ccTLDs to new gTLDs

Safeway pulls all four new gTLD apps

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Donuts snatches four new gTLDs at auction, beating Amazon to .video

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Verisign plans TLD standards group

The NTIA's Notice Of Inquiry regarding IANA, which floats the idea of breaking up the IANA functions and possibly assigning them to three different entities, was released a few weeks ago.

During his address this morning, former ICANN chair Vint Cerf put forth the view that this kind of government procurement contract may be an inappropriate mechanism for overseeing IANA functions:

> I believe that that concept of procuring service from ICANN really ought to change to become a cooperative agreement because I believe that format expresses more correctly the relationship between ICANN and the Department of Commerce.

Beckstrom evidently agrees with Cerf. At the press conference, he pointed out that the disadvantage of a procurement contract is that it's short term, undermining confidence in ICANN.

It also requires ICANN to run the IANA to the benefit of the American people, rather than the international community, he said. This obviously can reinforce the perception in some parts of the world that ICANN has an untenable American bias.

"A cooperative agreement seems more befitting of the relationship the NTIA and ICANN has developed," he said, noting that this is currently the structure of NTIA's relationship with VeriSign.

The Number Resource Organization may give a further clue to ICANN's game plan in this email (pdf) published today, in which the NRO says:

> We strongly believe that no government should have a special role in managing, regulating or supervising the IANA functions.
>
> ...
>
> The NRO suggests that ICANN, through these coming negotiations, should advocate for a staged reduction of the level of DoC's oversight to IANA. This process could possibly involve a transitionfrom a contract to a cooperation agreement, and ultimately arrival at a non-binding arrangement, such as an affirmation of commitments.

Beckstrom now wants your help to make this happen. During his keynote, he urged the ICANN community to make its disparate views known to the NTIA "openly and in writing".

"This is the chance to add your voice to those determining the fate of the IANA function," he said. "If your voice is to be heard, you must speak up."

"When all voices are heard, no single voice can dominate an organization – not even governments. Not even the government that facilitated its creation," Beckstrom said.

Details about how to respond to the NOI can be found in this PDF.

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Mr. NADLER. Thank you.

Mr. Strickling, before I begin my other questions, let me ask you as a follow-on: Do you believe that the step that you have announced of—with respect to ICANN will have any effect, pro or con, in increasing or decreasing the power of a foreign government that wants to limit the Internet in some way to do so outside its own borders or inside its borders, for that matter?

Mr. STRICKLING. I don't think it affects their power. No.

Mr. NADLER. Because?

Mr. STRICKLING. Well, to the extent a government wants to shut off content coming into its country, there is nothing any of us can do to prevent that other than continuing to help inspire stakeholders in those countries to rise up and oppose and object to such practices when they take place.

The ability of any government to somehow come in and take over ICANN is basically zero by itself. There is just no mechanism by which it can happen.

Now, governments can bring these matters to the UN and to the International Telecommunication Union, and we are concerned about certainly the outcome at the World Conference on International Telecommunications 2 years ago where 88 countries basically felt that some of these matters of Internet policy ought to be brought to the ITU.

That is very troubling, and we are working very hard in a——

Mr. NADLER. The step you are taking now that we are discussing today has no effect on that one way or the other?

Mr. STRICKLING. Well, we hope that—there is no question but what—the U.S. role in this has served as a talking point for countries like Russia and other authoritarian regimes.

When they are trying to convince countries in the developing world to join in them in some of their policies, they use this as an argument.

So, yes, we are taking that argument away. So we would hope that developing countries would approach these issues with a different mindset as a result of this.

Mr. NADLER. Thank you.

Now, the House Energy and Commerce Committee's Communication Technology Subcommittee is marking up and voting today on H.R. 4342, the DOTCOM Act of 2014. That bill would delay any transition of the IANA functions until after the Government Accountability Office reviews and reports on any transition proposals.

Do you support this bill? Could this act harm the transition process? And how might it impact the ongoing efforts of some nations to transition Internet governance to the ITU of the United Nations?

Mr. STRICKLING. So the Administration opposes the DOTCOM bill, and we do think that enactment of the bill would send the wrong signal to the global Internet community about the United States' continued support of the global multi-stakeholder governance model.

We think that the bill undermines longstanding U.S. support for the model's multi-stakeholder model of Internet governance.

And while we have certainly seen international support growing for the multi-stakeholder model, authoritarian regimes are attempting to provide an alternative Internet governance model that

would enhance the role of governments in controlling the Internet, and the timing of this bill would be particularly damaging for supporters of the multi-stakeholder model.

Mr. NADLER. Okay. Now, some of my colleagues—and you dealt with this somewhat in your statement, but I would like you to briefly elaborate on it.

Some of my colleagues have claimed that relinquishing the contractual relationship with ICANN could mean turning Internet over to greater influence by foreign governments such as Russia or China. You stated this isn't true, obviously.

Even if the initial model to which we transition doesn't allow for this, how do we ensure that it isn't later changed to allow governments to exert undue control?

Mr. STRICKLING. Well, again, we are putting our faith, as we have for the last 15 years, in the multi-stakeholder model.

What we are depending on, again, are large multi-national corporations, important civil society organizations both here and the United States and worldwide.

We are relying on technical experts who created this Internet, people like Steve Crocker, the chairman of the board of ICANN who is sitting in the room today.

And you would have us believe that somehow those people are going to somehow end up with a result that, in effect, would turn this over to governments who have a totally different model in mind in terms of how the Internet ought to operate? I just don't see that happening. It just won't happen.

Mr. NADLER. Now, some have argued that relinquishing the contractual relationship robs us of any oversight or leverage to ensure that ICANN adheres to its operating principles.

Do we have any such control by virtue of our contract with ICANN now? And, if so, how do we ensure similar accountability from ICANN if we relinquish the contract?

Mr. STRICKLING. Well, these are important questions, and I think that is exactly what we have teed up for the community to be talking about as they develop a transition plan.

The question we put to the community is: What do you want to create, if anything, to replace the role we have played, however it has been interpreted by the community?

We recognize that there is a symbolic nature of the IANA functions contract that has given, we think, comfort to people who feel that somehow we can use that to discipline ICANN.

And the question of the community now is: Well, if you believe that, then design a mechanism that provides that same assurance to the entire community going forward. That is the task that the community will be taking up here over the next many months.

Mr. NADLER. And we will be able review the results of that?

Mr. STRICKLING. Yes. And as I indicated in my statement, we have provided four conditions that any proposal must meet.

They include maintaining security and stability of the Internet. They include respecting the multi-stakeholder model. And we expect and will demand and ensure that any proposal that is brought back to us measures up to those standards.

Mr. NADLER. Thank you.

And, finally, it is my understanding that some of ICANN's most important functions are performed under its affirmation of commitments, or AOC.

What incentives or pressures exist to keep ICANN from unilaterally withdrawing from the AOC? And is this something that can or might be strengthened through proposals to transition the IANA functions?

Mr. STRICKLING. I don't think it is affected by our announcement regarding IANA. Keep in mind that the commitments ICANN makes under the affirmation largely are already reflected in its own bylaws.

So, again, this is a situation where the multi-stakeholder community insists on these commitments, and I don't think they would allow them to be relaxed in any respect, nor would we in terms of the fact that these commitments have served an important purpose in the last 3 or 4 years.

We have seen the accountability and transparency of ICANN improve as a result of the work of the accountability and transparency teams.

ICANN staff, ICANN board have been supporters and have taken very seriously these recommendations and have taken the measures necessary to improve in those areas.

So I don't see those commitments going away, as a practical matter, even if the instrument itself might change over time.

Mr. NADLER. And the step you are proposing now would not change our ability to enforce any such commitments?

Mr. STRICKLING. That is right.

Mr. NADLER. Thank you.

Mr. MARINO. Thank you, Congressman Nadler.

I am going to break tradition here a little bit. And now the Ranking Member of the full Committee, Congressman Conyers, will ask questions.

Mr. CONYERS. Thank you, Mr. Chairman.

And we welcome you here, Assistant Secretary Strickling. This is—your testimony has been very helpful in starting us off on this role.

Let me ask you how you feel about the argument that NTIA's contractual relationship is working and should not be changed, it follows the "if it ain't broke, don't fix it" phrase?

Mr. STRICKLING. Well, we don't think we are changing anything. We feel we are carrying out the policy originally set forth in 1998 that has continued to be the policy of the United States, which is to complete the privatization of the domain name system.

Mr. CONYERS. All right. Some have characterized NTIA's role as providing critical oversight through its supervisory contractual control over ICANN and have raised concerns that, without the U.S. Government ensuring that ICANN's operating principles are followed, there is no way to stop foreign governments from interfering with ICANN's operation going forward.

How do you react to those kinds of assertions?

Mr. STRICKLING. Well, again, referring to my previous testimony, I just don't see a mechanism for that happening as a result of us completing the privatization of the domain name system. That action will not lead to that outcome, period.

Mr. CONYERS. And even if the initial model to which the IANA functions are transitioned—safeguards against this, how do we ensure that changes aren't made that allow undue governmental influence going forward?

Mr. STRICKLING. Well, again, we have made it very clear that any proposal presented to us cannot be a proposal that turns this over to governments or would lead to governments taking this over.

So we are expecting that in terms of coming from the community—that we would get from the community a proposal that will ensure that.

Mr. CONYERS. All right. In the past, a number of us, including myself, former Judiciary Chair Lamar Smith, have raised concerns about ICANN's management of Internet domain functions, including whether it was affording adequate protections for consumers and rights holders in working to combat online fraud and piracy.

Now, if NTIA relinquishes all contractual relations with ICANN, how do we ensure that ICANN remains responsive to our concerns as well as those of other key stakeholders down the road?

Mr. STRICKLING. So, again, the role we have with IANA functions really doesn't bear on the policymaking with respect to the expansion of top-level domains.

We shared many of those same concerns in terms of the expansion of top-level domains, and we expressed those views as vigorous advocates at the Government Advisory Committee.

And to ICANN's credit, they adopted many, many of the recommendations that the governmental advisory committee, through our leadership, adopted.

And so we will continue to play that role going forward, and I do know that will not change as a result of the announcement we made 3, 4 weeks ago.

Mr. CONYERS. Well, Secretary Strickling, your responses have all been quite satisfactory to me. I thank you.

Mr. STRICKLING. Thank you.

Mr. CONYERS. And I yield back the balance of my time, Mr. Chairman.

Mr. MARINO. Okay. We are going to—thank you, Congressman Conyers.

We are going to break for votes. We are being held more and more to the time limit on the votes. So we will get over there. We will vote. Looks like we are going to have two votes, and we will be back here. I apologize for the inconvenience. Recess.

[Recess.]

Mr. MARINO. The hearing will now come to order.

The Chair recognizes the gentleman from Texas, Congressman Farenthold, who has to be in three places at one time today.

Mr. FARENTHOLD. Thank you very much, Mr. Strickling. I want to talk to you a second. Mr. Conyers asked you, if it ain't broke, why are we trying to fix it, and your response was to the effect of, we are not fixing it, we are just moving along with the process. You know, I want to take exception to that, because I think if you are changing the process and the people in charge, you really do run the risk of breaking something that isn't broken.

I mean, we are not having any problems today getting the root servers updated. I mean, the technical process is going fine, right? There are no problems there?

Mr. STRICKLING. That is correct.

Mr. FARENTHOLD. And they are being done in a timely fashion, right? It is getting done

Mr. STRICKLING. Well——

Mr. FARENTHOLD [continuing]. Basically overnight, at the max?

Mr. STRICKLING. You should probably ask the customers of the IANA functions the rate on that.

Mr. FARENTHOLD. Yeah. And there have been no complaints that we are not administering in a fair fashion?

Mr. STRICKLING. I am sorry?

Mr. FARENTHOLD. It is not being administered in an unfair way, right?

Mr. STRICKLING. Well, when you say administer, what are you referring to?

Mr. FARENTHOLD. Well, you don't have people saying, well, you are not registering my domain name because I am from X, Y, Z country?

Mr. STRICKLING. That is not us.

Mr. FARENTHOLD. Right. Nobody is saying we are not being fair?

Mr. STRICKLING. Well, again, I think you are maybe conflating ICANN and the policymaking process with the role we play. Again, as I said earlier in my testimony, all we do after a change to the root zone is sent to us from ICANN, verify its accuracy, basically proofread it and pass it onto Verisign, and nobody has complained about that role that we have played.

Mr. FARENTHOLD. And it is not costing us a lot of money?

Mr. STRICKLING. No, it is less than a full-time staff person who performs these functions for us.

Mr. FARENTHOLD. All right. And I think you answered Chairman Goodlatte that there is no complaints we are taking advantage of this through, you know, the Snowden in the NSA, or we are not getting any intelligence advantage or any other advantage out of doing this, right?

Mr. STRICKLING. None.

Mr. FARENTHOLD. We are not blocking our political enemies or trying to stifle free speech by saying, oh, we are not going to register that domain name, we are going to, you know, block this. We are not doing that, right?

Mr. STRICKLING. That is correct.

Mr. FARENTHOLD. And in fact, this country has been pretty aggressive about protecting that. I know we had quite a debate here in Congress when SOPA and PIPA came out, we were talking about, you know, blocking things, a little above your level at the DNS level, but we didn't do that. So I guess I come back to, it isn't broke, it is not expensive, why are we messing with it?

Mr. STRICKLING. Well, again, I repeat what I said before, we are carrying out the policy that was established in 1998 to complete the privatization of this function. And we are——

Mr. FARENTHOLD. All right. And I understand where you are going with that, and I——

Mr. STRICKLING. Yes. Could I add, sir?

Mr. FARENTHOLD. Sure.

Mr. STRICKLING. But what we have put in place now is a process for the community to decide how best to replace our role. They may decide nothing is needed, because as I said before, it is largely a clerical role. That is for the community to decide.

Mr. FARENTHOLD. Right. And I think you also testified in response to a question from Chairman Goodlatte, with respect to the affirmation deal, isn't it correct that that could be abrogated with just a couple months' notice?

Mr. STRICKLING. The document can be abrogated on 120 days' notice. But as I also testified, the commitments that ICANN makes in that largely come directly from its bylaws, so they are not going to go away.

Mr. FARENTHOLD. And, you know, again, I am going to beg to differ with you there, that I like the fact that America continues to be in a leadership role in the Internet.

Mr. STRICKLING. We will continue in that leadership role, sir.

Mr. FARENTHOLD. We basically invented it, you know. Our tax dollars funded DARPA which became the Internet. I would argue, it may be the only successful computing project this government has actually ever undertaken. So, you know, I am concerned about giving up our leadership role.

Finally, I——

Mr. STRICKLING. Sir, please, I must push back on you. We are not giving up our leadership role. We are stepping out of a clerical function that we currently perform, but as I have testified I think to many of the Members this morning, we are not giving up our leadership role in this space.

Mr. FARENTHOLD. All right. And you and I visited a couple seconds before the meeting. My office had sent you a letter with some specific questions and rather than take up this Committee's time dealing with this, I just want you to just state for the record you are in the process of answering that and will have those answers in short order, some things dealing with some constitutional analysis and background and the process coming to this decision. You are committed to getting us an answer to those questions?

Mr. STRICKLING. Yes, sir, we are preparing answers to your questions, and we will get that to you as quickly as we can.

Mr. FARENTHOLD. And I don't want to put you on the spot. I want full and accurate answers——

Mr. STRICKLING. Sir, feel free.

Mr. FARENTHOLD [continuing]. So I will be waiting for the response to that letter. Hopefully it will not close before the opportunity to file extraneous materials in the record for this hearing.

But my red light is on, so I am out of time. Thank you.

Mr. MARINO. Thank you.

The Chair now recognizes the gentlewoman from California, Dr. Chu.

Ms. CHU. Thank you, Mr. Chair.

A number of U.S. companies including, for example, Google, Verizon, AT&T, and the Chamber of Commerce have expressed their support for NTIA's announcement and the transition to this multi-stakeholder process. Why do these companies support this,

and how might this transition affect their businesses here and overseas?

Mr. STRICKLING. So, first off, you referred to a transition to the multi-stakeholder model. The multi-stakeholder model exists today. It is the way ICANN does business. I think what you are seeing in the various positive responses we are getting from these large companies here in the United States, and the other support that we are getting from civil society and from technical experts reflects the fact that the multi-stakeholder model has worked. It is what has led to the economic growth and innovation we enjoy today on the Internet, and they want to see that continue.

And I think that is why they are so strongly in support of this very, again, renewed affirmation of support from the United States for this model, setting an example for the rest of the world. Because one of the challenges we face is getting other parts of the world to accept this model, to join in this effort.

We need to be able to convince these countries that engaging in the multi-stakeholder model can bring the benefits of the Internet economy into their Nations, the job creation, the wealth creation, and I think these countries stand to gain a lot from the growth of users of the Internet and the more intensive use of the Internet by existing users, and that is why they support this.

Ms. CHU. And the way it would affect their businesses here and overseas?

Mr. STRICKLING. I think, as the multi-stakeholder model continues to grow and expand overseas, it will help their businesses.

Ms. CHU. What would be the impact if Congress were to halt this transition?

Mr. STRICKLING. Well, I think we would suffer seriously in the face of the rest of the world in terms of a policy that has been a clear and unequivocal policy for 15 years, to all of a sudden step in and reject that policy. It would show a lack of faith in the multi-stakeholder model, and I think there would be repercussions for us worldwide.

Ms. CHU. Some have suggested that NTIA's announcements is a knee-jerk reaction to international anger over Edward Snowden's leaks about U.S. surveillance. So I would like to ask you, how, if at all, has that issue played into this announcement?

Mr. STRICKLING. So as I explained in response to an earlier question, our decision to do this and to do it now was based on two factors: One was the continuing improvement in maturation of ICANN in terms of its accountability and transparency and technical competence. I mentioned that I had served on these two accountability and transparency review teams in 2010 and 2013, the result of which have been a series of recommendations that have been adopted by the ICANN board, implemented by the ICANN staff and have led to measurable and significant improvement in that regard.

The other factor that bore on this was the increasing international acceptance of the multi-stakeholder model. Again, it is trending positively. It is not where it needs to be in terms of where we would like to see the international community be in terms of support for that, but the trend line was going well.

And we felt that, again, making this announcement at this time would provide something of a booster shot to those efforts to continue to build international support for the multi-stakeholder model of governance, which as I mentioned, in response to your earlier question, very important to American businesses, very important to continuing the concept of a free and open and growing and innovative Internet.

Ms. CHU. What are your thoughts about subjecting this transition and accountability mechanism to stress test?

Mr. STRICKLING. We think that is a good idea, in the sense that there are serious questions that are being raised here in this hearing. We heard them last week at the Energy and Commerce hearing. We are hearing them in the community. What we have done is simply ask ICANN to convene a process that is going to last for many months.

We do think that all of these issues that people have, these concerns that people have raised about what could happen here, what might happen there, we ought to develop, and when I say "we," I am really referring to the global community that works on this. I think it is incumbent upon them to develop these use cases and really think through and, as you say, stress test them to make sure that the proposal that comes back to us is going to meet the conditions and is going to be sustainable for the long term.

Ms. CHU. Could you explain what is the stress test and how it might give more assurance to——

Mr. STRICKLING. Well, I think the idea is that rather than just sitting down and designing a process in isolation, the idea of the use cases and stress tests are that you really sit down and figure out, what are all the scenarios that might emerge, what are all the things that might go differently than you assume, and plan at the front end as to how you will respond to that if that emerges or to take action in making your proposal; that will ensure that the proposal is designed strong enough that those situations won't arise and jeopardize what it is you are trying to accomplish.

So it seems to us, this is a very appropriate and commonsense way to proceed. My understanding is, and you will hear from Fadi Chehadé in the next panel, he endorses this. I think the community heard this discussion in Singapore several weeks ago. I think the community is coming around in support of it.

So I think it is a good idea, and I expect the community will actually apply that as they develop their proposal. It is a smart thing to do.

Ms. CHU. Thank you.

I yield back.

Mr. MARINO. Thank you, Doctor.

I yield myself 5 minutes now to ask questions. Secretary, we are going to do a little lightning round, okay?

Mr. STRICKLING. Okay. I will try.

Mr. MARINO. Mr. Secretary, I appreciate your commitment to keeping this Committee informed. You and I had a very lengthy discussion yesterday and a very good exchange. And throughout this proposed transition process, will you also commit to working with the Members of this Committee to ensure we can develop a consensus before decisions are made or announced.

Mr. STRICKLING. Yes, sir, we will keep you informed. We will keep my other Committee, Energy and Commerce well informed, as well. I have got to put that in. No favoritism here. We will endeavor to keep Congress informed of progress throughout the process, yes, sir.

Mr. MARINO. And informed in time enough for us to further get involved in the decisionmaking as far as our opinions are concerned?

Mr. STRICKLING. Yes. Chairman, we want this to be a consensus proposal.

Mr. MARINO. Good.

Mr. STRICKLING. Congress are stakeholders, too, and we would hope that you will participate in the process however you wish to ensure that we reach a good outcome here.

Mr. MARINO. We appreciate that.

If we give up oversight, over to the IANA contract, the only role we have in ICANN is the Government Affairs Committee; is that correct?

Mr. STRICKLING. You say the only other role?

Mr. MARINO. Yes, the only.

Mr. STRICKLING. Oh, that is not true today.

Mr. MARINO. Please elaborate.

Mr. STRICKLING. I am sorry?

Mr. MARINO. Could you please elaborate on that.

Mr. STRICKLING. Yes. So we have the Government Advisory Committee; in addition, we are the signatory to the affirmation of commitments that we have talked about. And I think I mentioned several times, I personally have a seat on the accountability and transparency review team that meets every 3 years.

Mr. MARINO. Okay. I am going to pose a quick hypothetical to you: As far as putting the American people on solid footing, if I may use that suggestion, will our concerns be weighed equally with as much input from ICANN concerning North Korea? Let me rephrase that.

Mr. STRICKLING. Yeah.

Mr. MARINO. Okay. Will the American people's concerns be equally weighed with those of North Korea?

Mr. STRICKLING. I am not even sure North Korea will participate in this process, but I will assure you, American interests will be well taken care of as part of this process. We will ensure that that happens.

Mr. MARINO. What if communist countries do participate in this? Are they going to be given equal weight as democratic countries?

Mr. STRICKLING. Well, again, I think you are kind of migrating over to a multilateral or governmental type of discussion. The multi-stakeholder process does not operate by governments or by states; it operates by stakeholders. So when Cisco appears and operates in this, they may be sending staff members from any number of countries who are knowledgeable on the issues, but they are there to represent Cisco's interests.

So what I can assure you is that a well-run, open, transparent multi-stakeholder process takes into account everyone's issues and everyone's concerns.

Mr. MARINO. Okay. Can you give me your opinion as to why former President Clinton made the statement he made, given the fact that this was put together under his watch?

Mr. STRICKLING. Well, as I read his statement, I did not see any lack of support for the multi-stakeholder model. I didn't see any statement from him saying that we shouldn't have done what we did. What I saw in his statement was that he raised concerns, many of which you have raised, have been raised here and many that have been raised in other parts of the community, and those are important concerns and we want to make sure they are addressed as part of this process.

Mr. MARINO. What do we tell our constituents back home, what do we tell the American people when the issue comes up of what influence, if any, and what authority, if any, is the United Nations going to play in this issue?

Mr. STRICKLING. So what you want to tell your constituents is that the United States is opposed to having the United Nations run the Internet; that this process that we have put in place, we think, will reduce the risk of that happening; and that the proposal that has to be brought back to us cannot result in the United Nations taking this over, and we will do everything within our power to prevent that from happening.

I would add to that, that I see no real basis on which to assume that the multi-stakeholder community would ever bring such a proposal like that back to us. So I think it is an extremely small likelihood of occurring. We stated it explicitly because we wanted to assure people that wouldn't be an outcome of this process.

Mr. MARINO. Given the fact that the U.N. has endorsed this, do you have any opinion about that concerning their role in this?

Mr. STRICKLING. Well, when you say the U.N. has endorsed it, I am not sure what you mean. I am aware of a statement from the secretary general, but I view that as actually showing progress in the sense that the secretary general is endorsing the multi-stakeholder model.

The issue at the U.N. isn't the Secretary General. The issue at the U.N. are authoritarian regimes such as Russia and countries in the Middle East that attempt to use the U.N. as a way to meet their policy goals. The problem is not with the Secretary General.

Mr. MARINO. Okay. My time has expired.

And the Chair now recognizes the Congressman from New York, Congressman Jeffries.

Mr. JEFFRIES. Thank you very much for yielding.

And Mr. Strickling, thank you for your presence here today.

Now, privatization of the domain-name system has been contemplated since 1998; is that correct?

Mr. STRICKLING. As a practical matter, it has happened. The only thing that is remaining is this last little vestige of involvement that we have, but ICANN has been managing the domain-name system and has been conducting the multi-stakeholder processes to set policy in this space for over—well, 15 years.

Mr. JEFFRIES. Now, in terms of the formal transition, was that something that originally was expected by NTIA to occur in 2000?

Mr. STRICKLING. The statement of policy released in 1998 did lay out 2000 as the date they hoped of which to complete the transition. Obviously, we are a little late.

Mr. JEFFRIES. So I assume that the privatization that was originally contemplated to have been completed by 2000 did not occur because NTIA came to the conclusion that ICANN hadn't reached the sufficient level of maturity at that time?

Mr. STRICKLING. I wasn't there, so I hesitate to give the reasons for why it didn't happen. I have heard people say that, you know, 9/11, after it occurred, I think, changed some behavior as to why, or changed some views on this, but I don't know the particulars.

Mr. JEFFRIES. But nevertheless, you have now concluded that ICANN has reached the sufficient level of maturity, correct?

Mr. STRICKLING. That is a factor, yes, in leading us to make the announcement we made 4 weeks ago, yes.

Mr. JEFFRIES. And what are the indications of that level of maturity that you have come to the conclusion that now is an appropriate time to move forward with the final stage of privatization?

Mr. STRICKLING. So as I mentioned earlier in my testimony, in large part, the work to improve its accountability and transparency. When the affirmation of commitments was signed in 2009, it created a series of review teams so that the global community now had an opportunity to review ICANN's performance in a number of areas, the most important of which was their overall accountability and transparency to the global community. As part of that process, teams are put together and they run every 3 years to evaluate ICANN's performance in these different areas.

For accountability and transparency, we set up the affirmation so that I, or the Assistant Secretary of Commerce, sits on that team. So I personally have participated in very lengthy, in-depth reviews of ICANN's accountability and transparency, first in 2010 and again last year in 2013.

Mr. JEFFRIES. Now, you also stated that you expected that the U.S. would continue its leadership role with respect to the Internet moving forward, correct?

Mr. STRICKLING. Absolutely. We are not going anywhere.

Mr. JEFFRIES. Right. Now, can you elaborate on how exactly you expect the United States under this completion of privatization to maintain its leadership role?

Mr. STRICKLING. So again, with respect to ICANN, we will continue to play a leadership role in the Governmental Advisory Committee just as we have up until now. We will continue to participate in the accountability and transparency reviews. I think worldwide, though, the United States has always been a leader on these issues of Internet policy and Internet governance, even beyond just the narrow area, technical area in which ICANN performs. We are not yielding that one bit.

Mr. JEFFRIES. Now, it is fair to say that the First Amendment protections embedded in our Constitution have been important to the United States throughout the history of the Republic and have helped inform how the Internet has developed through United States leadership; is that correct?

Mr. STRICKLING. I would tell you that the idea of a free and open Internet and the freedom of expression on the Internet supersedes,

or no, it doesn't supersede but it even transcends our First Amendment here in the United States. I mean, that is a global value that we increasingly see other countries who perhaps don't have the domestic tradition of a First Amendment protection in their own constitutions, yet they recognize the importance of free expression as a way to grow the Internet. So I would say it is more worldwide than just a U.S. issue or U.S. value.

Mr. JEFFRIES. But isn't it reasonable to be concerned about authoritarian governments such as Russia or China or other entities that have been moving toward authoritarianism? We saw a recent example with the Turkish prime minister as it relates to Twitter.

Are these reasonable concerns as it relates to maintaining the openness of the Internet, which I think you yourself have testified openness is one of the four criteria that NTIA will evaluate; and what are the metrics by which you will measure whether sufficient anticensorship measures have been put into place?

Mr. STRICKLING. Well, again, for the issue that we have before us, I am not sure that we are going to get into content issues or censorship issues. When you talk about the performance of the IANA functions, those aren't content-based issues. But in general, I think the United States has to remain a beacon for the rest of the world in the area of supporting free flow of information on the Internet.

It is critical to our business interests; it is critical for our social interests in ensuring that not just American citizens but global citizens, have the ability to express themselves on the Internet and I expect that we and the State Department and everybody who touches these issues will continue to be strong and vigorous advocates for that.

Mr. JEFFRIES. My time has expired, but I would simply state for the record, too, that how one accesses information through the address system that is available is a key link to content, and I think that is a consideration that must be taken into account.

I yield back.

Mr. STRICKLING. Thank you, sir.

Mr. MARINO. Thank you, Congressman.

The Chair now goes to the Congresswoman from California, Congresswoman Lofgren.

Ms. LOFGREN. Thank you very much, Mr. Chairman.

You know, it has been interesting to listen to some of the discussion today and it reminds me that generally when the Congress gets involved in the engineering questions of the Internet, we sometimes show that we don't understand the Internet and we often almost make mistakes, I think, about the call that some on the Committee made to, quote, bring in the nerds during the SOPA discussion because it was pretty obvious that most of the Members didn't even know what DNS was.

I do think, therefore, that this hearing is very, very helpful, because it informs us and the American people about what really is the question before us.

I remember, I was on the Committee in 1998, 1997 when we had these discussions initially, and obviously, America invented the Internet, but it became obvious to all of us in the mid-1990's that

we were not going to have an international Internet run by the Department of Commerce, that was just not going to work.

And we had some choices to make, and the choice we made and I think has proven to work very well, is to have private-sector, multi-stakeholder governance of these core functions, and it is driven by, you know, engineers and technical people, and I think, you know, and it is not just the generic top-level domain system, I mean, IPv4 and IPv6, we have a nongovernmental function, that those at that level are being managed by the ARIN and RIPE in Europe and elsewhere, so this is not new.

And I do think it is important that we stand up for what has worked, because the alternative, which was the same alternative we really had in the 1990's, was to try and have government control of this system. Now, we have had discussions, ITU had the conference in Dubai where authoritarian regimes openly discussed trying to take over all functions with an intent to subvert the free and open nature of the Internet.

I think we can't have it both ways. Either we are for nongovernmental, multi-stakeholder governance or we are for governmental governance and if it is the latter, I think we are walking into a very serious bad problem which is the agenda of authoritarian regimes to take over this.

Now, I am against government control of the Internet. I am against government regulation of the Internet. And I think, and I come from Silicon Valley, all of the Internet companies that I am aware of are in favor of an open Internet. So I guess my question to you, Mr. Strickling, is, do you know of any of the Internet companies that oppose what you are doing?

Mr. STRICKLING. No, and, in fact, we have gotten the support of the Internet Association, which is a trade association of many of those companies. Google and Facebook and Cisco have all issued strong statements of support for this, and I am sure others that I just don't recall sitting here now.

Ms. LOFGREN. I know that Vint Cerf was at one time on the governing board of ICANN, along with other famous Internet evangelists. What does Vint Cerf say about this proposal?

Mr. STRICKLING. Oh, Vint is a very strong supporter of this and has been quoted in the press multiple times over the last 3 or 4 weeks indicating his support for this.

Ms. LOFGREN. Well, I would just urge, and I won't use all my time because we have another panel, but I think that it is important that this Committee stand up against the inaccuracies that have been promulgated out in the press by people, I assume they are working in good faith, but who misunderstand what is even being discussed here; and that we stand up for freedom on the Internet, which means standing up for multi-stakeholder governance and against government control and regulation of the Internet.

That is what this is about. It is what the decision was about in 1998 and I still remember the conversation I had with Howard Berman at the time saying, you know, we are just not going to—it is not a good idea for the government to run this. And I think that the Committee was of one mind at that time, and hopefully

we are of the same mind at this point to preserve a free and open Internet.

And I thank you for your service, sir.

Mr. STRICKLING. Well, thank you, congresswoman.

Mr. MARINO. Thank you.

I see there are no other congresswomen or men here at this time, so I want to thank Secretary Strickling for his testimony. It was very enlightening, and thank you for being here.

Mr. STRICKLING. Thank you.

Mr. MARINO. We are going to turn to our second panel, but I want my colleagues to know that the record will remain open for 5 days where they can submit questions to you and hopefully you can get some responses back, if you don't mind.

Again, thank you very much and I am now going to turn to the second panel.

And if you would remain standing, we will get the swearing in out of the way. Good morning, gentlemen. Would you please raise your right hand.

[Witnesses sworn.]

Mr. MARINO. You may be seated. And let the record reflect that the witnesses answered in the affirmative.

And let me just give you an update on what is going to happen. In the next 10 to 15 minutes we are going to be called for votes. We were supposed to have three series today, they condensed the last two into one series of votes. However, it is broken up where we vote, 10 minutes later vote again, 10 minutes later vote again.

We want to continue with this hearing. If it is all right with you, I am asking if you would indulge us, and you are probably going to be waiting for us for 45 minutes. Jerry says it may not be that long. So, I am not as optimistic as he is, but if that is the case, so be it. Does anyone have any objections? I know your schedules.

All right, thank you. Thanks so much.

Our first witness is Mr. Paul Rosenzweig. Am I pronouncing that correctly?

Mr. ROSENZWEIG. Yes, Mr. Marino.

Mr. MARINO. Thank you. Founder of Red Branch Law and Consulting and Visiting Fellow at the Heritage Foundation. He is here today to testify in his personal capacity. Mr. Rosenzweig formally served as Deputy Assistant Secretary for Policy in the Department of Homeland Security; in addition to clerking for the Honorable R. Lanier Anderson, III, of the United States Court of Appeals for the 11th Circuit.

Mr. Rosenzweig received his juris doctorate from the University of Chicago School of Law. He holds a Master's in Science and Chemical Oceanography from the Scripps Institute of Oceanography University of California in San Diego and his Bachelor of Arts is from Haverford College. Welcome.

Mr. ROSENZWEIG. Thank you.

Mr. MARINO. Our next witness is Mister, and help me out on the pronunciation, Fadi Chehadé. Thank you. President and Chief Executive Officer of the Internet Corporation for Assigned Names and Numbers, also known as ICANN. Mr. Chehadé leads and builds progressive Internet enterprises and leverages relationships with

senior executives and government officials across Asia, Europe and the Middle East and the United States.

Before joining ICANN in 2012, he served as Chief Executive Officer of Vocado, a U.S. firm that provides cloud-based software for the administration of educational institutions. Mr. Chehadé received his Master's Degree in Engineering Management from Stanford University and his Bachelor's Degrees in Computer Science from Polytechnic University in New York. Welcome, sir.

Our third witness is Mr. Steven Metalitz, partner at Mitchell Silberberg & Knupp and counsel to the Coalition for Online Accountability. For nearly 20 years, Mr. Metalitz had advised the trade association and companies in the film, music, software, video game and publishing industries on domestic and international, antipiracy and e-commerce issues.

As counsel to the Coalition on Online Accountability, Mr. Metalitz represents the interest of copyright industry companies, associations and organizations on matters that come before ICANN. Mr. Metalitz received his juris doctorate from Georgetown University Law Center and his Bachelor of Arts from the University of Chicago. It is good to see you here, sir.

Our fourth and final witness is Mr. Daniel Castro, Senior Analyst With Information Technology & Innovation Foundation, also known as ITIF. He is also Director of the Center for Data Innovation. Mr. Castro writes and speaks on a variety of issues related to information technologies and Internet policy, including privacy, security, intellectual property and Internet governance.

Before joining ITIF, he worked as an IT analyst at the Government Accountability Office where he audited IT security and management controls at various government agencies. Mr. Castro holds a Master's of Science and Information Security Technology in Management from Carnegie Mellon University and his Bachelor's of Science in Foreign Service from Georgetown University.

Welcome to you all, and once again, we are going to start with Mr. Rosenzweig. And let me, please, again, emphasize, would you kindly watch the lights, keep your remarks to 5 minutes. I will politely tap; you don't have to stop there, but just bring it to a conclusion. And bear in mind that all of your statements will be entered into the record as full. Thank you.

Sir, please.

TESTIMONY OF PAUL ROSENZWEIG, VISITING FELLOW, THE HERITAGE FOUNDATION, PRINCIPAL, RED BRANCH CONSULTING, PLLC

Mr. ROSENZWEIG. Thank you, Chairman Marino, Ranking Member Nadler, thank you very much for the invitation to be here.

I confess to find myself a bit confused after the conclusion of the prior panel, because if I were to have listened to Mr. Strickling, I would have heard that this was an exceedingly minor ministerial change which, if that is the case, should neither be opposed nor approved but with any great degree of fervor. I think the truth is to the contrary, that this is a rather consequential change of great significance.

And I also find myself unconvinced at this point whether it is going to be a success or not. I am quite certain that there are many

ways in which the transition of the IANA function to ICANN can work very well. I am also quite certain that there are instances in which the proposals that would come forward from the community might not be sufficiently protective of some of the interests that we think are important in terms of the management of the network.

Indeed, I thought Congressman Jeffries' point was quite well taken, which is that there is in the world a significant anti-openness, anti-freedom component to the argument, and it is at least feasible to imagine certain structures that would be developed that would, rather than foster that openness in freedom, degrade it.

So I think the challenge for ICANN going forward, one that I am open to their succeeding on, is to develop an architecture for the IANA management function that ensures its technical capability, that is that the DNS will continue to function as well as it functions now; ensures that it maintains a political independence from control of authoritarian regimes.

It is absolutely the case that in the last expansion of global top-level domains, some people thought of the top-level domains as content based and therefore opposed new top-level domains like dot Islam or dot gay on the grounds that they were expressive and shouldn't be continued. We can develop structures that prohibit, that avoid diminution of the openness, but those structures need to be defined, as well.

Likewise, it is absolutely the case that there are certain financial components to the expansion of global top-level domains that need to be controlled for and managed in a way to ensure that ICANN or the IANA management function doesn't take on aspects of an unregulated monopoly, something that Daniel's testimony talks about at greater length. I think that there is a possibility for that structure to be developed, but it is going to have to be brought forward and shown to the NTIA as a successful one.

I can outline some of the components of what I think that would necessarily include: Things like outside audit boards for the IANA function; maybe an inspector general type functionality; a commitment for the new IANA function to a FOIA-like responsiveness to the public, such that all of the information that is necessary for people to actually have some confidence in the transparency and accountability of the institution are in place.

Those are not necessarily impossible things to achieve. And then the fourth thing that I would suggest is essential, is some way of gaining an assurance that once we have the structure in place, it doesn't change. I agree with Mr. Strickling that the affirmation of commitments is part of the bylaws, for example, of ICANN, but corporations can change their bylaws at some point. It takes an act of the board of directors and there is a barrier to do that, but if we think it is important, we want to try and figure out aspects of the mechanism that make that less likely to happen.

Again, I don't think that those are impossible objectives to achieve, but what I do think is that it is going to take a great deal of conversation within ICANN, a great deal of conversation within the community and that we here in the United States, we at the NTIA ought to be cautious in proceeding and ought to insist that the details of the transition process be made clear before approving the transition.

The principles that Mr. Strickling articulated are eminently reasonable and ones that everybody ought to support as a necessary component of the transition. But we ought to also be clear that if the proposal doesn't meet those principles in actual practice, that the NTIA should maintain its current role. These are not impossible objectives, but they are going to be ones that are going to require a lot of process from ICANN in order to achieve.

I thank you.

[The prepared statement of Paul Rosenzweig follows:]

STATEMENT

Of

Paul Rosenzweig
Visiting Fellow, The Heritage Foundation
Principal, Red Branch Consulting, PLLC
Professorial Lecturer in Law, George Washington University
Washington, D.C.

Before the

Subcommittee on Courts, Intellectual Property and the Internet
Committee on the Judiciary
United States House of Representatives

April 10, 2014

The Proposed Transfer of the IANA Function to ICANN

Introduction

Chairman Coble, Ranking Member Nadler, Chairman Goodlatte, Ranking Member Conyers, and Members of the Subcommittee, I thank you for the invitation to appear today and present testimony on the recent announcement by the Department of Commerce of its intention to transfer the Internet Assigned Name Authority (IANA) function to the Internet Corporation for Assigned Names and Numbers (ICANN).

My name is Paul Rosenzweig and I am the principal and founder of a small consulting company, Red Branch Consulting, PLLC, which specializes in, among other things, cybersecurity policy and legal advice. I am also a senior advisor to The Chertoff Group and a professorial lecturer in law at George Washington University where I teach a course on cybersecurity law and policy. In addition, I serve as a visiting fellow in the Douglas and Sarah Allison Center for Foreign Policy Studies at The Heritage Foundation.[1] From

[1]The Heritage Foundation is the most broadly supported think tank in the United States. During 2013, it had more than 600,000 individual, foundation, and corporate supporters representing every state in the U.S. Its 2013 operating income came from the following sources:

Individuals	80%
Foundations	17%
Corporations	3%

2005 to 2009 I served as the deputy assistant secretary for policy in the Department of Homeland Security.

Needless to say, my testimony today is in my individual capacity and does not reflect the views of any institution with which I am affiliated or any of my various clients. I am testifying as an individual discussing my own independent research. The views expressed are my own.

Much of my testimony today is derived from prior work I have done in this field, most notably a research paper I co-authored at The Heritage Foundation -- "Important Work to Be Done Before the U.S. Relinquishes Stewardship of ICANN."[2]

In my testimony today I want to make four basic points:

- First, the transition of the IANA function to ICANN is consequential. The network, as we know it, is a central driver of economic and political freedom around the globe. Any change to its governance comes with significant potential risks (and also potential gains).
- Second, the transition to ICANN raises concerns along three dimensions:
    - Technical capability – Can ICANN maintain the IANA function effectively?
    - Political/Practical – How will ICANN manage the system to insure its continued openness and independence?
    - Financial – Will ICANN use its soon-to-be unregulated monopoly power to engage in rent-seeking behavior?
- This, in turn, suggests that before any transition of IANA governance to ICANN occurs the US government should assure itself that ICANN will establish a new structure that meets three tests:

The top five corporate givers provided The Heritage Foundation with 1% of its 2013 operating income. The Heritage Foundation's books are audited annually by the national accounting firm of McGladrey & Pullen. A list of major donors is available from The Heritage Foundation upon request.
provided The Heritage Foundation with 2% of its 2011 income. The Heritage Foundation's books are audited annually by the national accounting firm of McGladrey & Pullen. A list of major donors is available from The Heritage Foundation upon request.

[2]Brett D. Schaefer, James L. Gattuso, Paul Rosenzweig, and David Inserra, "Important Work to Be Done Before the U.S. Relinquishes Stewardship of ICANN," Heritage Foundation *Issue Brief* No. 4175, March 21, 2014, http://www.heritage.org/research/reports/2014/03/important-work-to-be-done-before-the-us-relinquishes-stewardship-of-icann. I have also relied on the contents of four blog posts that I wrote for the *Lawfare Blog* (http://www.lawfareblog.com) where I am a contributing editor: "The Continuing Struggle for Control of Cyberspace—And The Deterioration of Western Influence," January 13, 2013 ; "Who Controls the Internet Address Book? ICANN, NTIA and IANA," March 15, 2014; "Legal Limits on the Transfer of Control to ICANN," March 19, 2014; and "Defining Success for the ICANN Transition," March 24, 2014.

- Competence – ICANN must demonstrate a technical capacity to manage the IANA function at least as well as it is managed today.
- Candor – ICANN must adopt structures that insure its accountability and transparency, including things like outside audit boards, an internal inspector general and a commitment to FOIA-like responsiveness to the public.
- Control – And the structure developed must prevent the IANA function from becoming subject to the control of other sovereigns, multi-national organizations, or other institutions who might reduce its innovative nature and openness.

- Finally, some transition to international governance is likely inevitable in this internationalized domain. As stewards of the network, the US government has an obligation to make sure that the transition to international control goes well. If we default on that obligation, we might wind up with results that are far worse than those we could achieve through a well-managed evolution.

The Importance of the Network

Let me begin by setting the scene and reminding the Subcommittee that the question of Internet governance is one of the most significant questions facing the development of cyberspace in the coming few years. The answer we choose to the question of governance will, in the end, affect the whole world. Today, the globe-spanning reach of cyberspace touches the lives of more than 2.5 billion people.[3] The so-called Internet of Things controls more than 1 trillion devices—everything ranging from cars and houses to industrial plants, elevators and even medical devices. Every day (in 2012) we created roughly 2.5 quintillion bytes of data (that is a 1 followed by 18 zeroes). Put another way, 90 percent of the data created since the dawn of human history was created (and passed through cyberspace) in the past two years.[4] As a world community our dependence upon and interdependence with the cyber domain is growing so fast that our conception of its size cannot keep up with the reality of it. How we govern this distributed and dynamic space is profoundly important to the future prosperity of humankind.

And that is why we must be cautious and not rush to change the current structure. The system we have in place, imperfect as it is, has been, by any measure, successful in creating the opportunity for economic growth and intellectual freedom. We must be confident that any changes made will not disrupt the existing status quo adversely. To be sure the IANA function is but a small portion of the broader international internet governance question – but the answer we choose in this transition may well be a model for other aspects of network governance.

[3]Internet World Stats, http://www.internetworldstats.com/stats.htm (accessed March 28, 2014).
[4]Data on Big Data, http://marciaconner.com/blog/data-on-big-data/ (accessed March 28, 2014).

ICANN, IANA, and the NTIA

Last month the Department of Commerce announced that the United States would relinquish part of its controlling role in managing the Internet Domain Name System (DNS).[5] In effect, the last remaining legal vestige of American control of the network will vanish next year. Our stewardship of the network will transition to an international nonprofit that may, or may not, have the capabilities required. That is a big deal. To understand why requires a bit of explanation.

The DNS is, in effect, the address book of the Internet. Someone, in the end, has to decide that "microsoft.com" means the big computer software company in Washington. And someone has to decide that in addition to dot-com addresses we will now start recognizing ".bank" and ".xxx" and ".home" as valid global top-level domains (gTLDs). We call this role the Internet Assigned Numbers Authority (IANA)—the right and responsibility to assign names among the domains.

Historically, since the original architecture of the network was developed in the United States, that responsibility was originally given to American institutions—indeed, initially, it was the U.S. government itself. Since the 1990s however, the U.S. government has offloaded much of that responsibility to a third party—it has contracted out the IANA function to a nonprofit group, the Internet Corporation for Assigned Names and Numbers (ICANN).

ICANN is an American nonprofit corporation, headquartered in Southern California. It was, to summarize and simplify, created for the purpose of being able to run the IANA function within a contract. And so for roughly the past 15 years ICANN has entered into a contract with the National Telecommunications and Information Administration (NTIA), a component of the Department of Commerce, to manage the IANA function.

The contract was last let out for bid in 2011,[6] and is due to expire in 2015. (I should add that "let out for bid" is a bit of a misnomer, since the way that the request for proposal was written only one entity, ICANN, could possibly have won the contract.) Boiled down to its simplest form, the announcement last month was a statement by the NTIA that it was not going to enter into another contract—that, instead, it would let ICANN have the responsibility of running the IANA function on its own. The only condition that the NTIA set for the transition was that ICANN develop an internal mechanism for oversight and win the trust of crucial stakeholders around the world.

There is one further piece to the puzzle that one needs to understand about the architecture of the administration of the DNS system and the IANA function. Though ICANN manages the IANA function under contract to the NTIA, it does not actually do the work of implementing changes to the DNS when they are made. That technical work is managed under a cooperative agreement between the NTIA and

[5]News release, "NTIA Announces Intent to Transition Key Internet Domain Name Functions," National Telecommunications and Information Administration, March 14, 2104, http://www.ntia.doc.gov/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions (accessed March 28, 2014).
[6]*Federal Register*, Vol. 76, No. 38 (February 25, 2011), p. 10569, http://www.gpo.gov/fdsys/pkg/FR-2011-02-25/html/2011-4240.htm (accessed March 28, 2014).

Verisign, the American company that also manages the dot-com domain (under a separate arrangement with ICANN). Verisign maintains the root zone (that is the core list of the gTLD domains and their operators), for free as a service to the Internet and the world. So, today, when ICANN decides to make a change in the DNS system, the ultimate responsibility for implementing that change lies with Verisign.[7]

In other words, today there are three parties who work cooperatively to keep the Web address DNS system running: ICANN, the NTIA, and Verisign (the Root Zone Maintainer). Here is how the NTIA describes the workings:

> (1) TLD operators submit change requests to the IANA Functions Operator [i.e. ICANN]; (2) the IANA Functions Operator processes the request and conducts due diligence in verifying the request; (3) the IANA Functions Operator sends a recommendation regarding the request to the Administrator [of NTIA] for verification/authorization; (4) the Administrator verifies that the IANA Functions Operator has followed its agreed upon verification/processing policies and procedures; (5) the Administrator authorizes the Root Zone Maintainer [i.e. Verisign] to make the change; (6) the Root Zone Maintainer edits and generates the updated root zone file; and (7) the Root Zone Maintainer distributes the updated root zone file to the thirteen (13) root server operators

So, now we can understand why the changes proposed are of some real significance. Today, by contract, the NTIA has a verification and authorization role over how ICANN performs its functions. In other words, in the end, any changes that ICANN wants to make are subject to review by the U.S. government. After the policy that was announced last month takes effect, the U.S. government will give up that role. And according to the NTIA,[8] this will likely mean that Verisign's role will have to be modified, as well, if not completely transitioned to another root zone manager.

Three Concerns – Technical, Political/Practical, and Financial

With that introduction, it seems to me clear that this change will have effects along three dimensions whose importance will differ to different constituencies. It is useful to outline them since our consideration of the transition may be influenced by which of the three dimensions predominates our thinking.

- **Technical.** As should be clear, the most significant danger in terms of adverse consequences is the technical one that the transition might not work at an engineering level. Today, changes to the DNS system are effectuated seamlessly without error. If the transition of the IANA function to ICANN means a change in the technical operating system, we must be sure that the

[7]By way of disclosure, the Subcommittee should be aware that I have done consulting work for Verisign on matters unrelated to its root zone maintenance function.

[8]National Telecommunications and Information Administration, "IANA Functions and Related Root Zone Management Transition Questions and Answers," http://www.ntia.doc.gov/files/ntia/publications/qa_-_iana-for_web_eop.pdf (accessed March 28, 2014).

replacement system is equally effective. This is the "if it ain't broke, don't fix it principle" writ large on the global cyber stage.

- **Political/Practical.** The naming function itself remains important, but at a practical level its importance is decreasing somewhat. These days the name assigned to a domain is less determinative of its nature and success than is its prominence in search engines. As Martin Libicki of Rand remarked the other day, "If you are looking for a new pair of socks you don't look to 'socks.com.'" Instead, you type "socks" into your search engine and go wherever that leads you. So in practical terms the gTLD naming function is less influential on network behavior than the search engine function—put colloquially, Google matters more than ICANN. That said, domain names continue to retain some real significance as indicators of content. That is why some nations, for example, objected to new gTLDs like ".islam" and ".gay" during the last expansion. Thus, one potential adverse result of the transition might be a limitation on gTLD names that is inconsistent with our commitment to the openness of the network.

- **Financial.** Finally, as with most things, in the end this transition will likely be mostly about its economic effects. The opening up and provisioning new gTLDs is a big money endeavor. In effect, whoever manages the IANA function has a monopoly over the distribution of a valuable resource whose provisioning will affect brands and trademarks across the globe. Already we have seen domain name holders in the ".com" global domain expending significant capital to reserve (and take out of use) their equivalent name in the ".xxx" domain, simply to protect their brand. We would, likewise, anticipate the same economic effect whenever the IANA manager decides to provision the new gTLD ".stinks" or similar names. In the United States we have a tradition of regulating monopolies to prevent them from engaging in monopolistic price setting. To some degree the contract with the NTIA may have served as a checking function on ICANNs pricing models—a checking function that will need to be replaced in the transition.

Two Questions – Legality and Wisdom

With those dimensions of concern in mind, let me now turn to two important questions.

1) Is It Legal?

One lingering question of particular interest to this Subcommittee should be the legality of the proposed transition. As *The Wall Street Journal* noted last month,[9] this is an as yet unanswered question. A study from the Office of the General Counsel at the Government Accountability Office (GAO)[10] back in 2000

[9]L. Gordon Crovitz, "America's Internet Surrender," *The Wall Street Journal*, March 18, 2014, http://online.wsj.com/news/articles/SB10001424052702303563304579447362610955656?mod=WSJ_Opinion_LEADTop&mg=reno64-wsj (accessed March 28, 2014)

[10]Robert P. Murphy, General Counsel, "Department of Commerce: Relationship with the Internet Corporation for Assigned Names and Numbers Government Accountability Office," July 7, 2000, B-284206, http://www.gao.gov/new.items/og00033r.pdf (accessed March 28, 2014).

(when ICANN had only recently been incorporated and when GAO was still the General Accounting Office) had this to say:

> The question of whether the Department has the authority to transfer control of the authoritative root server to ICANN is a difficult one to answer. Although control over the authoritative root server is not based on any statute or international agreement, the government has long been instrumental in supporting and developing the Internet and the domain name system. The Department has no specific statutory obligations to manage the domain name system or to control the authoritative root server. It is uncertain whether transferring control would also include transfer of government property to a private entity. Determining whether there is government property may be difficult. To the extent that transition of the management control to a private entity would involve the transfer of government property, it is unclear if the Department has the requisite authority to effect such a transfer. Since the Department states that it has no plans to transfer the root server system, it has not examined these issues. Currently, under the cooperative agreement with Network Solutions, the Department has reserved final policy control over the authoritative root server.

To this I would actually add an antecedent question: What is the legal basis for the initial assertion by the NTIA and the Department of Commerce of the authority to control the IANA function? To be sure, the history of the IANA function is that it was developed as part of research that was principally funded by the Federal government. But it is unclear to me whether the funding mechanisms used to develop the network's functions were of the sort that would result in federal ownership of the resulting domain. We don't, for example, think that the U.S government takes an ownership control of any product whose development it subsidizes. Of course, if the U.S. did not own it in the first place, then there is not much of a legal barrier to giving it up now. But if the U.S. does own it, then we must determine the legality of the transfer. If I were Congress and this Subcommittee, I would ask the current general counsels of the Department of Commerce and of the GAO to make a determination of that question.

2) Is It Wise?

Assuming that the proposed transition is lawful, we are then left with the more interesting question of whether it is good policy. I will acknowledge, at the outset, that reasonable minds can disagree on this question. That said, my topline analysis is that the proposal is sensible, ***if and only if*** the structure of the organization to which the IANA function is transferred is such as to give us good confidence that it will support values of freedom and openness to which the U.S. is committed. I take the NTIA at its word that it will insist upon such a structure as a condition of finalizing the transition. The corollary of that, of course, is that the NTIA must be equally clear that its decision is contingent and that it will not complete the transfer if the proposed structure is unacceptable.

Assessing the Policy Choice

Let me expand upon that topline analysis with these thoughts:

- In some ways this transition is, in my view, inevitable. This is a conclusion with which some of my colleagues may disagree. But in my view, it is simply untenable for the United States to continue to be the proprietor of the globalized internet domain. At some point, a transition to an international system will be required.

- On the other hand, ICANN may not necessarily be in a good position to take over this responsibility (as anxious as it is to do so). Many are worried that ICANN is beholden to the domain name registry industry, who pay large fees to ICANN for the privilege of managing (and reselling) top-level domain systems. When ICANN recently opened up new gTLDs, it reaped a huge profit. If you accept the maxim that "he who has the gold makes the rules," the transition to ICANN control may actually be about a transition to corporate control through ICANN.

- ICANN is often thought of as unaccountable. Its multi-stakeholder model of governance attempts to bring all parties to the table. But that is an awfully big table. In the end, the ICANN executive group is often perceived by outsiders as taking the initiative and driving the agenda—and without the check of the NTIA (however modest it has been in the past), they may have greater leeway to do as they please.

- More worryingly, from my perspective, is the question of technical expertise. It is far from clear to me that ICANN is ready and able to take over the implementation role of root zone management. The worst possible result would be a broken DNS system.

- The move by the United States to start this transition may be a reasonable diplomatic move. The optimist in me wants to think that the transition to ICANN management is an effort to forestall an even worse result from takeover of network administration by the International Telecommunications Union (ITU) (a prospect I discuss in more detail below). It may be that allowing ICANN a controlling role will placate our European allies and prevent the ITU meeting in Busan, South Korea, this fall from becoming a debacle.

- I am hopeful that this proposal is not a reaction to the Snowden disclosures. The pessimist in me fears that American stewardship of the network is suspect and that some, hoping to defuse the anger, may have chosen to rush to give up that stewardship, without thinking through the consequences.

Defining a Successful Transition

As I have said, given the magnitude of the proposed change, the Administration needs to proceed with some caution, and with a willingness to pull the plug if the transition looks like it will go awry. How, then, to define "awry"?

Department of Commerce Definition of Success. In announcing the proposed transition, the Department of Commerce insisted that it would only cede control if ICANN could demonstrate the ability to maintain the network, consistent with five principles: They insisted that ICANN would have to

1) "Support and enhance the multi-stakeholder model";
2) "Maintain the security, stability, and resiliency of the Internet DNS";
3) "Meet the needs and expectation of the global customers and partners of the IANA services";
4) "Maintain the openness of the Internet"; and
5) The NTIA also clarified that it would "not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution."[11]

A More Detailed Definition of Success. But those principles, while salutary in nature, are (save for the last one) more in the nature of aspirations than concrete requirements. It is useful, I think, to ask the question with greater specificity and granularity: What affirmative commitments should the U.S. government require from ICANN before finalizing its transition of control of the IANA function?

To answer that question, we must first consider what our concerns with the transition might be. It is useful to lump those concerns into three distinct buckets:

1) **Competence:** Can ICANN do the job?

2) **Candor:** Is ICANN sufficiently transparent and accountable?

3) **Control:** Do the mechanisms ICANN puts in place support its independence from authoritarian control?

If we contextualize our concerns along those lines, then we can begin to think of some of the commitments that ought to be required of ICANN.

First, the multi-stakeholder model developed by ICANN for management of the IANA function should (as the Administration notes) prohibit any governmental, inter-governmental or U.N. control. Indeed, sovereign or quasi-sovereign multilateral organizations should have only an advisory role in any process. Instead, the multi-stakeholder control system should reflect the interests of those who develop and use the network—a representative sampling of large, medium, and small businesses and industry groups should either manage the IANA or have authority to veto ICANN decisions that threaten the openness or viability of the Internet. There will be difficulties (and politics, with a small "p") in defining the composition of the new institution, but at a minimum it needs to be broadly representative and peopled only by those with a demonstrable and verifiable commitment to a free and open network.

I should note here that in this regard my recommendations diverge somewhat from the reported position of the Administration. According to news reports,[12] during the recent ICANN meeting in Singapore, the Department of Commerce appeared to accept the idea that governmental organizations would have some formal membership role in the new IANA management structure to be created by ICANN. That would be consistent with ICANN's expressed view that "all" stakeholders should have a say

[11]News release, "NTIA Announces Intent to Transition Key Internet Domain Name Functions," *supra*.
[12]Kieran McCarthy, "What the US Government Said About IANA in Singapore," Circle ID, March 26, 2014, http://www.circleid.com/posts/20140327_what_the_us_government_said_about_iana_in_singapore/ (accessed March 28, 2014).

in the management of the domain. I think that would be a mistake. If the premise of our decision to give up NTIA control of the IANA function is that governmental management is suspect, then that should be equally true of a governmental role (even a broader based one) in the new IANA management structure. My recommendation would be that the governmental role in any new structure be limited to an advisory one – with no formal, or informal right of control over the process.

Second, ICANN will need to be fully accountable for its actions and its operations. It will need to accept the establishment of an independent auditing body comprised of government, business, and nongovernmental organization representatives to monitor its finances and activities. The authority to manage the IANA function brings with it significant financial benefits. We should not allow ICANN to, in effect, develop a taxation authority over network expansion without, at the same time, demanding a public accounting of how the money received is spent. ICANN should, likewise, be required to implement an Inspector General–equivalent function with authority to discipline its own officers and employees—for there is no other institution to which that authority could be given and the lack of an internal checking mechanism would be problematic. And, as well, the new IANA management function should be transparent to the general public—a requirement that necessitates some form of Freedom of Information Act–like obligations to disclose ICANN records. More to the point, since personnel is always policy, there will need to be some vetting mechanism (about which more below) to insure that those given the responsibility for managing the IANA policy are committed to principles of network freedom and openness.

Third, before the root zone management function is transitioned to ICANN (or to a subcontractor employed by ICANN) it will need to demonstrate to our satisfaction its technical capability to manage the root zone. This will mean a highly technical examination of ICANN's capabilities, including, for example, the process controls it requires before implementing any root zone change, and the security and redundancy of its root zone facilities. Indeed, one thing ICANN might do to reassure the world of its commitment to managing the root effectively would be to commit to maintaining the current technical aspects of the system unchanged, unless and until any proposed change is fully approved and technically vetted.

Finally, we need to think of a mechanism for locking in any mandatory requirements. After all, they would be useless if six months after committing to them ICANN were free to disregard the obligations it had undertaken. Since the most obvious means of enforcing such commitments (through a contractual obligation to the U.S. government) is, *per force*, no longer on the table, other, more creative binding mechanisms need to be developed.

That is easier said than done. Indeed it may not be possible at all—and that thought is itself concerning. For, as I have noted, though the U.S. influence over the network has not been wholly benign, I am convinced it has been a net positive. In the absence of that influence, we will have to trust that the governance architecture we develop to constrain ICANN is effective. And that is a bit of a risky bet.

I offer three thoughts (not fully developed) for how ICANN's commitments could be manifest and locked in.

- First, ICANN currently has a written affirmation of commitment that it makes to the United States regarding its obligations to maintain the openness and freedom of the network. That affirmation could be renewed as part of the transition and opened to signature by any nation or organization that wishes to put itself in the position of a guarantor of ICANN's fidelity to its commitments. While the affirmation of commitments is, to be sure, more symbolic than it is practical and binding, the sheer weight of support would, I think, contribute to creating an atmosphere of obligation that would be welcome.

- Second, we might have an official checking function on the technical side of the IANA process to audit ICANN's activities. To some degree that system already exists, as ICANN's implementation work is subject to review by the Internet Engineering Task Force (IEFT), a non-governmental consortium of internet technicians. Their role could be further expanding and formalized so that they become, in effect, part of a dual-key authority to modify the IANA function. In other words, require both IETF and the new IANA organization to concur in any significant technical modifications.

- Third, we need a mechanism to guard against the more likely twin dangers of political capture and/or economic capture of ICANN itself. Today, ICANN's board is nominated by various constituencies, and that is a good thing. To assure that those nominated are fundamentally committed to internet freedom we might consider the creation of an external board of guarantors who would have a veto power over nominees to the ICANN board of directors and who have a vested interest in the network's openness and transparency. The composition of that board of guarantors is something I'm working to conceive, but it might include, for example, neutral freedom-loving nations like Switzerland and Costa Rica, as well as civil liberties NGOs.

All of these sound cumbersome and perhaps they may be unwise, but they are the best ideas I have right now. And we do need good ideas. Put simply, not only is this transition a "big deal" but it is also a vitally important one. It may, indeed, prove to be one of the most consequential decisions this Administration has made. It would be terribly tragic if the decision proved to have been a mistake — if, in retrospect, the openness of the Internet were to suffer or if control of the network function were to devolve to irresponsible (or, worse, venal) hands. Caution is required. More importantly, the Administration needs to clearly articulate its objectives and set a red line standard that ICANN must meet before the transition occurs.

The Alternative

One final point bears mention: The alternative to the transition to ICANN may not be *status quo*. There is a realistic possibility that the alternative to ICANN governance of the IANA function would be a transition to governance of IANA by the ITU, which is part of the U.N. I think we should systematically

prefer governance by ICANN and the IETF over that of the ITU for reasons beyond questions of national interest. We should do so because it makes good economic sense. The world economy and humanity's overall general welfare would be better served by ICANN's adherence (albeit imperfect) to a deregulated, market-driven approach to the development of cyberspace. This approach compares favorably to the turgid, ineffective process of the international public regulatory sector. If you consider that American or European regulatory processes are slow, you must realize that the problem will only be magnified in the international sphere.

Recall, again, the size and scope of the network. Given the scale of the enterprise, the mechanisms for multinational cooperation are too cumbersome, hierarchical, and slow to be of much use in the development of international standards. Acceptable behavior in cyberspace mutates across multiple dimensions at a pace that far outstrips the speed of the policymaking apparatus in the public international system (which, to cite just one example, has yet to conclude an updated trade treaty despite nearly two decades of effort). We should all be concerned that there is no surer way to kill the economic value of the cyber domain than to let the public international community run it.

Conclusion

In the end, we should strive to instill confidence in ICANN and the IETF as stewards of cyberspace. To do so, it may be necessary to further decouple those institutions from Western influence. But we must also recognize that the non-state structure currently in place is *less* subject to political manipulation than the alternatives. These international institutions are multi-stakeholder groups where individuals, technologists, political organizations, innovators, and commercial entities all have a voice. The product of their consensus is more representative and more moderated than any system respondent to only sovereign interests can hope to be.

And so, for me, the bottom line seems relatively clear—despite *the strum und drang* of recent months, the United States has been a fundamentally good steward of the network. It has fostered innovation, openness, freedom, and growth. Not perfectly to be sure and not always without a healthy dollop of self-interest, but at its core the U.S. management of the network has been more benign than venal, with the result that we have today—a vibrant network with more good than bad in it.

The transition to ICANN management may well upset that happy vision. While I am more optimistic about ICANN than I might be about the ITU as a new steward, the capabilities and political strength of the institution are unproven and remain a question mark. The Administration has made a cautious first step down the road to a transition that may be inevitable and is probably good policy, but it is important that Congress (and the American public) pay attention to the transition process to insure that the end product meets our requirements. In short, the NTIA needs to clearly define what a successful transition will look like, vet that vision with Congress and American stakeholders, and then insist that ICANN's proposed transition achieves that vision.

Mr. MARINO. Thank you, sir.
Mr. Chehadé, please.

TESTIMONY OF FADI CHEHADÉ, PRESIDENT AND CHIEF EXECUTIVE OFFICER, INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS (ICANN)

Mr. CHEHADÉ. Mr. Chairman, Ranking Member, Members of the Subcommittee, thank you for welcoming me here today. I am Fadi Chehadé, the President and CEO of ICANN, and I am here today to provide you testimony that hopefully will help with this discussion.

I was 18 when my father insisted I leave our war-torn country that was governed by an oppressive regime. And I asked him, why don't I just go to a place where I speak the language, because I did not speak English. And my late father said, go to America. That is the place that has our values: Openness, inclusivity, acceptance, freedom. And I came alone at 18. And it has been a remarkable journey, a journey of all these values have proved to be true; in fact, they are truest today as I stand in front of you.

These same values underpin the Internet. It was our invention, open, inclusive, promoting freedom, again. And it is this Internet that I stand before you today to support, because many of us think of the Internet as a place that is open and free and inclusive. We forget that the American genius that created the Internet, which I don't take credit for, I give credit to my boss, the chairman of ICANN who is behind me, and many others, Dr. Crocker, who invented this when they were in high school together, these people equally invented the system of governing the Internet which we call the multi-stakeholder system. It is a remarkable invention almost as good as the Internet where no one can capture this governance model.

Today at ICANN, yes, we have 133 governments. They cannot even offer me advice or offer the board advice unless all 133 can reach consensus. What kind of capture can happen in a system like that? And that is just the governments. Then we have all the stakeholders, the users, the civil liberty folks. Everyone is at the table with an equal voice. Consensus is hard, very hard to achieve, but it is by design like the Internet impossible to capture, and it is what made ICANN successful today.

We are promoting the Internet and the multi-stakeholder model to the world, and therefore the decision of NTIA to show the American people's trust in the multi-stakeholder model is a momentous decision; it is a decision telling the world, not only have we given you the Internet, but we are giving you a model we trust. And the model works. It works very well. It is through that model that we have a $4 trillion digital economy that fuels the economies of the world today. It is all borne out of engineers, academics, Americans, foreigners, everyone working together to create this great resource called the Internet.

Today, I stand before you to say the following: I did not hear all morning any disagreement that we all want less government in the affairs of the Internet. I don't think anyone disagrees with that. However, what I did hear is valid concerns that we make sure that

as this last bit of involvement in the IANA functions goes away, that it does not get replaced with the wrong mechanism.

I am with you on that. And as the President of ICANN, I want to give you the assurance that we will build the mechanism that not only meets the requirements that NTIA put out to ensure no government or intergovernmental organization controls that mechanism, but I will make sure that these same conditions set by NTIA survive the transition. It is important that we believe in these parameters, these principles, and we keep them at the heart of how ICANN works.

And I am not alone: Cisco, Microsoft, AT&T, Verizon, Facebook, the U.S. Chamber of Commerce, even the Motion Picture Association, everyone is engaged with us. I give you this assurance. Today, I invite you to join us, as well, in the ICANN processes. Please do come visit and watch how this great American invention called the multi-stakeholder model works. It works very well.

I am here to take your questions, and I thank you again for welcoming us.

[The prepared statement of Mr. Chehadé follows:]

Prepared Statement of Fadi Chehadé, President and Chief Executive Officer, Internet Corporation for Assigned Names and Numbers (ICANN)

Mr. Chairman, Ranking Member, and members of the Subcommittee, I am Fadi Chehadé, the President and CEO of ICANN, the Internet Corporation for Assigned Names and Numbers. I am very pleased to be testifying before you today.

Forty-five years ago, America demonstrated its technological brilliance by inventing the Internet. We showed our diplomatic genius 29 years later, by establishing a multistakeholder community model to govern a part of the Internet's basic functioning, free from the political pressures inherent in government-run institutions. This was a bold and unprecedented experiment. Governance by those who make the Internet work for the benefit of all. Over the past 16 years the multistakeholder community has demonstrated an extraordinary capacity to govern itself, and according to the framework laid out across three U.S. Presidential administrations, ICANN has matured into a responsible, representative, respected governing body. America's great experiment has succeeded.

In recent years some have questioned the principle of the multistakeholder community. Some critics demand a greater role for governments, perhaps by transferring functions performed by ICANN to an inter-governmental organization, such as the ITU. They point out that the Internet is not truly free from government control if one government retains unique control for itself—referring to the United States, via issuance of the contract with ICANN to perform the Internet Assigned Numbers Authority (IANA) functions. The U.S., its allies, and the vast majority of stakeholders acknowledge this one exception to the "no government control" rule, but make clear that overseeing the IANA contract is ministerial, minor and has had no real impact on day-to-day operations of ICANN or the Internet. And they remind us that for nearly 16 years the U.S. has consistently voiced its support for the multistakeholder model rather than a government-run model. Additionally, the U.S. has consistently reduced its unilateral involvement in ICANN matters and oversight of ICANN operations.

On March 14th, the NTIA announced its intent to transition this final element—stewardship of Internet domain name functions via the IANA contract—to the global multistakeholder community. The U.S. called upon ICANN to convene a process to develop a proposal for that transition that will guarantee no future government control. ICANN, the Internet technical organizations and many American organizations—such as AT&T, Cisco, Google, Microsoft, Neustar, the U.S. Chamber and Verizon—almost immediately voiced their support for NTIA's announcement.

As outlined in the NTIA's announcement, the NTIA's stewardship role will not be replaced with a government-led or an intergovernmental solution. This is consistent with the unequivocal policy expressed in the 2012 bipartisan resolutions of the U.S. Senate and House of Representatives (S.Con.Res.50 and H.Con.Res.127) affirming U.S. support for the multistakeholder model of Internet governance.

In brief, the proposal generated through broad multistakeholder dialogue will meet the following four fundamental criteria:

- Supports and enhances the multistakeholder model
- Maintains the security, stability and resiliency of the DNS
- Meets the expectations of affected parties
- Maintains the openness of the Internet

ICANN is committed to developing a robust bottom-up process to develop the proposal for transition. At ICANN's forty ninth public meeting, which took place March 21–27 in Singapore, ICANN launched discussions with the multistakeholder community, in-person and remotely, for public dialogue on how the mechanisms for the transition should occur. Inputs were compiled, and, on April 8, ICANN intends to seek public comment and community feedback on the principles, mechanisms, and process for arriving at a proposal that meets NTIA's criteria. The feedback from the community will inform the process going forward. ICANN is facilitating the process, and in this regard will work with its partners to engage the global multistakeholder community in relevant forums and meetings around the world, in addition to ICANN's public meetings.

In its role as administrator of the IANA functions since 1998, ICANN has been responsible for coordinating unique Internet identifiers—names, IP numbers, and protocol parameters—and has done so while maintaining the continued security, stability, and resiliency of the Internet. It is important to note that ICANN doesn't control content on the Internet; instead it coordinates the Internet's unique identifier functions. These functions are not apparent to most Internet users, but they play a critical role in maintaining a single, global, unified and interoperable Internet. ICANN has performed the IANA functions for nearly 16 years, in a no-fee agreement with the U.S. government.

Since its inception in 1998, ICANN has evolved its accountability and transparency mechanisms for the benefit of the global community. ICANN's Bylaws, and the Affirmation of Commitments, establish clear mechanisms for ICANN's evolution, review of its processes, and improvements, through community input and multistakeholder review committees. With the eventual transition, ICANN recognizes the urgency of enhancing and extending its accountability mechanisms. At the meeting in Singapore, the ICANN multistakeholder community began a dialogue on this subject, taking the Affirmation of Commitments as a baseline.

In relation to the IANA functions, ICANN's Performance Standards for timeliness and accuracy of processing stakeholder's requests are published on a monthly basis. In addition, ICANN is subject to an annual audit of the security of the IANA functions systems. Over the years, ICANN has performed the IANA functions with increasing autonomy, demonstrating in the process both operational excellence and maturity in organization—as illustrated by the findings of the IANA Functions Satisfaction Survey of December 2013. In addition, after an independent assessment, the IANA Functions Department received recognition from an international organization for its business excellence.

Now, let me be clear: NTIA's announcement will not affect the status quo. The continued strength and stability of the IANA functions are critical to the operation of the Internet. The IANA functions will continue to be administered by ICANN in coordination and cooperation with the affected parties (country code and generic top-level domain operators, root server system operators, regional Internet registries, the Internet Architecture Board and the Internet Engineering Task Force). These bodies continue to hold policy authority for names, IP numbers and protocol parameters. They also maintain oversight responsibility to ensure that ICANN administers these functions according to those policies. Finally, this announcement does not affect Internet users and their use of the Internet. While stakeholders work through the ICANN-convened process to develop a transition proposal, NTIA's current role will remain unchanged.

Since ICANN's beginning, the U.S. government has envisaged transitioning its modest stewardship role to the private-sector led, multistakeholder community. Today, ICANN is uniquely positioned, as both the current IANA functions contractor and the global coordinator for the DNS, to convene the multistakeholder process to develop the transition plan. NTIA's announcement in fact represents the final triumph of the American ideal for self-governance by the Internet community, free from government control, even our own. Few nations in history have had such vision, magnanimity and consistency. ICANN understands and accepts the responsibility of the task at hand, and I am confident in ICANN's ability to lead the community in this effort.

Both ICANN and the U.S. government have championed the multistakeholder model, in which standards and policies are developed by large and small businesses, the technical community, not-for-profit organizations, civil society, intellectual property experts, governments, academia, and Internet users from around the globe. American corporations—such as AT&T, Cisco, Google, Microsoft, Neustar and Verizon—and the Internet technical community (the IAB, IETF, the Internet Society, the RIRs and the World Wide Web Consortium) are also supporters of the multistakeholder model. These entities have welcomed the U.S. government's announcement as the way to bring more countries to support the multistakeholder approach to Internet governance, moving them away from a model in which only governments hold sway. NTIA's announcement preserves and prolongs the free and open Internet that has brought so much economic growth and social and cultural development.

Thank you for inviting me to testify. I would be happy to answer any questions you may have.

Mr. MARINO. Thank you. The Committee is now in recess and hopefully we will return not longer than 30 minutes.

[Recess.]

Mr. MARINO. The hearing will once again begin, and we have opening statements, two opening statements yet.

Chairman, you want to quickly put in your questions and then—all right. The Chair recognizes the Chairman just to put two questions into the record.

Mr. BACHUS. Yeah, I just had a unanimous request to submit two questions for the record, to the representative of ICANN.

Mr. MARINO. No objection.

Mr. BACHUS. IANA. All right. Thank you.

[The information referred to follows:]

Questions for the Record
Rep. Spencer Bachus
April 10, 2014
For: The Honorable Lawrence E. Strickling

1.) I understand the National Telecommunications and Information Administration (NTIA) has an accountability mechanism in place for whoever assumes the role that NTIA has played in the IANA functions. I also understand there is a process known as Accountability and Transparency Review Team (ATRT) in which you are a participant. Can you provide us a brief overview of ATRT? Has ATRT been effective in achieving its goals?

2.) My understanding is that ICANN is behind in implementing key portions of ATRT. Is that correct? If so, could you please elaborate as to the reasons for the delay? Also, please explain how any new mechanisms for accountability would be implemented when ATRT goals have not yet been achieved?

Mr. MARINO. Mr. Metalitz, please.

TESTIMONY OF STEVEN J. METALITZ, PARTNER, MITCHELL SILBERBERG & KNUPP LLP, ON BEHALF OF THE COALITION FOR ONLINE ACCOUNTABILITY

Mr. METALITZ. Thank you very much, Vice Chairman Marino, Mr. Nadler, Members of the Subcommittee.

That was a well timed break since I don't immediately have to follow Fadi Chehadé,who is a very hard act to follow, but I appreciate the chance to be here. This Committee has played a critical role in oversight of NTIA and ICANN and their relationship for 15 years, and we are pleased to have been able to contribute to that. This is the seventh time you have asked us to testify on these topics, so we appreciate it very much. And of course, I am here representing the Coalition for Online Accountability, which is the copyright and trademark interests that are very much affected by what ICANN does.

I want to—you have my written statement, so let me just hit 3 points quickly. The first is the IANA function, the second is everything else that ICANN does, which is extremely important, and then our thoughts on the challenge ahead both for ICANN and NTIA and for this Committee. The IANA function, as you already heard, is a limited function, a technical function but extremely important, and particularly in the part we focused on, which is the root zone file for domain names. Normally, this function is extremely mundane and routine, but it is also quite easy to imagine scenarios in which it would not be, and that is why we have been very glad to have NTIA oversight of proper execution of this step.

So, if there is going to be a change in that, it is crucial that the alternative structure be very carefully crafted, very thoroughly vetted, and very well overseen, including by this Committee.

Now, the NTIA has stated its criteria. It has set up a line about governmental control, and we are basically in agreement with those. In our testimony we do suggest a couple of other factors that ought to be taken into account, but if we look at everything else that ICANN does, apart from the IANA functions, these are the issues that have really—this Committee has been engaged with for 15 years.

Issues like the accuracy of the "whois database," so we know who is actually involved with the registration of domain names. The new gTLD program, which we have already heard a lot about. These are all areas where the U.S. Government relinquished its contractual control, is not planning to, it did it 5 years ago in 2009 when the Affirmation of Commitments came in replacing the previous contractual relationships.

So, these are areas where active involvement by the U.S. government is really important and very important for copyright and trademark owners. We have heard a lot about free expression and all the other benefits of the open internet which are very important and should be at the center of oversight here, but let's also remember, we are talking about some very important economic interests of the United States.

The industries that depend on copyright protection are a trillion dollar industry, five-and-a-half million jobs, and they are good U.S.

jobs, and a lot of the decisions ICANN makes have a big impact, especially as more and more of the copyright industries are moving to the internet as their main means of delivering to the public.

So, there are at least two vehicles that are important for continued NTIA engagement. One is the Governmental Advisory Committee. As our testimony lays out, we have seen an increased U.S. Government role and it has played a very positive role, I think, over the last few years, so we hope history will be continuing along that line.

And the second is the Affirmation of Commitments. One thing that is—provision in the Affirmation of Commitments that is very important is that ICANN remains in the United States subject to U.S. law. This is a failsafe. This is an extremely important failsafe to maintain in place, and as we have heard, the AOC can be abrogated by either party unilaterally on 120 days' notice. That is probably an area that really requires some greater certainty before we move ahead with the transition.

And finally, in terms of the challenges ahead, I will just talk about two. One of course is this IANA function transition, both the process for shaping it and the outcome need to be credible. We now have NTIA looking over ICANN's shoulder as it performs these functions, who is going to be doing that in the future? But the other point, of course, is with everything else that ICANN is doing, there is a dire need for execution on the part of ICANN, and we need the U.S. Government oversight to make sure that happens.

Particularly with regard to contracts. You know, we have heard a lot about the multi-stakeholder model here. One key feature of the multi-stakeholder model is that instead of government regulation, we have contractual frameworks, and those frameworks will only work, the multi-stakeholder model will only work, if those contracts are strong and if they are strongly enforced. So, there is a big compliance and execution challenge. We have already seen problems even at the beginning of the new gTLD rollout, so this is an area where continued strong oversight by this Committee is going to be essential.

Thank you. I am glad to answer any questions.

[The prepared statement of Mr. Metalitz follows:]

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Should the Department of Commerce Relinquish Direct Oversight Over ICANN?

Prepared Testimony of

Steven J. Metalitz
Counsel, Coalition for Online Accountability

Before the

Subcommittee on Courts, Intellectual Property and the Internet
Committee on the Judiciary
United States House of Representatives

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Entertainment Software Association (ESA)
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Chairman Coble, Ranking Member Nadler, and members of the Subcommittee:

Thank you for convening this hearing on the recent announcement by the National Telecommunications and Information Administration (NTIA) that it intends to allow its contractual control over ICANN's exercise of the "IANA function" to expire late next year. We especially appreciate this opportunity to provide once again to this subcommittee the perspective of associations, organizations, and companies that depend upon the rules set by ICANN to enable them to enforce their copyrights and trademarks online.

About COA

The Coalition for Online Accountability (COA), which I serve as counsel, and its predecessor organization, the Copyright Coalition on Domain Names (CCDN), has played an active role within ICANN since 1999. Today, when studies show that streaming audio and audio-visual content consumes far more Internet bandwidth than any other application, it is more important than ever that the voice of the creative community that depends on copyright protection is taken into account.

COA participants include three leading copyright industry trade associations (the Motion Picture Association of America (MPAA), the Recording Industry Association of America (RIAA), and the Software and Information Industry Association (SIIA)); the two largest organizations administering the public performance right in musical compositions, ASCAP and BMI; and major copyright-owning companies such as Time Warner Inc. and the Walt Disney Company. COA's focus is the Domain Name System (DNS) administered by ICANN. Our main goal is to enhance and strengthen online transparency and accountability, by promoting the continued availability of the data needed for effective enforcement against online infringement

of copyrights and trademarks. COA has also been an active participant in ICANN's work to develop the new gTLD program, both on its own account and as a member of ICANN's Intellectual Property Constituency (IPC). COA (and CCDN) have testified six times before this subcommittee or its predecessor on domain name issues, and we welcome the opportunity to do so again today.

I. The NTIA "Transition"

NTIA's announcement certainly is important, and a proper topic for this subcommittee's ongoing oversight. It may help at the outset to be specific about what it involves.

A. The "IANA Function"

The transition recently proposed by NTIA concerns the "IANA function" that ICANN performs, and that NTIA oversees pursuant to its contract with ICANN. In the domain name system (DNS), the IANA function involves any changes to the authoritative listing of Top Level Domains – the space "to the right of the dot" – and the registries responsible for operating them.

Today, it is ICANN that decides which generic Top Level Domains (gTLDs) there will be, and who will operate them. It is ICANN that ratifies the decisions of others on these topics, in the case of country code Top Level Domains (ccTLDs). The IANA function is the documentation of those decisions and the process of making them operational.

NTIA's job in the IANA process is to make sure these steps are properly executed. Someone needs to perform that job in an accountable and transparent manner. If the entity performing that role is to change, it is critical that any proposed alternative be carefully evaluated, with input from the major stakeholders, including the content community.

B. ICANN's Other Critical Roles in the DNS

It is also important that we continue to focus on those important aspects of managing the domain name system that have already been transitioned from NTIA. In 2009, when NTIA let its Joint Project Agreement with ICANN expire, and substituted for it an Affirmation of Commitments (AOC), it marked a significant change in the U.S. government role. Notably, the AOC lacks any concrete enforcement mechanisms, and provides that either party – the Department of Commerce, or ICANN – may unilaterally withdraw from it on 120 days' notice.

Thus, for the past five years, ICANN has carried out many of its most important and impactful functions under the aegis of the AOC, and not on the basis of an enforceable contract with NTIA. These functions include (1) the biggest and most far-reaching initiative in ICANN's history – the rollout of thousands of new generic Top Level Domains – and (2) management of one of the most important Internet public resources that has been consigned to ICANN's stewardship – the database of contact data on domain name registrants usually referred to as Whois. Whois, and new gTLDs, also represent the core of this Committee's oversight activities regarding NTIA and ICANN over the past 15 years.

The challenges presented by these issues – and by others that ICANN is now grappling with – lie well outside the boundaries of the "IANA function." But they are vitally important to key national economic interests, including but not limited to the major U.S. industry sector that relies on strong copyright protection, especially in the online environment. That sector now contributes one trillion dollars annually to the U.S. economy, and provides almost 5.4 million good American jobs. These issues are also critical to the huge U.S. business and consumer interest in preventing trademark infringement and similar fraudulent conduct on the Internet.

Active U.S. government involvement to protect these interests, and active oversight by this committee of the government's efforts to do so, will be just as critical in the years ahead as they have been over the past decade and a half – regardless of whether or not NTIA retains its contractual oversight of the IANA function.

C. Vehicles for U.S. Government Involvement

So how can the U.S. government maintain or even increase its active involvement on the important issues facing ICANN, above and beyond any possible "transition" of the IANA function? Two main vehicles are worth highlighting.

First, NTIA (and through it, other U.S. government agencies) should ramp up their engagement in ICANN's Governmental Advisory Committee (GAC). The U.S. government has always been a stalwart supporter of the GAC. In recent years, the GAC has become far more influential in shaping ICANN decision-making, particularly with regard to the new gTLD program. The U.S. government has played a vital role in these developments.

While COA does not agree with every position the GAC has taken regarding new gTLDs, on the whole the GAC influence on the process has been highly positive. In particular, the protections and safeguards for intellectual property rights in the new gTLDs, both against cybersquatting and other trademark infringements, and against the risk that the new gTLDs will become havens for copyright piracy and counterfeiting activities, are far stronger today than they would have been without the active involvement of the GAC. If these protections and safeguards are to be meaningfully implemented in practice, and ultimately to be brought to bear in the legacy gTLDs as well as the new ones, the GAC needs to remain vigilant, proactive, and forthright in providing its advice to ICANN's board and senior management.

There is some historical reason for optimism for the future US role in the GAC. From our perspective, it is not coincidental that, starting in 2009, as the US government stepped back from its comprehensive oversight role with ICANN under the Joint Project Agreement, it has become more active in the GAC, and has successfully encouraged some other governments to contribute constructively as well to GAC efforts to improve the new gTLD program. We hope that, no matter what happens regarding the IANA function, NTIA will redouble its efforts to make the GAC an effective and efficient channel for pressing ICANN to protect intellectual property rights, as well as other public interest priorities, throughout the Domain Name System.

Second, nothing flowing from the NTIA's recent announcement would change ICANN's obligation, spelled out in the Affirmation of Commitments, to remain a not-for-profit corporation headquartered in the U.S. and organized under U.S. law. This means that ICANN's structure and activities are ultimately subject to the jurisdiction of U.S. courts. The status of ICANN under U.S. law, as enshrined in the AOC, is a critical fail-safe feature.

II. What Comes Next

What are the critical challenges facing the U.S. government in its relationship to ICANN in the next months and years, and how important to meeting those challenges is strong oversight from Congress?

A. IANA Transition

The first question is what would replace NTIA's role in oversight of ICANN's stewardship of the IANA function if a transition were to occur? NTIA has stated that that a "transition" should not happen unless and until four critical parameters are met: enhancement of

the multi-stakeholder governance model; maintaining the security, stability and resiliency of the DNS; meeting the needs and expectations of global customers and partners of the IANA services; and maintaining the Internet as a global platform for discourse. It has also indicated that subordinating the IANA function to the oversight of a purely governmental or intergovernmental institution would not be acceptable.

There is widespread agreement on these criteria, as far they go. The challenge will be to implement these criteria rigorously in evaluating whatever successor model for IANA function oversight is proposed. In addition, both in evaluating IANA transition proposals, and in the broader Internet governance debate now unfolding, we urge NTIA, and other US government agencies, to spell out some other sound governance principles that may be implicit in its stated parameters, but that would benefit from greater visibility. These include:

- the need for meaningful participation by all interested parties, and for maximum feasible transparency in how the IANA function is carried out;
- protection of intellectual property rights as a critical ingredient for healthy growth and innovation in the Internet environment; and
- respect on the Internet for the rule of law, consistent with international norms and the principles of a free and democratic society.

Recently 38 global entertainment and cultural organizations, including several COA participants, joined together to emphasize that any new Internet governance structure must ensure a safe, stable, and secure Internet supported by the rule of law and the sovereign rights of states, consistent with international norms and the principles of a free and democratic society. I

attach to this statement the joint submission these organizations made to the upcoming NetMundial conference in Brazil.

ICANN has just kicked off the process for developing a transition proposal that NTIA will evaluate against these criteria. COA looks forward to participating in that process, both directly and through the ICANN IPC. Whatever specific proposal emerges, the process will almost inevitably cast a spotlight on ICANN itself. So it is appropriate to review ICANN's recent performance, the main challenges it faces, and the critical role that NTIA and the rest of the U.S. government, under Congressional oversight, must play in meeting them.

B. ICANN's Recent Track Record

When COA last testified before this subcommittee two years ago on ICANN's planned rollout of thousands of new generic Top Level Domains, the picture was rather gloomy. I am glad to report on a number of positive developments since then:

- Requirements for the new gTLDs were expanded to include a number of important safeguards, including some modest but meaningful improvements in the "rights protection mechanisms" available to prevent rampant cybersquatting in the new gTLD space, and to quickly and efficiently redress abusive registrations when they do occur.

- Perhaps more significantly from COA's perspective, all the new gTLDs must now take on "public interest commitments," subject to ICANN contract enforcement, that have the potential to sharply reduce the risk that this new space could become

a haven for pirates, counterfeiters, and others who register domain names in order to carry out criminal activities.

- ICANN has also issued a new (2013) version of its standard Registrar Accreditation Agreement (RAA), binding domain name registrars to somewhat stronger obligations to improve the accuracy of the Whois data on which intellectual property owners, law enforcement, consumers and members of the public rely to learn who is responsible for particular domain names and the websites and other Internet resources associated with them. The new RAA obligations apply to all registrations made in new gTLDs, but also to registrations in .com, .net and the other "legacy" gTLDs that are sponsored by the same registrars; and gradually, as contracts under the earlier versions of the RAA expire, the vast majority of domain name registrations across all gTLDs will become subject to these somewhat tougher Whois accuracy standards.

- ICANN is also taking other steps, following recommendations of a cross-constituency review team convened pursuant to the AOC, to try to improve access to, and accuracy of, Whois data. These include making available a single portal through which all gTLD Whois data can be accessed, and developing automated tools for identifying unverifiable Whois data, forwarding it to the responsible registrar, and monitoring follow-up efforts to either make the data accurate or suspend the registrations.

- Finally, ICANN has just adopted a consensus policy to require the two largest gTLD registries – .com and .net – to end their outlier status and consolidate all

Whois data at the registry level, rather than dispersing it across a thousand registrar databases around the world. This requirement to move to the so-called "thick Whois" architecture will make vital data more readily accessible and facilitate enforcement of Whois data accuracy requirements.

No one person or entity can take credit for all these significant improvements. As I have already mentioned, the invigorated activities of the GAC have been a critical ingredient in pressing ICANN forward, especially with regard to safeguards in the new gTLDs; and the responsible positions taken by some of the leading contracted parties against use of their services by pirates, counterfeiters, and other cyber-criminals must also be commended. However, a great deal of the credit must go to the new senior management of ICANN, and especially to its CEO, Fadi Chehade, who has brought a unique combination of pragmatic and visionary leadership, and seemingly inexhaustible energy, to a position that had long been lacking in both.

C. The Challenges Ahead

The main challenge facing ICANN today can be summed up in one word: execution. All the positive developments I have just described look pretty good on paper; but ICANN must make it a primary objective to ensure that they are thoroughly, promptly and proactively implemented by all the parties with which ICANN has contracts. It should never be forgotten that the essence of the much-talked- about "multi-stakeholder model" of DNS governance boils down to the replacement of governmental regulation of a critical public resource with private contractual constraints and community oversight. This model only works when those contracts are strong and when they are vigorously enforced.

Candidly, over the past decade and a half, ICANN's track record on contract compliance does not inspire confidence. The development of stronger, clearer contracts, and the arrival of new leadership that stresses its commitment to contract compliance, are hopeful harbingers of change. But the challenge of instituting a true "culture of compliance" under thousands of new contracts with hundreds of new players is daunting; and some of the preliminary indications are not reassuring. Already, even before more than a handful of new gTLDs have gone live, we are seeing evidence of registry operators gaming the new rights protection mechanisms, seeking to circumvent the obligation to give trademark owners the option of pre-emptive registration of their marks as second level domains during a "sunrise period," and undercutting the requirement that other registrants be put on notice when the domain name they seek to register is subject to the trademark claims of others. Whether ICANN can nip these problems in the bud could be a litmus test of how it responds to the compliance challenge. Will ICANN's hard-working compliance staff be given the resources, the authority, and the institutional support they need? This question remains to be resolved; and the USG, along with like-minded governments, needs to keep the pressure on ICANN to resolve it.

ICANN's execution challenge is not limited to enforcement of its existing contracts. It must also deliver on its commitment to make the current Whois system work for the millions of people, businesses and governments that rely on it. Steps to improve Whois accuracy have been promised, but are very slow in coming to fruition. The one-fifth or more of gTLD registrations that lurk in the shadows of the public Whois, through a completely unregulated proxy registration system, need to be brought into the sunlight, whenever the system is manipulated to make it impossible to identify or contact those responsible for abusive domain name registrations. The first steps toward greater accountability and transparency for the so-called

".proxy" world were taken in the 2013 RAA, and must be actively enforced; but ICANN urgently needs to develop a more comprehensive and practical long-term solution.

A final challenge for ICANN in the gTLD space has already been flagged by NTIA and by many others (including the IPC), but ICANN's response to it is unclear so far. Today, 99.9% of the problems we copyright and trademark owners encounter in gTLDs do not arise in the embryonic new gTLD space, but in the existing gTLDs – .com, .net, and the other twenty "legacy" registries. While that proportion will surely decline over time, as the new gTLDs take off, the improvements engineered into the new gTLDs will not directly apply to the main battlefield against online piracy, counterfeiting, and other infringements: the legacy gTLDs. How quickly can ICANN enable us to use this new arsenal on the main battlefield by applying these additional safeguards to the legacy gTLDs? It will take persistent pressure from USG and other concerned governments, as well as some bold leadership from ICANN senior management, to accelerate this critical process. The new consensus policy for "thick Whois" in the legacy gTLDs was an important step forward, but far more needs to be done.

Finally I need to note one other DNS area in which US government engagement, as well as strong Congressional oversight, is critical. The gTLD space is only one half of the domain name universe. The hundreds of two-letter country code TLDs, as well as a growing handful of ccTLDs using non-Latin characters, generally operate outside the matrix of ICANN contractual norms, and with very little oversight from ICANN or any other body. When pirates, counterfeiters and other online criminal operations set up shop in a ccTLD, the safeguards and remedial processes developed within the ICANN framework may be of little use.

There is no simple solution to this problem, but part of the answer surely lies on the inter-governmental level. Each ccTLD is associated with a specified geographic territory that is subject to the control of some national government, even though in many cases the operator of the TLD is entirely a non-governmental organization. Our government needs to work with other governments, through trade agreements, law enforcement relationships, and other means, to develop functional protocols for preventing abuse of ccTLD registration by criminal elements, up to and including the risk that some small ccTLD might be captured by bad actors. This is not an agenda item for NTIA alone, but certainly that agency has a great deal to contribute to finding effective solutions in this space.

Thank you for providing this opportunity to present the views of COA. I would be glad to respond to any questions.

ATTACHMENT A

Global Entertainment and Cultural Industry - Internet Governance Principles

- Area: SET OF INTERNET GOVERNANCE PRINCIPLES
- Entitled by: Ricardo Castanheira
- Region: Africa, Asia-Pacific, Canada, Carribean, Central America, Europe, Mexico, South America, United States
- Organization: 37 Entertainment and Cultural Organizations from around the world (full list attached)
- Sector: Private Sector
- Keywords: Entertainment and Cultural Industry, rule of law, intellectual property, Tunis Agenda

Abstract

The Internet is changing lives all over the world. Once connected, people have access to job opportunities, products, and services that were previously unthinkable. People also rely on the Internet for entertainment and culture. We know from recent studies that consumer demand for online content is skyrocketing, which is driving broadband deployment. To ensure continued and sustainable growth of the Internet, the entertainment and cultural industry supports a governance structure that: Benefits from meaningful participation by all interested parties, which requires that stakeholders share knowledge and information; Fosters growth and innovation, which means systems must be interoperable and intellectual property rights protected; and Ensures a safe, stable, and secure Internet supported by the rule of law and the sovereign rights of states, consistent with international norms and the principles of a free and democratic society.

Document

The Internet is changing lives all over the world. Once connected, people have access to job opportunities, products, and services that were previously unthinkable. People also rely on the Internet for entertainment and culture. We know from recent studies that consumer demand for online content is skyrocketing, which is driving broadband deployment. To ensure continued and sustainable growth of the Internet, the

entertainment and cultural industry supports a governance structure that:

- Benefits from meaningful participation by all interested parties, which requires that stakeholders share knowledge and information;

- Fosters growth and innovation, which means systems must be interoperable and intellectual property rights protected; and

- Ensures a safe, stable, and secure Internet supported by the rule of law and the sovereign rights of states, consistent with international norms and the principles of a free and democratic society.

These concepts stem from the 2005 *Tunis Agenda for the Information Society.* While the foundation for these principles was laid in Africa, we look forward to continuing the dialog in South America at the Netmundial conference in Brazil, and to future discussions in other international fora.

Supported by the following 38 entertainment and cultural industry associations from around the world:

INTERNATIONAL ORGANIZATIONS: IPA: International Publishers Association (representing organisations from more than 50 countries in Africa, Asia, Australia, Europe and the Americas); FIAPF: International Federation of Film Producers Associations (producers' organisations from 28 countries on five continents); IFPI: International Federation of the Phonographic Industry (1,300 member companies from 66 countries).

AFRICA: ANCOP, Nigeria: Association of Nollywood Core Producers; SAFACT, South African Federation Against Copyright Theft (Southern African film, home entertainment and interactive games industries).

ASIA-PACIFIC: HKRIA, Hong Kong Recording Industry Alliance Ltd; RIAS: Recording

Industry Association (Singapore); RIM: Recording Industry Association of Malaysia; RIT: Recording Industry Foundation in Taiwan; TECA: Thai Entertainment Content Trade Association.

CANADA: CMPA, Canadian Media Production Association; Music Canada.

CARRIBEAN, CENTRAL AMERICA, AND MEXICO: AGINPRO, Guatemalan Association of Performers and Phonogram Producers; AMPROFON, Mexican Association of Phonogram Producers; BSCAP, Belizean Society of Composers, Authors and Publishers; Cinemagic, Mexico; CLAC, Mexico: Coalition for Legal Access to Culture; COSCAP, Copyright Society of Composers, Authors and Publishers; JAMMS, Jamaica Music Society; SOMEXFON, Mexican Society of Record and Music Video Producers; PRODUCE, Society of Phonogram Producers of Panama; SODINPRO, Dominican Society of Record Producers; FONOTICA, Costa Rican Society of the Recording Industry.

EUROPE: ISFE, Interactive Software Federation of Europe; IVF: International Video Federation (representing video associations from Belgium, Denmark, Finland, France, Germany, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, and the United Kingdom).

SOUTH AMERICA: ABPD, Brazilian Association of Record Producers; ABLF, Brazilian Association of Phonographic Licensing; APDIF COLOMBIA, Association for the Protection of the Intellectual Property Rights of the Recording Industry; ASAP, Salvadorian Association of Phonogram Producers; CAPIF, Argentinean Chamber of Phonogram Producers; CUD, Uruguayan Chamber of the Recording Industry IFPI; CHILE, Chilean Phonographic Association; UNIMPRO, Peruvian Union of Phonograms and Music Videos Producers; SOPROFON, Ecuadorian Society of Phonogram Producers; SGP, Producers Society of Paraguay; PROFOVI, Society of Phonogram and Music Video Producers (Chile), SICAV - Sindicato Interestadual da Indústria Audiovisual (Rio de Janeiro).

UNITED STATES: AAP: Association of American Publishers; ESA: Entertainment Software Association; MPAA: Motion Picture Association of America; RIAA: Recording Industry Association of America.

Mr. MARINO. Thank you, sir.

The Chair recognizes Mr. Castro.

TESTIMONY OF DANIEL CASTRO, SENIOR ANALYST, INFORMATION TECHNOLOGY AND INNOVATION FOUNDATION (ITIF)

Mr. CASTRO. Thank you. Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to discuss the future of internet governance here today.

NTIA's proposal to relinquish its oversight of the IANA function presents unique risk. U.S. oversight serves an important and valuable role in maintaining the security, stability, and openness of the internet and in deterring countries who might try to manipulate the DNS for political purposes.

The U.S. Government does not directly exert its authority on ICANN's policymaking process, but it has intervened when ICANN has fallen short of global expectations. For example, in 2002, NTIA used its oversight to ensure that ICANN adopt an organization-wide conflict of interest policy and public reporting requirements to increase its transparency. Moreover, ICANN's future performance in the absence of U.S. oversight cannot be predicted based on its past performance while under it. Removing oversight means removing accountability.

Any pledged commitment or oath made by the current ICANN leadership is not binding unless there is some accountability mechanism in place to back up those promises. Until now, the United States has served that role. If the U.S. Government is no longer providing that stability, an alternative mechanism is needed to ensure that ICANN is held accountable to the public interest.

Without U.S. Oversight, ICANN has the potential to grow into the world's largest unregulated monopoly. ICANN finances its operations by levying fees on the internet resources it maintains. These fees can be adjusted and expanded at the discretion of ICANN. This is a conflict of interest since ICANN's own financial interests are at odds with keeping costs down for internet users and businesses.

It is natural for organizations to want larger budgets, but ICANN is in an unusual position in that it has a substantial amount of authority to independently raise additional revenue. Already ICANN has shown its appetite for more funding. In the decade from 2003 to 2012, ICANN's annual revenue grew tenfold, from 6 million to over 70 million, and in between 2012 and 2013, ICANN's revenue tripled to over 230 million as the organization expanded the number of top-level domains.

A lot could happen with so much money at stake. For example, some countries could look to ICANN as a new tool to redistribute global wealth. We should be very mindful of creating a global organization with little accountability that can effectively tax the internet.

While the proposal to transition governance of the DNS to a multi-stakeholder organization like ICANN is vastly superior to alternatives such as ceding control to the ITU. Giving up U.S. oversight creates a highly uncertain future for ICANN. The primary problem is that its existing bylaws and structures are not permanent and can easily be changed in the future. Without the U.S.

Government serving as a backstop, it may very well devolve into something resembling the ITU. Congress should be aware that a U.N. style takeover of the internet could happen even within ICANN if the advisory role the governments have today later becomes one of outright control.

Given the significant impact that this transition could have on the future of the internet, it is critical for Congress to be actively engaged on this issue. The final decision to relinquish its oversight should only occur if there is consensus for transition in both Congress and the Administration. If NTIA pursues this transition, it has only one opportunity to get it right. There are no second chances.

Therefore, Congress, through the Government Accountability Office should work closely with NTIA and other stakeholders to identify potential risks involved in the transition, including worse case scenarios, as well as opportunities to mitigate those risks. NTIA should then be required to explain to Congress how any proposal it finds acceptable would successfully avoid the threats identified by stakeholders and importantly, NTIA should be required to explain not just how the plan mitigates first order risk in the proposed plan but also second order risk of how ICANN could change after the U.S. Government relinquishes its oversight. Developing new scenarios will also help NTIA move from broad principles to detailed criteria for how it will evaluate any future proposal.

The future of internet governance is at a crossroads. The transition away from U.S. oversight will create risks and challenges for internet governance, many of which we may not be able to fully anticipate today. Without the current oversight by the United States, ICANN will not be accountable to anyone. Such a change may not bode well for the principles supported by the United States and its allies. While the initial principles for the transition outlined by NTIA are a good first step, Congress should exercise its own oversight authority to demand a more detailed set of criteria that must be met before any transition plan is accepted.

Thank you for the opportunity to share with you my thoughts on the proposed transition. I look forward to any questions.

[The prepared statement of Mr. Castro follows:]

Prepared Statement of Daniel Castro, Senior Analyst, Information Technology and Innovation Foundation (ITIF)

Chairman Coble and members of the subcommittee, I appreciate the opportunity to appear before you to discuss the recent decision by the Department of Commerce to give up U.S. oversight of important Internet functions. I am a senior analyst at the Information Technology and Innovation Foundation (ITIF). ITIF is a nonpartisan think tank whose mission is to formulate and promote public policies to advance technological innovation and productivity. In my testimony today, I will discuss the unique and valuable role that U.S. oversight has served in Internet governance, the risks inherent in a transition away from this model, and how to best mitigate those risks.

BACKGROUND

The U.S. government has had an unparalleled impact on the development of the Internet from the Defense Advanced Research Projects Agency (DARPA) building the first packet switching network to the National Science Foundation (NSF) funding research that would eventually lead to the creation of Google. Over time, the Internet has evolved from its original roots as a domestic research network into a global platform for commerce, communication, and innovation; however, throughout

this transformation, the U.S. government has been at the forefront of efforts to ensure the security, stability, and resiliency of the Internet, while also protecting the interests of individual users, businesses, and other stakeholders.

A core component of these efforts has been the oversight of the Internet Assigned Numbers Authority (IANA) functions by the National Telecommunications and Information Administration (NTIA) in the U.S. Department of Commerce. The IANA functions include managing the root zone of the Domain Name System (DNS), allocating Internet Protocol (IP) addresses, and various other technical functions integral to the stability and security of the Internet. The DNS is the system that translates URLs, such as www.congress.gov, into IP addresses, such as 140.147.249.9. These functions were originally managed directly by contracts held by the U.S. government, but after commercial use of the Internet expanded in the 1990s, the U.S. government decided to transfer the management of the DNS and related functions to the private sector.

In July 1997, the Clinton Administration reassigned responsibility for the IANA functions from the NSF to the NTIA and authorized the Department of Commerce "to support efforts to make the governance of the domain name system private and competitive and to create a contractually based self-regulatory regime that deals with potential conflicts between domain name usage and trademark laws on a global basis." [1] The NTIA, in turn, issued two policy statements, in January and June 1998 respectively (commonly referred to as "the Green Paper" and "the White Paper") outlining a plan to privatize the management of Internet names and addresses.[2] The NTIA made clear that "during the transition and thereafter, the stability of the Internet should be the first priority of any DNS management system." [3] Following the publication of these policy documents, the NTIA signed a no-cost contract with the Internet Corporation for Assigned Names and Numbers (ICANN), a newly-formed not-for-profit organization headquartered in Marina del Rey, California, tasking it with managing the DNS and related technical functions. Since then, the IANA contract has been renewed and modified multiple times, and the existing IANA contract with ICANN will expire on September 30, 2015. On March 14, 2014, the NTIA announced that it intends to relinquish its oversight of the IANA functions.[4]

U.S. OVERSIGHT HAS CONTRIBUTED TO THE STABILITY OF THE DNS AND ACCOUNTABILITY FOR ICANN

The U.S. government has had, and continues to have, an important role in maintaining the security, stability, and openness of the Internet. U.S. oversight provides a backstop to ensure that ICANN satisfies its responsibilities in effectively managing the Internet's domain name and addressing system. This oversight provides the necessary assurance to the millions of companies not just in the United States, but around the world, who invest in and use the Internet for business that the Internet's basic technical architecture will continue to be governed in a fair, open, and transparent manner. And under this oversight, the world has witnessed the Internet deliver an incredible amount of innovation and social benefits.

Moreover, U.S. oversight has served as a deterrent to stakeholders, including certain foreign countries, who might otherwise choose to interfere with ICANN's operations or manipulate the DNS for political purposes. For example, a country may want to censor a top-level domain name or have ICANN impose certain restrictions on domain name registries or registrars. However, both ICANN and the U.S. government have publicly committed to ensuring that decisions about the DNS are made in the public interest and that ICANN operates openly and transparently.[5] Although the U.S. government has made a strong commitment to upholding these principles, it does not directly exert its authority in ICANN's policymaking process. Instead, if ICANN were to fall short of these commitments, the U.S. government could intervene. For example, as recently as 2012, the NTIA used its oversight of the IANA function to ensure that ICANN adopt an organization-wide conflict of in-

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[1] "A Framework for Global Electronic Commerce," The White House, July 1, 1997. https://www.fas.org/irp/offdocs/pdd-nec-ec.htm.

[2] "Statement of Policy on the Management of Internet Names and Addresses," National Telecommunications and Information Administration, June 5, 1998, http://www.ntia.doc.gov/federal-register-notice/1998/statement-policy-management-internet-names-and-addresses.

[3] Ibid.

[4] "NTIA Announces Intent to Transition Key Internet Domain Name Functions," National Telecommunications and Information Administration, March 14, 2014, http://www.ntia.doc.gov/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions.

[5] "Affirmation of Commitments by the United States Department of Commerce and the Internet Corporation for Assigned Names and Numbers," September 30, 2014, http://www.ntia.doc.gov/files/ntia/publications/affirmation_of_commitments_2009.pdf.

terest policy and public reporting requirements to increase its transparency.[6] This governance structure provides tremendous benefit as it has created an open, participatory, bottom-up structure of Internet policymaking that includes constituents from the private sector, civil society, and governments, while ensuring that there is a fail-safe mechanism in place so that the principles and spirit with which ICANN was created can flourish.

THE PROPOSED TRANSITION PRESENTS RISKS TO INTERNET GOVERNANCE

The proposal to relinquish U.S. oversight of the IANA function presents unique risks to the future stability, security, and openness of the Internet. Removing oversight means removing accountability. Any pledge, commitment, or oath made by the current ICANN leadership is not binding unless there is some accountability mechanism in place to back up that promise. Until now, the United States has served that role. If the U.S. government is no longer providing that stability, an alternative mechanism is needed to ensure that ICANN is held accountable to the public interest.

ICANN's future performance in the absence of U.S. oversight cannot be predicted based on its past performance under U.S. oversight. U.S. oversight of ICANN resembles self-regulatory systems in the private sector. In these systems, an industry-led self-regulatory organization sets and enforces rules and standards related to the conduct of companies in the industry. However, there is typically an outside entity, such as the Federal Trade Commission (FTC), which can intervene if a company defies the self-regulatory organization or if the self-regulatory organization produces rules that are insufficient to protect the public interest. Just as it would be incomprehensible to suggest that an industry that has a successful track record with self-regulation no longer be subject to the FTC or other government oversight, it is a similarly dubious proposition to suggest removing this backstop for Internet governance without a suitable alternative mechanism in place.

Without U.S. oversight ICANN has the potential to grow into the world's largest unregulated monopoly. ICANN finances its operations by levying fees on the Internet resources it maintains. For every domain name that is registered, renewed, or transferred, ICANN receives between $0.18 and $0.25 per transaction.[7] These fees can be adjusted and expanded at the discretion of ICANN. For example, ICANN could decide to increase the fees it charges, expand the fee to an annual or monthly license fee instead of a per-transaction fee, or create new fees for other resources it manages such as IP addresses. ICANN has a conflict of interest in pursuing the global public interest since its own financial interests are at odds with keeping costs down for Internet users and businesses. It is natural for organizations to want larger budgets, but ICANN is in an unusual position in that it could raise a substantial amount of additional revenue with little accountability. Already, ICANN has shown its appetite for more funding. In the decade from 2003 to 2012, ICANN's annual revenue grew ten-fold from under $6 million to over $70 million. And then between 2012 and 2013, ICANN's revenue tripled to over $230 million as the organization expanded the number of top-level domains. Moreover, some countries could look to ICANN's ability to extract money from the Internet ecosystem to fund other projects such as broadband connectivity, digital literacy, or access to computers. These types of projects may have broad appeal, but it would not be useful to create a global organization with the ability to effectively tax the Internet with no safeguards in place to limit its authority.

Finally, while the proposal to transition governance of the DNS to a multi-stakeholder organization like ICANN is vastly superior to some alternatives, such as ceding control of these functions to a multi-lateral governmental organization like the International Telecommunication Union (ITU), as some nations have proposed, giving up U.S. oversight creates an uncertain future for the Internet. The primary problem is that the existing governance structure of ICANN, as with any organization, is not permanent and can easily be restructured in the future. Without the U.S. government serving as a backstop, it may very well devolve into something resembling the United Nations. Congress should be aware that a UN-style takeover

[6] "Commerce Department Awards Contract for Management of Key Internet Functions to ICANN," National Telecommunications and Information Administration, July 2, 2012, http://www.ntia.doc.gov/press-release/2012/commerce-department-awards-contract-management-key-internet-functions-icann.

[7] ICANN receives either $0.18 or $0.20 from registrars providing services for current TLDs. See "FY14 Budget Approval," ICANN, August 22, 2013, http://www.icann.org/en/about/financials/adopted-opplan-budget-fy14-22aug13-en.pdf. Registrars providing services for the new gTLDs are assessed a $0.25 fee. See: "Frequently Asked Questions," ICANN, 2014, http://newgtlds.icann.org/en/applicants/customer-service/faqs/faqs-en.

of the Internet could happen even within ICANN if the advisory role that governments have today later becomes one of outright control.

THE U.S. GOVERNMENT SHOULD WORK TO IDENTIFY AND MITIGATE RISKS MOVING FORWARD

Given the significant impact that this transition could have on the future of the Internet, it is critical for Congress to be actively engaged on this issue. The final decision to relinquish this oversight should only occur if there is consensus for a transition in both Congress and the Administration. If the NTIA pursues this transition, it has only one opportunity to get it right—there are no second chances. Therefore, Congress, through the Government Accountability Office, should work closely with the NTIA and other stakeholders to identify potential risks involved in this transition, including "worst case" scenarios, as well as opportunities to mitigate those risks. The NTIA should then be required to explain to Congress how any proposal it finds acceptable would successfully avoid the threats identified by stakeholders. And importantly, the NTIA should be required to explain not just how their plan mitigates first-order risks in the proposed plan, but also second-order risks of how ICANN could change after the U.S. government relinquishes its oversight. Developing these scenarios will also help the NTIA move from broad principles to detailed criteria for how it will evaluate any proposal.

CONCLUSION

The future of Internet governance is at a crossroads. The transition away from U.S. oversight will create unique risks and challenges for Internet governance, many of which we may not be able to anticipate today. Without the current oversight by the United States, ICANN would not be accountable to anyone and would be motivated only by the interests of those individuals who control the organization. Such a change may not bode well for the principles supported by the United States and its allies. While the initial principles for the transition outlined by the NTIA are a good first step, Congress should exercise its own authority to demand a more detailed set of criteria that must be met before any transition plan is accepted. Thank you for the opportunity to share with you my thoughts on the proposed transition. I look forward to answering any questions you have.

Mr. MARINO. Thank you, sir.

The Chair now is going to recognize the Ranking Member Mr. Nadler from New York to do the first series of questioning.

Mr. NADLER. Thank you. Let me thank all the witnesses.

Let me ask, first of all, that—I gathered from all the witnesses, the possible exception of Mr. Castro, that all the concerns you have expressed are contingent concerns that we ought to bear in mind, that we got to watch the process of—as proposals are put out. A year-and-a-half from now, the—or request for proposals in effect that is put out. A year-and-a-half from now, proposals come back, and at that time we have to be very careful that these concerns that have been expressed have been adequately addressed by any proposal before it is adopted then but that the real concern that we ought to have and look at in the proposals that come back then, and just be wary of this now.

Does anyone disagree with that? In other words, does anyone disagree? Does anyone think we are taking a step that is irrevocable or really bad now, or does everybody, or good, for that matter, or does everybody really think that we are setting the stage, there is going to be a preparation, and we really have to watch carefully what comes back and make decisions a year-and-a-half or 2 years from now?

Why don't we go left to right. Mr. Rosenzweig.

Mr. ROSENZWEIG. I agree with the characterization. I would add only the small "p" political concern that there might be a degree

of pre-commitment to the result on the part of both the Administration and/or and NTIA and/or ICANN, but——

Mr. NADLER. But you haven't seen that.

Mr. ROSENZWEIG. But I haven't seen that, yeah, but I would correct—I think you are correct in structuring this as we need to measure the result.

Mr. NADLER. And a little premature to get all upset or happy or whatever. Mr. Chehadé.

Mr. CHEHADÉ. You are correct, Congressman Nadler. We have time, and as I said also before, we are not—we shouldn't be rushed. I know that we have a contract that has a natural ending in September 2015, but there is no rush. We should get this right, and we have the time to do them.

Mr. NADLER. Mr. Metalitz.

Mr. METALITZ. Yes, sir. I would agree with that, Mr. Nadler. The one footnote I would drop is that in fact this decision might be irrevocable, and that is why we need to be so careful.

Mr. NADLER. Yeah, but the decision, a year-and-a-half from now, not now?

Mr. METALITZ. Yes, that is right. Both in the process and in the outcome, we need to make sure we get it right.

Mr. NADLER. Right. Mr. Castro.

Mr. CASTRO. I would just add that I think the announcement puts us on a irrevocable trajectory right now.

Mr. NADLER. So you disagree.

Mr. CASTRO. I just think that, I don't think we can go back from this. I think it would be very difficult to, at least.

Mr. NADLER. So, are you saying that the decision to seek these proposals now binds us to accept a proposal even if the criteria are not met, Mr. Castro?

Mr. CASTRO. It doesn't bind us, but it certainly puts tremendous pressure to accept it.

Mr. NADLER. Okay. I assume none of you, the rest of you agree with that. Okay.

Now, Mr. Chehadé, Politico reported yesterday that you conceptually support H.R. 4342, the DOTCOM Act of 2014. Do you support that bill?

Mr. CHEHADÉ. As I said yesterday to you and to the public, Congressman Nadler, we support conceptually mechanisms for accountability and for transparency. We do not support any particular bill.

Mr. NADLER. Okay. So you don't support that bill or any other bill. Do you think that that bill, the DOTCOM Act, could harm the transition process? And let me just comment, and how might it impact the ongoing efforts of some nations to transition internet governance to the ITU or to the United Nations?

Mr. CHEHADÉ. I believe that if the perception globally that our government does not trust the multi-stakeholder model, which we approved unanimously——

Mr. NADLER. Which you think would be generated by adoption of that bill?

Mr. CHEHADÉ. Could.

Mr. NADLER. Okay.

Mr. CHEHADÉ. Could add to the perception that we do not trust our own model, and I think that that will send the wrong messages.

Mr. NADLER. So do you think the DOTCOM Act would harm the transition process for that or any other reason?

Mr. CHEHADÉ. I don't think it affects directly that transition process, but it will send continued messages that we are not trusting our own multi-stakeholder model that we believe in and we believe is the right model.

Mr. NADLER. Okay. Do you see any reason we need legislation now to ensure our oversight of this process?

Mr. CHEHADÉ. The only reason we would is if we hadn't heard Secretary Strickling multiple times say that he is going to be available, he is going to build consensus here, he will inform the Congress, and I make the same assurances on behalf of ICANN.

Mr. NADLER. Okay. Now, there is concern that without NTIA oversight, ICANN will not have any external accountability and might be governed by the interests of those controlling the organization, what would you reply to that?

Mr. CHEHADÉ. It would be impossible to imagine that.

Mr. NADLER. Because?

Mr. CHEHADÉ. Because ICANN was structured, as I said before, with a set of mechanisms and hundreds of checks and balances that make it impossible for any one party to capture the processes at ICANN.

Mr. NADLER. Okay. Now, in the past, some of my colleagues have raised concerns that ICANN's management of internet domain functions, including whether it was affording adequate protections to consumers and rights holders and working to combat online fraud and piracy, if NTIA relinquishes contractual relations with ICANN, how do we ensure that ICANN is responsive to our concerns as well as to other key stakeholders down the road?

Mr. CHEHADÉ. So, first let me clarify that the announcement by NTIA has nothing to do with the way we make policies and we enforce our contracts. These are completely two separate things. So the fact that they are going to relinquish that particular oversight is being conflated with the other work we do, as Mr. Metalitz explained very well. In that other realm of policies and enforcement, I want to tell you that we have been strengthening our ability to ensure compliance. I think in since 2011 we nearly tripled the——

Mr. NADLER. But some people think that the NTIA—that we have leverage over ICANN because of this, no?

Mr. CHEHADÉ. Not any more than you will continue to have. NTIA participates, the U.S. Government participates in all of our processes, and they will continue to do so. The announcement 3 weeks ago has to do with the IANA function, and that is a very small and specific area of work, important, but has nothing to do with the policies and the enforcement of the Congress.

Mr. NADLER. Okay. My last—is what Mr. Metalitz noted that ICANN must remain a not-for-profit subject to U.S. law by virtue of the Affirmation of Commitments, and I want to ask why is this important and what would cause ICANN to withdraw from the AOC, and if it did so, how can anyone be sure that obligations contained in the AOC would continue to be followed?

Mr. CHEHADÉ. This Mr. Metalitz is superbly right here. We must maintain the AOC. It is a very important document. I am committed to that. In fact, in the next few days we will launch a public consultation process to strengthen the AOC, strengthen our accountability, and engage the whole community to ensure that the concepts and the agreements that we made to the world and the AOC remain very much in the fabric of ICANN.

Mr. NADLER. Okay. Mr. Metalitz, you have any comment on that?

Mr. METALITZ. Yes. I think that is—that is a welcome statement, but Mr. Chehadé is not going to be the president of ICANN forever, the board isn't going to be the same forever, and I think we need to probably be looking at mechanisms to make sure that ICANN's relationship under the Affirmation of Commitments is kept permanent as much as possible.

Mr. NADLER. I assume in the next hearing, you have to go make recommendations as to some mechanisms of doing so.

Mr. METALITZ. Yes.

Mr. NADLER. Thank you very much. My time is expired.

Mr. HOLDING [presiding.] Thank you.

Mr. Chehadé, can you respond to Mr. Castro's concern that ICANN has the potential to become the world's largest unregulated monopoly and may be able to use this authority to tax the internet?

Mr. CHEHADÉ. It is impossible for ICANN to move in that direction because of the multi-stakeholder model. It is important to appreciate that even the policies we use to perform the IANA functions come from huge large communities even outside of ICANN. Take, for example, the thousands of engineers of the Internet Engineering Task Force, the IETF. They get together around the world every few months.

They make policies. They check on me performing these policies regularly, and it is not a fun meeting when we have it with them. They have accountability on us. So for all these thousands of people in different communities even outside of ICANN who make policies for how the internet works, to be somehow captured under a single model is impossible. It is by design. It is almost like saying one entity can control the entire internet. Just like the Internet, ICANN is impossible to capture.

Mr. HOLDING. Mr. Castro, he says you don't know what you are talking about, so take a minute to refute Mr. Chehadé there.

Mr. CASTRO. Sure. I think any political system is subject to various types of designs, and those designs put constraints on what people can do, but they are not infallible. Certainly we can look at any government, any institution in the world where we have seen dramatic change. We have seen in our own U.S. history a change in the amount of revenue that the Federal Government takes in along various principles.

You know, at one point an income tax was inconceivable, and we have that today. I am not, by any means, anti-tax, but the point is, organizations change. The dynamics change. The political will to do things changes. It is very conceivable to think of a time when ICANN would be suffering as an organization, and to move forward, it would have to raise revenue even just to remain operational, and so changes would be made. And as well, the technology

changes. The technology for which ICANN is responsible might change as well.

We are moving from IPv4 to IPv6. What that means is we are going to have a significantly larger pool of numbers that ICANN is responsible for.

Right now ICANN doesn't charge anything for that, but it could. That would be an astronomical increase in the amount of revenue it could obtain. These aren't things that definitively will happen, but these are risks that we should be aware of.

Mr. HOLDING. Mr. Rosenzweig, do you think there is a potential of this monopoly danger?

Mr. ROSENZWEIG. I think the right way to structure the question is this, all of the restrictions that Mr. Chehadé has referenced are internal to ICANN, and they are good. They are probably quite effective, but you work in a body that has a lot of internal restrictions as well, and you know as well as I do that times come where people waive those restrictions or change them or they mutate over time for good reasons or for benevolent reasons.

The only way—the right answer to that problem is one not available to this institution of some other form of external checking function that is able to restrict and restrain that mutation if it goes off in adverse ways. That is why I suggested, as part of my testimony, the need for, you know, an outside check-in function in forms of audits, oversights, inspectors generals, an external judiciary of which they already have a forum.

Those are the types of external structures that will then ensure that the internal structures continue to function as they are and aren't overtaken by internal events. So, again, I don't think it is an insurmountable problem, but I think it is critical that as part of the IANA transition, one of the things that ICANN brings back to the NTIA and for us to review is what those external structures would be that would maintain that Mr. Metalitz's suggestion that ICANN has to remain subject to U.S. law suggests that is one of those functions might be U.S. courts.

I don't know if that would be a good answer or not and I am not sure whether the rest of the world would like that answer, but that is at least inside the model of what I think is essential.

Mr. HOLDING. Do you think it is possible that ICANN has a significant financial motive in wanting to move to an international status?

Mr. ROSENZWEIG. I can't examine the motives of ICANN. I don't know. I do know that there are at least failure modes I could imagine in which the financial incentives would drive behaviors that I would consider bad. I haven't seen any evidence of that now, but I can't guarantee that they won't happen in the future, so to that degree, I sort of concur with Daniel's suggestion that it is a possibility, but it is one that I think can be guarded against or should be guarded against.

Mr. HOLDING. Mr. Chehadé, what was ICANN's annual revenue in 2001?

Mr. CHEHADÉ. I was not, I am not aware of that number. I can get back to you, Mr. Chairman.

Mr. HOLDING. A few million dollars, would it fair to say?

Mr. CHEHADÉ. Yes, under 10 million.

Mr. HOLDING. How about in 2013?

Mr. CHEHADÉ. Our revenues for the core operations of ICANN was a little shy of $80 million or so.

Mr. HOLDING. Eighty million?

Mr. CHEHADÉ. Yes. Now if you add the new gTLD program——

Mr. HOLDING. 8-0.

Mr. NADLER. He said 8-0 or 1-8?

Mr. CHEHADÉ. Yes. And then for the new gTLD program, we have a separate accounting mechanism to deal with that, but that is a revenue neutral program. It is not a profit program. The fees we take are used to process the program, and the fees we have taken are pretty much spent on getting that program up and running.

Mr. HOLDING. All right. Thank you.

I believe Ms. Lofgren.

Ms. LOFGREN. Yes. Thank you, Mr. Chairman.

I think this has been a very helpful discussion, and as I listen to Mr. Chehadé's testimony, I am struck by how closely this development in ICANN has tracked what our hopes were back in the 1990's, in the mid 1990's. Now, it is true, I mean, there is no guarantee for anything ever in life, but so far so good, and I had to laugh when I heard you say, you know, meeting with thousands of internet engineers is not always fun. I cannot imagine, I mean, the internet engineers I know agreeing to do any of the parade of horribles that, you know, people are concerned about, so that is one part of the guarantee.

I think it is important that we have a diversity of opinion, and Mr. Castro is odd man out again. I remember when you were here during the SOPA hearings. I think you were the only voice in favor of DNS redirection and in favor of SOPA when all of the rest of the internet engineers I had ever met were arguing against it, and I think it is important that your voice, although isolated, be heard again.

I do think that, as I have listened to my colleagues, I am hearing an interest. Obviously, the United States is going to continue to be involved in ICANN, but primarily that involvement has been through the private sector, individual engineers, and kind of the nerdiest branch of the Federal Government in the Department of Commerce. Is there a role for the legislative branch to look and to observe in ICANN or have any other governments have legislators also attend meetings and observe? Would that be a problem?

Mr. CHEHADÉ. First of all, everyone is welcome at ICANN. ICANN is open, has no membership fees, all of our meetings are transcribed, completely transparent in all languages of the U.N. plus Portuguese, so everyone is welcome. We have not seen a large participation by judicial bodies from around the world. Law enforcement, however, has been more involved at ICANN with the Interpol and the FBI and others engaged, and in fact, they have been very helpful in shaping some of the elements of the new agreements we signed with a thousand registrars in the world.

Ms. LOFGREN. Right.

Mr. CHEHADÉ. So, but I think the participation is welcome, Congress is welcome, we need everyone to be involved, but at this stage, ICANN has shown its very close attention to the review

mechanisms and the accountability mechanisms and they are in place and they are working. My colleague Paul mentioned earlier FOIA.

We have a process at ICANN similar to FOIA that we have implemented since 2009, so we have many of these mechanisms and processes, including independent review mechanisms that go outside of ICANN to ensure that we are performing with accountability.

Ms. LOFGREN. Well, I think that, you know, unfortunately, and I don't think it is people in this body, but there have been some alarmist voices out in the media world that I wish that—I hope that they have listened to this hearing and gotten a greater understanding really what this is about, and the fact that you, Mr. Chehadé, and ICANN itself is not resisting, in fact, is embracing the idea of continued involvement to make sure that our goals for a free and open internet continue to be met.

And I certainly, the Committee and other, Energy and Commerce Committee, as well, is interested in that, and you know, I don't know that every Member of Congress would want to go and sit through these meetings, but it might be a good experience for us and the next time you meet in the United States, maybe, you know, we should do a little group and go see firsthand what it is like to participate, and I will be the first to volunteer to do that. I want to thank each one of you for your excellent testimony here today. It is a service to the country, and you know, people don't realize that you are volunteers here. I mean, and we appreciate that. It is really very, very helpful.

And I thank you, Mr. Chairman. I know we have one other speaker and lots of airplanes waiting for us to leave for our 2 weeks off.

Thank you very much.

Mr. MARINO [presiding]. Thank you.

I guess I am the last one. So, as we say in my rural district of Pennsylvania, let's go to the barn and talk turkey here because I didn't hear the questioning from my colleagues, but I was in a meeting with someone that I didn't want to send them home without meeting with me, so I apologize for that.

But I think it—Mr. Metalitz and Mr. Chehadé, I emphasized on more than one occasion, I believe, that ICANN is going to stay in the United States. Is that true? Did I hear that correctly?

Mr. CHEHADÉ. Yes, it is part of the Affirmations of Commitment document today that we have to remain incorporated and headquartered in the United States.

Mr. MARINO. Is there a possibility, and I am asking for a prediction, when we pass legislation well intended, we do not see some ramifications coming down the road, but with a reasonable degree of certainty, can you tell me could ICANN leave the United States at some point, and why, and how?

Mr. CHEHADÉ. So long as the Affirmation of Commitments are in place, and I mentioned earlier that I am starting a process to strengthen them and affirm them, we will stay here. We also have thousands of contracts signed here as a California corporation. It is the logical thing for us to continue and there is no plan or prospect right now for doing so.

Mr. MARINO. I am going to ask you to play devil's advocate with me a little bit here. Give me a scenario, if you could, again, with a reasonable degree of thought here, how ICANN would move from the United States? Is there a circumstance that you can think of that would occur, because even though there is a commitment, you have contracts here, anything can be litigated if it got to that, but there is—I know of nothing that would prevent a company from leaving the United States should it decide to do that.

Mr. CHEHADÉ. The best way to look at this scenario is to think, as you asked, Mr. Chairman, how would we get there. Well, it is not the decision I can make. It is not the decision even our board can finalize without full multi-stakeholder consultation that will take—if it took us 7 years to come up with a gTLD program, it will take us a little longer than that to agree on something this fundamental and this changing of how we work. So, the good news is that ICANN will involve the private sector, you will have Microsoft, you will have Google, you will have Cisco, you will have all of our members, the civil society groups, everyone will have to be involved in, frankly, answering your questions, which are why would we do this?

It has worked so well for us here, why would we change that. So this is a process, and it takes a long time, and all is transparent, so none of this can happen without this House and this Congress knowing immediately that there is even a discussion about that, because everything we do is public, transparent, and transcribed.

Mr. MARINO. Does anyone else want to respond to that? To my scenario?

Mr. METALITZ. If I may.

Mr. MARINO. Please, go ahead, sir.

Mr. METALITZ. If I may. I would agree that it would be—it wouldn't be an overnight decision if that were to occur, but I want to—I just feel like I have to respond to one thing that Mr. Chehadé said earlier which was that it is impossible for any one group to capture the multi-stakeholder process.

That may be true if you think of the multi-stakeholder process in the abstract, but as I sit here, having been involved in ICANN longer than everyone else at this table put together, I can tell you that ICANN, while it tries to embody the multi-stakeholder model, ICANN can be captured and it has been captured in the past by interest groups. So, I think we constantly have to be on guard against that.

Maybe in the abstract the multi-stakeholder model cannot be captured, but I think we really do have to be on guard against that in this human institution called ICANN that is attempting to embody the multi-stakeholder model.

And I think this is really an area where oversight by this Committee and by the Congress is extremely important as well as engagement by the U.S. Government on an ongoing level because I think that risk will remain.

Mr. MARINO. How many entities are involved in changing bylaws? I am not quite clear on that at this point. Anyone?

Mr. CHEHADÉ. So, ICANN has a board of directors made of 16 board members that are elected through both the community, so it takes a long time again for let's say the user groups can elect a

person that sits on the board, business sector, et cetera, so each stakeholder groups elects these board members.

And then we have an independent nominating committee that picks some of the board members, and again they search openly for a non-stakeholder based board members. That board has the ability to change the bylaws, but it is a pretty broad board and it is a community board and has used its, I think, if you look at how they have worked today, especially as it relates to bylaws, it has been very judicious in touching these. And it is very hard to get consensus, frankly, along 16 board members that have been elected through communities, not through monolithic processes.

Mr. MARINO. What intention would there be, if any, to bring those proposed bylaw changes to this Committee?

Mr. CHEHADÉ. What intention we——

Mr. MARINO. Would you have any problem with bringing those proposed bylaw changes to Congress, to this Committee?

Mr. CHEHADÉ. I think it would have to be explained to our stakeholders. We have thousands of stakeholders and many not U.S. based stakeholders. It would be very complicated for us to explain to them that we need to bring bylaw changes for a California corporation to Congress.

Frankly, I don't even know how this could be done with all of our stakeholders. We have to, frankly, I appreciate, Mr. Chairman, that you are concerned that bylaws could be changed without proper vetting, but I can tell you, we will, in these mechanisms that we plan to build in this transition, put strong components that ensure that the core principles you believe in and we believe in are maintained, that they are not easy to change. They have to be in there.

For example, the principles that NTIA put out that no government or intergovernmental body can control ICANN or control our decision making, I committed in my opening statement that we need to put these mechanisms and make sure that they survive not just the transition but past the transition. So, we are on the same page in that regard, and again, I invite you, Mr. Chairman, and Members of the Committee not just to attend our meetings, as Congressman Lofgren suggested, but indeed to keep an eye, and we will come back and keep you briefed so you can keep an eye on these changes.

Mr. MARINO. Thank you.

Anyone else want to respond to any of my scenarios?

Okay. Then I see no other individuals here before I move on further.

I would like to submit for the record a letter from ACT dated April 9, 2014, to the United States House of Representatives Committee on Judiciary that is headed, "In Defense of Process: Identifying the Problem Before Seeking Solutions."

I hear no opposition, so this will be entered into the record.

[The information referred to follows:]

ACT

April 9, 2014

U.S. House of Representatives
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Here are some thoughts I shared when I was in Singapore last month at the ICANN meeting. I thought that the questions that we faced there might be interesting to the committee as it conducts its hearings about the future of ICANN.

In Defense of Process: Identifying the Problem Before Seeking Solutions

You don't necessarily need to walk before you can run, but you should probably look where you are going before you do either.

The U.S. Government's announcement that it would transition out of its unique legacy role in ICANN set off a powder keg at ICANN, as stakeholders from every corner of the community rushed to offer their recommendations on how to fill the impending contractual vacuum with something, new, better, and appropriately reflective of the multi-stakeholder model.

These are worthwhile efforts, but before we dig more deeply into the meaty challenge of identifying solutions, it may make sense for all of us to take a big step back and come to some sort of consensus about the problem we're trying to solve.

Listening to the outpouring of comments on the transition, it's pretty clear that we don't yet even have clear agreement about what it is we are transitioning. Are we simply focusing on the mechanical aspects of the IANA functions, or are we also considering the non-explicit "backstop" role that the U.S. Government has traditionally played in the ICANN process?

There may be more questions to answer, but minimally, a chartering group to define the challenge should be able to answer:

- What roles (explicit and implicit) does NTIA fill under the current arrangement?
- How else are those roles handled in the current ecosystem?
- What roles do accountability functions need to perform?

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- Who needs to be involved in defining the transition (including non-traditional ICANN participants)?
- What existing roles could be improved/strengthened through a transition process?
- What is included in the transition?
- What existing contracts/mechanisms in the ICANN space could be enhanced or expanded
- What scenarios should a transitioned framework minimally be designed to meet?

How we answer those questions will have a major effect on how we answer all the questions that follow. By not even asking them, we dramatically reduce our likelihood of arriving at an effective resolution.

At the outset of this meeting there was talk of "starting the process to define the process," which may sound comically bureaucratic, but actually may not be procedural enough.

Before we define the process to define the process we need to define the scope of the challenge that the process will be required to meet.

I'm happy to discuss if the committee has further questions.

Sincerely,

Jonathan Zuck
President

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Mr. CHEHADÉ. Chairman, may I?

Mr. MARINO. Please, go ahead, sir.

Mr. CHEHADÉ. I just was reminded to share with you that every change to our bylaws, every proposed change to our bylaws is publicly posted and everyone is welcome to comment on it, and I hope including Congress. We do not make these changes before they are publicly posted and shared with everyone and we receive input from all stakeholders. I want to assure you of that.

Mr. MARINO. I am going to throw one more question out there, two questions actually, and anyone of you please respond it to if you want to. What is the single most important upside to this, and what is the single most detrimental down side to this?

Mr. ROSENZWEIG. I will swing first just because I am on the end. The most significant down side would be actually the technical one, which is that if somehow in the transition the current root zone management system were modified in a way that it did not function as effectively as it did now.

We are all extremely dependent upon that as a successful activity across the globe, and if it broke, that would be horrible. The upside is that the IANA function, the naming function is just one of a host of internet related issues that require some form of international coordination, spam, cybersecurity, yesterday we discovered the lack of international coordination on encryption stamps, et cetera, et cetera, et cetera. None of those have effective international—or none of those have standardized or completely effective international structures of governance.

Mr. MARINO. Sure.

Mr. ROSENZWEIG. If this works, if 5 years from now, 10 years from now we are all really confident in this multi-stakeholder model as a way of managing this little piece of the internet, then we may be building a structure that goes further, that is reproducible.

Mr. MARINO. Thank you. Anyone else?

Mr. CHEHADÉ. I have two boys that I taught to ride a bicycle, and at some point in their lives I have to take the training wheels off. The worse thing I could have done is that after I have watched them and taught them, as soon as they try to take their first ride, I put these training wheels back on.

I think we have been watching ICANN for 15 years, and the training wheels have been largely up, and we are fine. It doesn't mean we should walk away, just like I didn't from my boys when they took their first big ride. I watched them and I was near them, and if they got out of the way or did something dangerous, I stopped them, but this is the time to let go and show the world our trust.

So the answer to your question, if I could be direct, Chairman Marino, is this is the moment the world wants to watch us trust our own model. Let's not show them we don't trust it. Let's show them we are careful, we will put the safeguards, we will check on ICANN, please do, we need you to do that, but at the same time let's show our trust in the model we voted for unanimously. Please.

Mr. MARINO. All right. Thank you.

Gentleman, thank you.

Mr. Nadler.

Mr. NADLER. Before we adjourn, I would ask unanimous consent to insert two statements from the Wall Street Journal article and testimony of the executive director of Net Choice into the record.

Mr. MARINO. No objection. They are entered into the record.

[The information referred to follows:]

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OPINION

'Global' Internet Governance Invites Censorship

If the U.S. surrenders Web oversight, firm steps must be taken to protect free speech and commerce.

By JULIUS GENACHOWSKI And GORDON M. GOLDSTEIN

Updated April 3, 2014 10:43 p.m. ET

The Commerce Department announced last month that the U.S. government intends to transition its authority overseeing the Internet's Domain Name System, which is run through a nonprofit organization called Icann (the Internet Corporation for Assigned Names and Numbers), under a contract that expires in late 2015. This announcement comes at a time when global Internet freedom has never been more important or under greater threat.

Governments around the world are considering measures to squelch free speech or free enterprise on the Internet, including efforts to suppress Twitter, YouTube and Facebook, and restrictions on cloud computing and other Internet data services. Multilateral organizations have already taken disturbing steps. At the 2013 International Telecommunication Union treaty conference in Dubai, a majority of countries joined Russia, Iran and China in supporting a measure calling on the ITU, a United Nations agency, to play an enlarged role in "international Internet governance."

The ITU has historically had authority over certain international telephone rates and global spectrum allocations. At its next conference in South Korea in October, the ITU's 193 member states will likely consider extending the agency's authority to the Internet.

The U.S. can influence this and other multilateral gatherings, working to convince countries on the fence that a free and open Internet promotes economic growth globally and within countries that embrace it. Toward this end, changes in the U.S. relationship with Icann should be designed to preserve the unrestricted flow of information and data over the Internet.

This means, first of all, that any entity that might replace the U.S. oversight role cannot be a government entity. Instead, it must be a multistakeholder body rooted in the private sector and civil society, preserving the decentralized, nongovernmental approach that has "governed" the Internet from its inception. Otherwise, no deal.

The Commerce Department made such conditions implicit when it announced its intention to eventually transfer its current oversight role with Icann. We believe these conditions should become explicit and nonnegotiable. First, the U.S. should not yield any authority to another government, group of governments or intergovernmental body, including the United Nations or a U.N. agency such as the ITU. Second, any transfer must be to an entity that is protected from governmental interference and includes

both private sector and civil society organizations that depend upon the Internet remaining free of international actions that could impede innovation.

Third, any transfer must guarantee the reliability, stability and resilience of the Internet, complying with official U.S. policy since the Bush administration. Finally, any transfer of authority over Icann must be subjected to "stress tests," hypothetical scenarios designed to expose potential vulnerabilities of any new oversight mechanism.

America's relationship with Icann has been used as an argument to grant governing authority to a United Nations agency like the ITU or to otherwise Balkanize the Internet through increased restrictions by individual countries. Not coincidently, the argument has spread since the Arab Spring demonstrated that widely available Internet connectivity threatens nondemocratic governments. More recently, and without irony, some governments have cited the Snowden matter to advance international governmental involvement, despite the fact that American oversight of Icann is wholly unrelated to NSA matters.

Bowing to these arguments would be a mistake. The Internet is the infrastructure of the modern global economy, and the free flow of data is essential to any country seeking economic growth. Global Internet consumption and expenditure now exceeds that of the agriculture and energy sectors. The Internet spurred 21% of GDP growth during the past five years in the world's 13 leading developed nations, according to a 2011 study by the McKinsey Global Institute.

Moreover, the Internet is a boon to small businesses and job creation. The Web helps new businesses start and young businesses expand, enabling them to sell more products and services across all industries. The lower infrastructure costs of the mobile Internet has brought innovation to countries that had given up on building a well-functioning communications system. And while it's caused disruption in some sectors, McKinsey also found that for every job eliminated, the Internet created more than 2.5 new jobs.

The Internet is also driving innovation in health care and education world-wide, saving lives and creating economic opportunity for millions. Innovators in Africa have led the way on mobile health initiatives, such as texting services that send health reminders and tips to pregnant women and young mothers. Innovators in Asia are using the Internet and technology to expand literacy and basic skills. South Korea, for example, has pledged to replace all paper textbooks with digital learning by 2015.

A censored Internet will choke these opportunities. A flourishing and free Internet, on the other hand, will expand them. A January Boston Consulting Group study of 65 countries found that reducing limitations on online activity, through enhanced broadband connectivity and access, can increase a country's GDP by as much as 2.5%. A fragmented global network encumbered by international regulatory restrictions will only limit this potential for growth.

The good news is there's broad, bipartisan support for resisting measures to restrict Internet freedom. In 2012, both houses of Congress unanimously passed resolutions affirming that the policy of the U.S. is "to promote a global Internet free from governmental control." The Icann oversight transition presents a major opportunity to build on that consensus—to preserve and further Internet freedom world-wide.

Mr. Genachowski, former chairman of the Federal Communications Commission, is managing director at The Carlyle Group. Mr. Goldstein, who served on the U.S. Delegation to the World Conference on International Telecommunications, is managing director at Silver Lake.

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Statement of

Steve DelBianco,
Executive Director

NetChoice

Testimony before the

House Judiciary Committee,

Subcommittee on Courts, Intellectual Property, and the Internet
April 10, 2014

Should the Department of Commerce Relinquish Direct Oversight over ICANN?

I serve as Executive Director of NetChoice, an association of leading online and e-commerce businesses.[1] At the state, federal, and international levels, NetChoice works to promote the integrity and availability of the Internet. We participated in the past 26 ICANN meetings, and I've been elected four times as policy chair for ICANN's Business Constituency. I've attended seven Internet Governance Forum (IGF) meetings and testified in five Congressional hearings on ICANN and Internet governance.

NetChoice members are deeply invested in the topic of today's hearing because the Internet enables direct online revenue of $200 billion in the U.S. and $1.5 trillion globally.[2] Our businesses need a secure Internet address system that's resilient to cyber attacks and interruptions. We need addressing and routing that works the same around the globe – free from discriminatory regulation and taxation across national boundaries. And we need Internet policies that are predictable and enforceable, allowing innovation while protecting consumers.

My statement will focus on three points relevant to this committee:

1. Over 16 years and through three administrations, the U.S. government has protected the ICANN multistakeholder model from government encroachment and helped the organization mature towards independence. However, it is not sustainable for the U.S. to retain its unique role forever, and the current political situation requires that discussions now begin for how to complete the transition.
2. NTIA's principles and requirements for this transition are appropriate to design new mechanisms to oversee Internet addressing functions, to hold ICANN accountable, and to prevent government capture *after* the transition is complete. In addition, we should ask how a new accountability mechanism would respond to potential stress tests.
3. Congress is right to ask questions about the transition. Rather than denying the situation, Congress should channel its energy to help the Internet community design a new accountability mechanism for ICANN, potentially one with independent and external safeguards against potential stress scenarios.

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[1] See http://www.NetChoice.org. This statement reflects the view of NetChoice and does not necessarily represent the views of any individual member company.

[2] The Internet Economy 25 Years After .com, Robert Atkinson, ITIF, March 2010, at http://www.itif.org/publications/internet-economy-25-years-after-com

1. United States Government Stewardship of ICANN and IANA

America invented the core Internet technologies and promptly gave them to the world. Internet hosts were appearing internationally by the 1980s. The 1990's saw the explosion of commercial uses of the Internet, based on a naming and numbering system also created in the United States. In 1998, the Clinton administration privatized and internationalized the Domain Name System (DNS) with this directive in the *White Paper*:

> "The President directed the Secretary of Commerce to privatize the Domain Name System in a way that increases competition and facilitates international participation in its management."
>
> "The U.S. Government is committed to a transition that will allow the private sector to take leadership for DNS management."[3]

In the sixteen years since, it's been a long road from American invention to internationalized private-sector leadership by an entity the U.S. established for the task: the Internet Corporation for Assigned Names and Numbers (ICANN). Three administrations and several Congresses have worked to help ICANN mature and protect the vision of private-sector leadership from growing pressure for control by governments.

Many governments around the world saw the growth of the Internet and assumed that its governance required an inter-governmental solution. In 2005, the United Nations (UN) held a World Summit on the Information Society to discuss the issue. This UN activity prompted the House of Representatives to respond in November 2005, unanimously approving H.Con.Res.268 to express the sense of Congress:

> (1) the United States and other responsible governments send clear signals to the marketplace that the current structure of oversight and management of the Internet's domain name and addressing service works, and will continue to deliver tangible benefits to Internet users worldwide in the future; and
>
> (2) the authoritative root zone server should remain physically located in the United States and the Secretary of Commerce should maintain oversight of ICANN (the Internet Corporation for Assigned Names and Numbers) so that ICANN can continue to manage the day-to-day operation of the Internet's domain and addressing system, remain responsive to Internet stakeholders worldwide, and otherwise fulfill its core technical mission.[4]

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[3] The "White Paper" on Management of Internet Names and Addresses, U.S. Department of Commerce, Jun-1998, see http://www.ntia.doc.gov/ntiahome/domainname/6_5_98dns.htm

[4] H.Con.Res.268, Nov 17, 2005, http://beta.congress.gov/bill/109th-congress/house-concurrent-resolution/268/text?q=%7B%22search%22%3A%5B%22hcres268%22%5D%7D

At the same time, the Bush administration responded with its *Principles on the Internet's Domain Name and Addressing System:*

> The United States Government intends to preserve the security and stability of the Internet's Domain Name and Addressing System (DNS). Given the Internet's importance to the world's economy, it is essential that the underlying DNS of the Internet remain stable and secure. As such, the United States is committed to taking no action that would have the potential to adversely impact the effective and efficient operation of the DNS and will therefore maintain its historic role in authorizing changes or modifications to the authoritative root zone file."[5]

The transition was expected to take a few years, but by 2009 NTIA had made several extensions, the latest through a Joint Project Agreement that expired in September 2009. At the time, NetChoice was among those calling for another extension so that ICANN could develop permanent accountability mechanisms.

Instead, NTIA and ICANN unveiled a new agreement in September 2009, the *Affirmation of Commitments.*[6] The *Affirmation* established periodic reviews giving all stakeholders – including governments – a defined oversight role in assessing ICANN's performance. This was a welcome mat for governments wary of ICANN's unique multistakeholder process, and even those who resented the legacy oversight role of the U.S. government. The *Affirmation* also gave the global Internet community what it wanted: independence for ICANN in a framework bringing governments alongside private sector stakeholders, with a sharpened focus on security and serving global internet users.

But concerns about the U.S. role in naming and numbering remained after the execution of the *Affirmation.* NTIA retained its role in oversight and contracting for the Internet Assigned Numbers Authority (IANA). The IANA contract is deemed essential to ICANN and therefore provided NTIA leverage to hold ICANN to its *Affirmation* obligations.

However, ICANN can quit the *Affirmation* with just 120 days notice. And within a year of signing, ICANN's then-chairman told a group of European parliamentarians that he saw the *Affirmation* as a temporary arrangement ICANN would like to eventually terminate.[7]

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[5] U.S. Principles on the Internet's Domain Name and Addressing System, June 30, 2005, at http://www.ntia.doc.gov/other-publication/2005/us-principles-internets-domain-name-and-addressing-system

[6] Affirmation of Commitments, 2009, http://icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm

[7] Peter Dengate Thrush, in response to a question from Steve DelBianco, at event hosted by European Internet Foundation in Brussels, June 22, 2010.

All of this to say that ICANN needs a persistent and powerful reminder that it serves at the pleasure of global stakeholders; that ICANN has no permanent lock on managing the Internet's name and address system. We said at the time that ICANN's role in IANA functions should disappear if it were to walk away from the *Affirmation of Commitments*.

In 2005 the UN created the Internet Governance Forum (IGF). IGF meetings have become increasingly productive and substantive, yet some governments pressed the IGF to adopt resolutions and address more of the domain name issues managed by ICANN and IANA. In its July-2010 statement to the UN, China's government declared, "First, the future IGF should, in accordance with the provision of Tunis Agenda, focus on how to solve the issue of unilateral control of the Critical Internet Resources." By 'unilateral control', China means U.S. custody of the IANA contract. And 'the Critical Internet Resources' include IP addresses, root servers, and the policy-setting and management of domain names.

China was not alone in its desire for the migration of ICANN and IANA functions to the UN's International Telecommunication Union (ITU). ITU leadership did not like a model where governments share power with industry and civil society technologists, warning ICANN leaders that sooner or later governments would take greater control of the organization.

In 2011, a select group of governments convened to design their own replacement for U.S. oversight and ICANN's model of private sector leadership. India, Brazil, and South Africa (IBSA) declared it was time for "establishing a new global body" to:

i. be located within the UN system;
ii. be tasked to develop and establish international public policies with a view to ensuring coordination and coherence in cross-cutting Internet-related global issues;
iii. integrate and oversee the bodies responsible for technical and operational functioning of the Internet, including global standards setting;
iv. address developmental issues related to the internet;
v. undertake arbitration and dispute resolution, where necessary, and
vi. be responsible for crisis management. [8]

Against this geo-political backdrop in 2011, NTIA began the process to award the next iteration of the IANA contract. First, NTIA opened two rounds of public comment from global

[8] Recommendations of IBSA Multistakeholder meeting on Global Internet Governance, September 2011, at http://www.culturalivre.org.br/artigos/IBSA_recommendations_Internet_Governance.pdf

stakeholders – not just from U.S. interests – on how to improve IANA functions. ICANN's CEO submitted a comment that revealed the organizations' eagerness to end any remaining U.S. oversight, declaring that the United States "relinquished its oversight role" when it signed the *Affirmation*.[9]

But NTIA didn't see it that way, and took the bold step of cancelling the IANA solicitation because ICANN's bid wasn't responsive to increased technical requirements. Here's how NTIA Administrator Strickling described it in July 2012:

> Last year, in anticipation of the expiration of the IANA functions contract, NTIA undertook two consultations of stakeholders, both domestic and international, on how to best enhance the performance of the functions. Based on input received from stakeholders around the world, we added new requirements, such as the need for a robust conflict of interest policy, to exercise heightened respect for local country laws and to increase transparency and accountability.
>
> This spring, we took the unprecedented action of cancelling the initial request for proposals (RFP) because we received no proposals that met the requirements requested by the global community. We then reissued the RFP, and at the end of June we awarded the contract to ICANN, whose submission in response to the reissued RFP did adequately meet the new requirements.[10]

Also in 2012, both houses of Congress unanimously affirmed "the consistent and unequivocal policy of the United States to promote a global Internet free from government control and preserve and advance the successful multistakeholder model that governs the Internet today."[11]

To emphasize the point, Chairman Walden's H.R.1580 reported from this committee and passed the House 413-0 in May 2013, declaring: "It is the policy of the United States to preserve and advance the successful multistakeholder model that governs the Internet."[12]

Clearly, the last 16 years of "transition" have seen significant improvements in globalizing ICANN and IANA, although there have certainly been some challenges. Along the way, some governments and intergovernmental organizations have criticized the U.S. role and openly coveted taking over that role. But throughout, the U.S. Congress and multiple

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[9] p.3 of ICANN response, March 25, 2011, at http://www.ntia.doc.gov/files/ntia/comments/110207099-1099-01/attachments/ACF2EF.pdf

[10] http://www.ntia.doc.gov/speechtestimony/2012/remarks-assistant-secretary-strickling-internet-governance-forum-usa

[11] H.Con.Res.127 and S.Con.Res.50 - Expressing the sense of Congress regarding actions to preserve and advance the multistakeholder governance model under which the Internet has thrived, Aug 20, 2012

[12] H.R.1580 - To affirm the policy of the United States regarding Internet governance, May 14, 2013

administrations have stayed with the vision of multistakeholder, private-sector leadership for Internet addressing and policymaking. And our government has used its contractual tools to improve ICANN's performance and to hold the organization to the only accountability mechanism it has—the *Affirmation of Commitments*.

Still, the U.S. has continued to work towards full privatization of ICANN and IANA, at a deliberate pace and with measurable progress. Then came 2013 and Edward Snowden's revelations of U.S. government surveillance. While not at all related to the Domain Name System or to Internet addressing, the Snowden situation was conflated with U.S. oversight of ICANN and IANA, and gave a big boost to demands for globalization of these institutions.

2. NTIA's Announced Transition for IANA functions and ICANN Accountability

Last month the Commerce Department announced that it would begin a process to relinquish control of its contractual authority over the IANA contract. The positive global response was immediate and vocal, signaling that this move, at this time, could relieve the intense pressure from foreign governments demanding an end to the U.S. role in Internet oversight.

In its announcement, NTIA asked ICANN to develop a transition plan to move control of the DNS into the hands of "the global multistakeholder community" and stated principles for any new mechanism that would replace its role in overseeing Internet addressing functions and holding ICANN accountable:

> NTIA has communicated to ICANN that the transition proposal must have broad community support and address the following four principles:
>
> - Support and enhance the multistakeholder model;
> - Maintain the security, stability, and resiliency of the Internet DNS;
> - Meet the needs and expectation of the global customers and partners of the IANA services; and,
> - Maintain the openness of the Internet.

To these four principles, NTIA added a clear statement that it would not give up IANA control if the plan developed by ICANN would place other governments in the legacy role of the United States:

> Consistent with the clear policy expressed in bipartisan resolutions of the U.S. Senate and House of Representatives (S.Con.Res.50 and H.Con.Res.127), which affirmed the United States support for the multistakeholder model of Internet governance, NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution.[13]

With the experience of the last 16 years, it's appropriate for NTIA to impose this condition. And it will be important for the transition plan to prevent any government-led organization from replacing the former U.S. role *after* the transition is complete. Moreover, how would the transition proposal oversight respond to a range of potential stresses and scenarios it might confront one day?

Below we suggest the use of scenario planning, or stress tests, to help design and assess new accountability mechanisms proposed to replace NTIA's role. If new mechanisms can't answer the potential challenges, NTIA can extend the IANA contract to give the community more time to add stronger accountability mechanisms and protections for the multistakeholder model.

Scenario Planning/Stress Tests

Software designers need more than high-level principles to develop an application. Programming requires anticipating scenarios where users don't follow the expected routine. For non-programmers, here's an analogy: It's a good *principle* to practice safe driving in winter weather. It's a *scenario* to prepare for and respond to a specific situation, such as having your car spin sideways on a snow-covered road.

Knowing the array of possible scenarios helps us design appropriate responses, regardless of whether those scenarios ever actually occur. Today, ICANN is an effective organization that generally performs its core functions, so it can be uncomfortable to imagine a scenario where a future ICANN fails dramatically or is confronted with a serious threat. But we should consider challenging scenarios and develop mechanisms that could resolve those challenges in a way that's at least as effective as the mechanism we have today — where the

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[13] Press Release, "NTIA Announces Intent to Transition Key Internet Domain Name Functions", March 14, 2014, at http://www.ntia.doc.gov/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions

U.S. government and technical communities ensure a stable root and where the threat of losing the IANA contract keeps ICANN accountable to its global stakeholders and the public interest.

I suggest several scenarios/stress tests that could help assess performance and accountability if ICANN were to assume the IANA contract:

1. Scenario: ICANN cancels the *Affirmation of Commitments*, which it may do with just 120 days notice. And if not outright cancellation, ICANN could fail to implement recommendations of an *Affirmation* review. Presently, the discipline imposed by needing to win the IANA contract forces ICANN to adhere to the only external accountability it has today: the *Affirmation of Commitments*. If the *Affirmation* is to remain part of the new ICANN accountability framework, it's essential that the leverage formerly conveyed by the IANA contract be replaced with a new mechanism, which may or may not include parties external to ICANN.
2. Scenario: ICANN takes steps to eliminate its legal presence in a nation where Internet users and domain registrants are seeking legal remedies for ICANN's failure to enforce contracts. This scenario is not about ICANN opening new offices around the world as part of its global outreach. Rather, it's about ICANN creating a new legal entity distinct from its present status as a California non-profit corporation, and eventually relocating its legal presence. ICANN's current corporate presence in California creates legal certainty for U.S. businesses; presence in a new jurisdiction might not.
3. Scenario: ICANN becomes financially insolvent, due to lawsuits or gross mismanagement. However unlikely, this scenario should explore the orderly continuation of IANA functions in the event ICANN could not maintain the necessary qualified technical resources.
4. Scenario: ICANN expands scope beyond its limited technical mission by granting subsidies to promote Internet penetration or online participation in developing nations. ICANN has the power to determine fees charged to TLD applicants, registry operators, registrars, and registrants, so it presents a big target for any Internet-related cause seeking funding sources. However worthy the cause, this scenario should examine how a fully independent ICANN could be held to its limited technical mission, and whether its fees and spending are subject to external accountability.
5. Scenario: ICANN attempts to add a new top-level domain over security and stability concerns expressed by technical community leaders. This scenario actually came close to

occurring when ICANN management did not respond to recommendations of its own Security and Stability Advisory Committee (SSAC) regarding risks of new TLDs interacting with security certificates and internal domains already in use. SSAC recommendations from prior years were not acted upon until late 2013, after significant pressure from a root server operator, Internet service providers, and system integrators. In this instance ICANN responded with a collision mitigation plan. This scenario should assess how the new accountability mechanism could respond to similar technical risks expressed before a TLD delegation, as well as reactive responses to problems reported after a delegation.

6. Scenario: Governments in ICANN's Government Advisory Committee (GAC) amend their operating procedures to change from consensus decisions to majority voting. Today GAC adopts formal advice according to its Operating Principle 47: "consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection."[14] But the GAC may amend its procedures to use majority voting, where each government has equal voting power, such as in the UN and ITU. (Notably, only 61 governments were present at the GAC meeting in Singapore last month). While ICANN's board is not strictly obligated to follow GAC advice, this scenario should assess how ICANN could respond to advice with strong majority backing.

7. Scenario: Picking up on scenario 6, a majority of governments in the GAC might advise ICANN to suspend a TLD that refuses to remove domains with content critical of governments (e.g., .corrupt). Today, this kind of censorship routinely occurs at the edge of the Internet when governments block domestic access to websites, such as Turkey now blocking Twitter. But this scenario envisions censorship moving from the edge *to the core of the internet* – the root table of TLDs used by the entire world. It's a critical stress test to examine how the new IANA mechanism could respond if a future ICANN board bowed to GAC advice for censorship at the root of the Internet.

8. Scenario: A new government instructs ICANN to redirect a country code TLD already in the DNS root. For example, if Russia were to annex the rest of Ukraine, it might request Ukraine's **.ua** country code TLD to be redirected to a Russia-based server. This scenario helps to answer how ICANN could respond to this request and how it could be held accountable if the global community disagreed with its decision.

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[14] ICANN Government Advisory Committee (GAC) - Operating Principles, October, 2011, at https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles

9. Scenario: A country-code or generic TLD refuses to maintain accurate and verified contact information for websites (WHOIS). ICANN compliance is not effective, whether due to lack of contracts, inadequate compliance efforts, or to local privacy laws restricting disclosure of personal information of registrants. In this scenario, law enforcement authorities cite the lack of accurate and accessible WHOIS as impairing investigation and prosecution of consumer fraud originating with domain registrants in this TLD. How could the new IANA mechanism respond, and could their control of the root be used to suspend or re-delegate a top-level domain that is evading compliance?
10. Scenario: For political or technical reasons, updated security keys are not uploaded by all of the root zone server operators, resulting in failure of some Internet functions using DNS Security Extensions (DNSSEC). How – and how quickly – could the new IANA mechanism respond in order to restore cryptographical protection for the root table of top-level domains?

Although some of these scenarios are unlikely, many governments have expressed skepticism and dissatisfaction with the multistakeholder process and might pursue such courses of action through the GAC. Our scenarios should test whether the mechanism we develop could respond to protect the multistakeholder model from those who would usurp it.

One can argue that today's IANA contract includes nothing that explicitly responds to the scenarios listed above. But as noted earlier, the influence of the IANA contract award extends beyond its functional assignments and helps to keep ICANN accountable. Moreover, the performance of NTIA in its IANA oversight demonstrates the U.S. government commitment to the principle of an open Internet. Consider the example of .xxx, an adult content TLD that was approved by ICANN in 2010. GAC advice revealed no consensus to either oppose or support the TLD, and the U.S. government position was against the .xxx contract. That led some observers to speculate that NTIA would block .xxx when exercising its IANA approval role, but NTIA respected the multistakeholder process and the principle of an open Internet.

It's fair to ask how this decision and delegation would turn out if NTIA were not part of the IANA process, and that's a stress test question that should be applied to any proposed replacement for NTIA oversight. If we establish appropriate scenarios and stress tests as part of the process to design new accountability mechanisms, we'll end up with something that will answer to the threats and challenges we're likely to face in the real world.

3. The Role for Congress in Planning this Transition

Members of this committee and Congress in general are right to ask questions and raise concerns about this transition. As described earlier, Congress has supported NTIA in holding ICANN accountable and protecting ICANN from multi-governmental encroachment.

But rather than denying the situation, we recommend that Congress channel its energy to help the Internet community design a new accountability mechanism, including appropriate safeguards against potential scenarios and stresses.

As a member of the global community of stakeholders, Congress is welcome to participate directly in the transition planning process that began last month. If Congress can't participate directly, please consider other means of engagement.

We believe that the best role for Congress and the Commerce Department is to continue holding ICANN accountable to its *Affirmation of Commitments*, ensure a secure and stable Internet addressing system, and protect the multistakeholder model from governmental takeover.

The *White Paper* vision for ICANN should be preserved: ICANN should be led by, and accountable to its multistakeholder communities, including the private sector, civil society, and technology experts – along with governments. These stakeholders have built the Internet into the transformative platform that it is today. And these stakeholders will create the innovations and make the investments to bring connectivity, content, and commerce to the next billion global Internet users and to the next generation of Americans.

Mr. MARINO. Gentleman, thank you so very much. I thank you on behalf of the entire Committee, Mr. Nadler, and myself. It has been an extraordinary exchange. This is quite a task ahead of us. It could be a game changer for the positive.

So, with that, this concludes today's hearing. Thanks to all of you, our witnesses for attending. I want to thank the Members out at the gallery for being here and listening to this. Many people ask me what I do on intellectual property, and as soon as I start talking about copyrights and trademarks and hardware and software, they just—they glaze over, but we are sitting here because we find it extraordinarily interesting.

So, without objection, all Members will have 5 legislative days to submit additional written questions for the witnesses or additional materials for the record that you may want to submit.

This hearing is adjourned, and thank you, and everybody have a good break.

[Whereupon, at 1 p.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

April 9, 2014

The Honorable Rep. Howard Coble
Chairman
Judiciary Committee
Subcommittee on Courts, Intellectual Property, and the Internet
U.S. House of Representatives

The Honorable Rep. Tom Marino
Vice-Chairman
Judiciary Committee
Subcommittee on Courts, Intellectual Property, and the Internet
U.S. House of Representatives

Dear Chairman Coble and Vice-Chairman Marino:

The undersigned human rights and free expression organizations, like the members of this Subcommittee, are dedicated to ensuring that the Internet remains a free and open global platform, which fosters the free flow of information, for the exercise of everyone's rights. With that common goal in mind, ahead of the April 9 hearing "Should The Department Of Commerce Relinquish Direct Oversight Over Icann?", we write to express our support for the Department of Commerce's National Telecommunications and Information Administration (NTIA) announcement of its intent to transition key Internet domain name functions to the global multistakeholder community and our concerns regarding the DOTCOM Act (4342). Throughout this transition the Internet must continue to be an open platform for the free exercise of human rights online, and we believe the NTIA's announcement could help thwart government overreach in Internet governance, which would have devastating implications for human rights worldwide.

NTIA's "historic stewardship" of the DNS (Internet domain name system), while largely hands off, has drawn criticism and growing opposition from the international community for the simple fact that a single government performs an oversight role for what is clearly a global resource. This perceived imbalance has played into the hands of governments seeking to undermine the open, decentralized, participatory, bottom up, multistakeholder model of Internet governance and impose new governmental or intergovernmental controls that could threaten the security, stability, resilience, and freedom of the global Internet.

Therefore, we welcome NTIA's announcement that it intends to transfer the Internet Assigned Numbers Authority (IANA) functions to the global multistakeholder community and support the guiding criteria that NTIA articulated for that transition: a community generated proposal that supports and enhances the open, decentralized, bottom-up, multistakeholder model; maintains the security, stability, and resiliency of the Internet's domain name system; and maintains the openness of the Internet.

of Internet governance, and facilitate the exercise of human rights online. A transition on those terms would be fully consistent with prior bipartisan, unanimous statements of policy by the Congress (H. CON. RES. 127/S. CON. RES. 50) seeking to "preserve and advance the multistakeholder governance model under which the Internet has thrived." In taking this proactive step, and implementing a transition that has been a stated intention of the Commerce Department since the late '90s, the NTIA is leading the process and would be able to reject any proposal that does not meet its standards or serve the interests of a free, open, and secure Internet.

Forestalling the transfer of the IANA functions to the global multistakeholder community, as proposed by the DOTCOM Act, in contrast, could further empower critics who favor a governmental or intergovernmental model of Internet governance, whether implemented through the United Nations' International Telecommunication Union (ITU) or some other government-dominated, non-multistakeholder body.

Our organizations will watch closely and engage deeply in the transition process to ensure that human rights are respected by any future Internet governance arrangement and that the transition meets the internationally recognized standards of inclusiveness, transparency, and accountability. In the meantime, we welcome this Subcommittee's interest in this important and complex issue, and look forward to working with its Members to ensure that the future of Internet governance fosters rather than undermines the security, stability, resilience, and freedom of the global Internet.

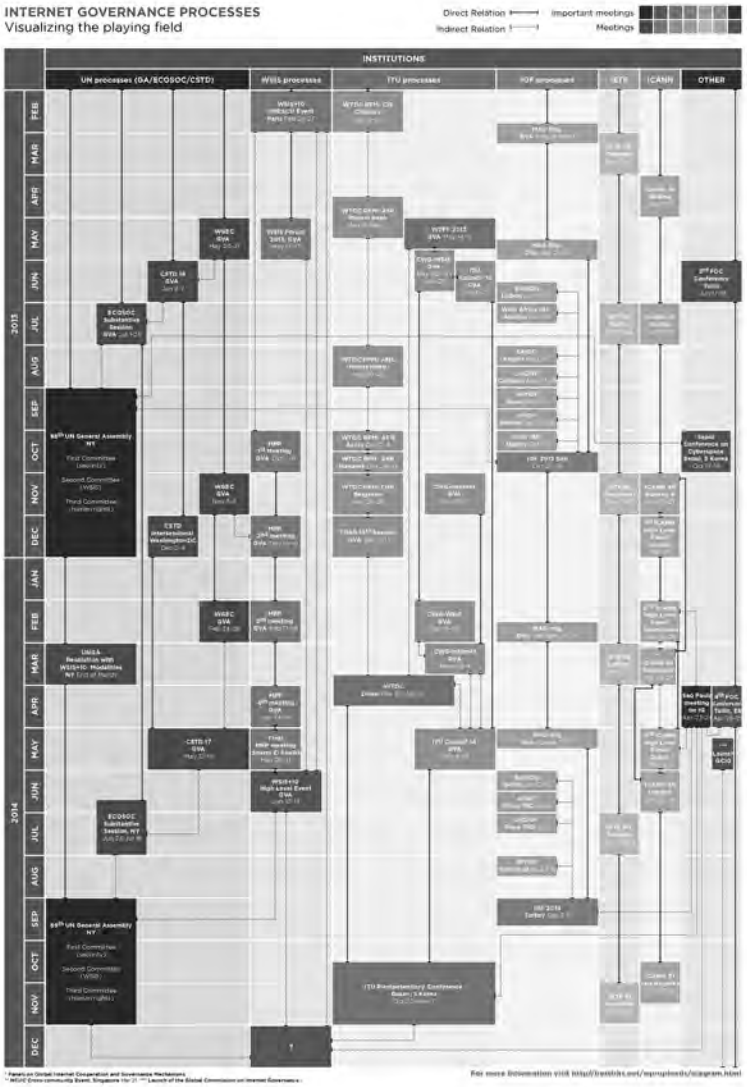
Sincerely,

Access
Center for Democracy & Technology
Freedom House
Human Rights Watch
The Open Technology Institute at New America Foundation
Public Knowledge

Attached documents:
Internet Governance Processes - Visualising The Playing Field. Also available at https://s3.amazonaws.com/access.3cdn.net/675fc04913828400 0e_gfm6ivdr2.pdf

ATTACHMENT

INTERNET GOVERNANCE PROCESSES
Visualizing the playing field
Already a pressing global issue, internet governance is growing in importance in international debates. A visual timeline was developed in an effort to better focus governance debates taking place across a range of fora. Civil society advocacy efforts by understanding where main discussions about global internet governance are taking place. This timeline aims to: 1) identify forums where internet governance is being discussed/decided over the next few years; and 2) identify avenues for participation for civil society to influence those processes.
The landscape is divided into several processes, including those taking under the United Nations General Assembly (UNGA), the International Telecommunication Union (ITU), the World Summit on the Information Society (WSIS) review, the Internet Governance Forum (IGF), and the processes related to the governance of Internet's technical resources. Main events related to these processes are then viewed around two parallel forums – the ITU Plenipotentiary in 2014 and the WSIS +10 review event in 2015, which were taken as framing references and provisional end points for the mapping.
NB: This is a work in progress. Additional processes and extension of the endpoint beyond 2014 is planned as the timeline gets developed, and more information becomes available.
This visual timeline on internet governance mapping was developed by Deborah Brown (Access), Lea Kaspar (Global Partners Digital) and Anja Virta (Center for Technology and Society of the Getulio Vargas Foundation).
UN processes
(GA/ECOSOC/CSTD)
World Summit on the Information Society
(WSIS) review process
International Telecommunication Union
(ITU)
Internet Governance Forum
(IGF)
Governance of Internet's technical resources
(ICANN, IETF, etc.)
Abbreviations:
CSTD: Commission on Science and Technology for Development
ECOSOC: Economic and Social Council
UNGA: United Nations General Assembly
WGEC: CSTD Working Group on Enhanced Cooperation
MPP: WSIS+10 Multistakeholder Preparatory Platform
Abbreviations:
CWG-Internet: Council Working Group on international Internet-related public policy issues
CWG-WSIS: Council Working Group WSIS: Implementation of Outcomes
TDAG: Telecommunication Development Advisory Group
WTDC: World Telecommunication Development Conference
WTDC RPMs: WTDC Regional Preparatory Meetings
WTPF: World Telecommunication/ICT Policy Forum
MAG: Multistakeholder Advisory Group
Regional IGFs:
AfIGF: African IGF
Arab IGF
APrIGF: Asia Pacific Regional IGF
EuroDig: European Dialogue on IGF
LACIGF: Latin America and the Caribbean IGF
SAIGF: Southern Africa Internet Governance Forum
West Africa IGF
Abbreviations:
ICANN: Internet Corporation for Assigned Names and Numbers
IETF: Internet Engineering Task Force


INTERNET GOVERNANCE PROCESSES
Visualizing the playing field
Direct Relation
Indirect Relation
Important meetings
Meetings
INSTITUTIONS
UN processes (GA/ECOSOC/CSTD)
WSIS processes
ITU processes
IGF processes
IETF
ICANN
OTHER
2015
2014
FEB
MAR
APR
MAY
JUN
JUL
AUG
SEP
OCT
NOV
DEC
JAN
For more information visit http://netlab.net/wgroupmeets/diagram.html

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INFORMATION AGE

Governments Grab for the Web

Authoritarians accept Obama's invitation to take Internet control

By L. GORDON CROVITZ

April 27, 2014 6:21 p.m. ET

The Obama administration still doesn't seem to understand the whirlwind it reaped with its decision to give up stewardship of the open Internet. The first Internet governance conference since that surprise March announcement was held last week. The State Department issued a statement before the conference urging everyone to avoid the issue: "We would discourage meeting participants from debating the reach or limitations of state sovereignty in Internet policy."

But deciding who gets to govern the Internet was precisely why many attendees from 80 countries came to last week's NetMundial conference in Brazil.

The host country's leftist president, Dilma Rousseff, opened the conference by declaring: "The participation of governments should occur with equality so that no country has more weight than others." The Russian representative objected to "the control of one government," calling for the United Nations to decide "international norms and other standards on Internet governance." Last week Vladimir Putin called the Internet a "CIA project" and said "we must purposefully fight for our interests."

Brazilian President Dilma Rousseff at the NetMundial conference on Internet governance in Sao Paulo, April 23. *Reuters*

Authoritarian regimes want to control the Internet to preserve their power. "National sovereignty should rule Internet policy and governance," the Chinese representative said. "Each government should build its own infrastructure, undertake its own governance and enforce its own laws." The Saudi Arabian delegate said: "International public policy in regard to the Internet is the right of governments and that public policy should be developed by all governments on an equal footing."

Even nominal supporters of the existing multi-stakeholder model embraced the end of Internet self-governance. The delegate from India declared a greater role for the world's governments "an imperative that can't be ignored." Neelie Kroes of the European Commission said: "The Internet is now a global resource demanding global governance."

Philip Corwin, a U.S. lawyer who represents Internet companies, noted that 27 of the first 30 speakers at NetMundial were from governments or U.N. agencies—at a "meeting supposedly conceived to strengthen the private-sector-led multi-stakeholder, consensus-based policy-making model."

The conference produced a "consensus" document that asserts: "The respective roles and responsibilities of stakeholders should be interpreted in a flexible manner with reference to the issue under discussion." Carl Bildt, Sweden's foreign minister, offered this translation: "Governments are more equal than other stakeholders when it comes to policy."

The Internet ran smoothly for 25 years because the U.S. ensured that the Internet Corporation for Assigned Names and Numbers, known as Icann, operated without government interference. Authoritarian regimes can censor the Internet in their own countries and jail their bloggers, but until now had no way to get control over the root zone filenames and addresses of the global Internet. Handing over control could allow them to undermine the open Internet globally, including Americans' access to U.S. websites.

Some open-Internet advocacy groups realize it is light-handed U.S. control that has allowed what political theorists would call the "ordered liberty" of Internet self-governance. "Part of the strength of the Internet over the last couple of decades has been that the technical aspects have not had direct political or government interference," Thomas Hughes of the human-rights group Article 19 told the BBC.

Michael Daniel, special assistant to President Obama, declared without apparent irony that "from the U.S. perspective, NetMundial was a huge success." But it's no accomplishment when countries that have long sought power over the Internet embrace the U.S. invitation for them to seize it.

The NetMundial conference was politicized from the start. It was held in Brazil as a favor to President Rousseff after she objected when news broke that the National Security Agency had listened in on her communications. But Sweden's Mr. Bildt pointed out at the conference that "the issue of surveillance in no way relates to the issues of the governance of the net." He added: "I'm stressing this point because sometimes the debate on surveillance is used as an argument to change the governance of the net."

Under bipartisan pressure in Washington, the Obama administration was forced to backtrack during congressional hearings earlier this month. Officials testified they won't necessarily stick to their original September 2015 date for giving up protection of the Internet. Officials said the issue could be pushed to 2019 and thus decided by the next president. Many in Congress want an up-or-down vote on ending U.S. control of the Internet, knowing lawmakers would reject the idea.

President Obama should revoke the plan to abandon the open Internet. The ugly spectacle of countries jockeying to control the Internet is a timely reminder of why the U.S. should never give them the chance.

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Testimony of Josh Bourne
President
Coalition Against Domain Name Abuse

Before the Subcommittee on Courts, Intellectual Property, and the Internet
Hearing entitled
"Should the Department of Commerce Relinquish Direct Oversight Over ICANN"

April 10, 2014

Chairman Goodlatte, Ranking Member Conyers, and members of the Subcommittee, thank you for this opportunity to testify on behalf of the Coalition Against Domain Name Abuse regarding the recent announcement by the National Telecommunications and Information Administration (NTIA) to transfer key Internet domain name functions to the global multistakeholder community.

The Coalition Against Domain Name Abuse (CADNA) represents major brand owners in the quest to educate the public about cybersquatting and the fight to reduce it. Through education, advocacy, and collaboration, CADNA seeks strong and effective public policy to deter online criminals and protect all Internet users.

CADNA has engaged members of Congress in its efforts to reduce instances of cybersquatting through advocacy for stronger deterrents and through requests for a hearing on the economic damage cybersquatting causes for American industry each year. In the past, CADNA has held events drawing attention to the harms of cybersquatting and launched an online public education campaign to raise public awareness.

With coming changes in U.S. authority over the Internet, CADNA believes the U.S. government must use the full extent of its powers to ensure that the Internet remains as safe as possible, where users can expect to reach the websites they intend to reach, and not be duped into buying counterfeit goods or downloading malware.

The Trademark Clearinghouse (TMCH), for example, was created to protect trademark owners in new generic Top-Level Domains (gTLDs). If a potential registrant attempts to register a domain name listed in the TMCH, the TMCH alerts the potential registrant. If the registrant proceeds to register the domain, the TMCH then notifies the trademark owner. Although the TMCH doesn't deter cybersquatting completely, it helps deter some instances of cybersquatting and it denies even the most persistent cybersquatters claims of ignorance about their infringements.

The U.S. always has put its faith in the multistakeholder model and has announced its intent to support that model in the future. That model is particularly significant in relation to the administration of the Internet Assigned Numbers Authority (IANA), which controls the Domain Name System. CADNA's brand affiliates and Internet users in general – indeed, all business and free speech online - are dependent upon the integrity of the Domain Name System.

Coalition Against Domain Name Abuse (CADNA)
1000 Potomac St NW | Suite 350
Washington, D.C. 20007

CADNA
The Coalition Against Domain Name Abuse

The following issues are of particular concern to CADNA:

- Participation in the multistakeholder model requires involvement in public meetings, stakeholder groups, conference calls, and emails. This takes both time and resources to travel the globe and engage in frequent and lengthy debates. With the Domain Name System under multistakeholder stewardship, how will Congress or the National Telecommunications and Information Administration (NTIA) ensure that the rights of business and Internet users are protected under the U.S. rule of law?

- Cybersquatting is the concern primarily of businesses and online consumers. Although it siphons billions of dollars away from the U.S. economy and into the hands of criminals every year, cybersquatting is frequently viewed as an ancillary issue. What can Congress or the NTIA do to ensure that issues of concern to a minority of the stakeholder community will be taken into consideration in governance of the Internet?

Thank you for your consideration of CADNA's views. I would be happy to answer any questions you may have.

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1000 Potomac St NW | Suite 350
Washington, D.C. 20007

The Internet Association

April 9, 2014

The Honorable Howard Coble
Chairman
Subcommittee on Courts, Intellectual Property, and the Internet
U.S. House Judiciary Committee
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Jerrold Nadler
Ranking Member
U.S. House Judiciary Committee
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Coble and Ranking Member Nadler:

On behalf of the Internet Association, I submit this letter concerning your April 10, 2014, hearing "Should the Department of Commerce Relinquish Direct Oversight Over ICANN?" The Internet Association represents the world's leading Internet companies and their global community of users. We are dedicated to advancing public policy solutions to strengthen and protect Internet freedom, foster innovation and economic growth, and empower users. We appreciate the opportunity to share our thoughts on the future of Internet Governance and why we support the recent announcement regarding the National Telecommunications and Information Administration's (NTIA) oversight authority over important technical Internet functions.

With global participation at nearly half the world's population, the Internet is a transformative platform for technological innovation, democratic discourse, and economic growth. The Internet affords basic human rights to its users. The Internet accounts for 21% of Gross Domestic Product growth in advanced economies and facilitates $8 trillion each year in e-commerce. In short, the Internet has revolutionized the way we work and live, drawing the world closer together and creating opportunities in places previously left behind.

The Internet is one of the greatest engines for economic growth, freedom, and prosperity the world has ever known thanks in large part to its multistakeholder governance model. As we shape what the Internet will become, one of our top priorities must be preserving this open, bottom-up system that ensures global citizens are able to access and take advantage of an ever-growing platform. Preserving a free Internet is essential to the preservation of political and economic liberty for global citizens. We do not believe inter-governmental bodies are the right way to govern the Internet. Instead, we should look for innovative solutions involving the breadth of the Internet community. A global Internet that is not constrained by geographic boundaries should not be governed solely through institutions defined by them.

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www.internetassociation.org

The Internet Association

The future of the Internet community, and businesses that operate within it, is dependent on the continuation of the Internet's security, stability, interoperability, and resiliency. For our companies to continue to innovate, to foster development and change, and ultimately to succeed as businesses globally, we need the continuation of the current bottom-up, multistakeholder model of Internet governance. However, as the Internet continues to evolve, so too must the models that govern it.

The United States has performed an important role as the overseer of the contract with the Internet Corporation for Assigned Names and Numbers (ICANN) to provide technical management of the Domain Name System. Equally important was the recognition when this agreement was first established that ultimately the Internet should be governed and held accountable not by governments but rather by public and private stakeholders. Therefore, since the creation of the model that governs the Internet today, it was always envisaged that this oversight role held by the United States would eventually transition to the private sector. The announcement by NTIA is simply the fulfillment of this vision.

The Internet Association supports the announcement by NTIA to fully transition oversight authority over a set of technical functions to the multistakeholder community, provided certain specified principles are met. Along with these principles came a clear statement from NTIA that contractual authority would not be transitioned if the proposed plan places governments or inter-governmental bodies in that role. To do so will mean that the entire community, working in conjunction with ICANN, will need to focus on improving existing accountability and transparency mechanisms to ensure the continued protection of these technical functions as well as the continued evolution of the multistakeholder model. Meeting these criteria is essential to ensuring the continued success of the global Internet.

The Internet community will be vigilant in pursuit of these principles, and we believe Congress should as well. We appreciate your interest in this issue, and the leadership you have shown in ensuring that the process that NTIA has started reaches a successful conclusion. As vital Internet stakeholders, we look forward to working with you to achieve that outcome.

Thank you again for your consideration of our concerns on this issue.

Sincerely,

Michael Beckerman
President and CEO
The Internet Association

Cc: Chairman Bob Goodlatte and Ranking Member John Conyers.

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