

Testimony of Carolina Rossini
Project Director, Internet Governance and Human Rights Program
at the Open Technology Institute at New America Foundation

Before the Subcommittee on Communications and Technology
Committee on Energy and Commerce
House of Representatives
Congress of the United States of America

April 2, 2014.

Chairman Walden and Ranking Member Eshoo, Members of the Subcommittee, sirs and madams. Thank you for the opportunity to present testimony today.

These are the views of Open Technology Institute¹ as well as Public Knowledge².

The Open Technology Institute, a New America Foundation initiative under which my program resides, formulates policy and regulatory reforms to support open architectures and open source innovations. OTI promotes affordable, universal, and ubiquitous communications networks through partnerships with communities, researchers, industry, and public interest groups and is committed to maximizing the potential of innovative open technologies by studying their social and economic impacts – particularly

¹ <http://oti.newamerica.net>

² <http://www.publicknowledge.org/>

for poor, rural, and other underserved constituencies. OTI provides non-partisan, in-depth, objective research, analysis, and findings for policy decision-makers and the general public.

Public Knowledge preserves the openness of the Internet and the public's access to knowledge; promotes creativity through balanced copyright; and upholds and protects the rights of consumers to use innovative technology lawfully. Public Knowledge works at the intersection of copyright, telecommunications, and Internet law, at a time when these fields are converging. PK's experience in all three areas puts it in an ideal position to advocate for policies that serve the public interest.

Although I speak only for OTI and PK, I am also a member of a broader, US-based coalition of public interest non-profits³ brought together to advocate for an internet governance system that preserves the open, free, generative and global internet. This coalition is guided by human rights principles and evolves based on processes that are democratic, inclusive, transparent and multistakeholder⁴. I am here today to argue that internet governance is not just a technical issue, but also a human rights issue, and to encourage

³ I would also notice that a broader international coalition has expressed its support. See BestBits statement "Civil society representatives welcome NTIA announcement on transition of key internet domain name functions" available at <http://bestbits.net/ntia-announcement/>. Accessed on March 30th, 2014.

⁴ A Multistakeholder Model is an organizational framework or structure which adopts the multistakeholder process of governance or policy making, which aims to bring together the primary stakeholders such as businesses, civil society, governments, research institutions and non-government organizations to cooperate and participate in the dialogue, decision making and implementation of solutions to common problems or goals. A stakeholder refers to an individual, group or organization that has a direct or indirect interest or stake in a particular organization; that is, a given action has the ability to influence the organization's actions, decisions and policies to achieve results. Available at http://icannwiki.com/index.php/Multistakeholder_Model. Accessed on March 30th, 2014.

the committee to view the recent events through the lens of promoting human rights and democracy around the world.

I would like to make three key points today.

First, I welcome the U.S. Department of Commerce's proposed transfer of oversight and nominal stewardship over critical resources - the modest functions⁵ of top-level numbering and name assignments to the global multi-stakeholder community - if the appropriate conditions are met, as a fulfillment of many years of U.S promises to the international internet community.

Second, I encourage you to view the administration of key internet functions through the lens of human rights and freedom of expression globally, and to connect the proposed transfer to the spread of democratic ideals around the globe.

Third, I believe that if the proposed transfer does not go through, the near-term geopolitical outcome will be a transfer of the functions anyway - but to a specialized agency of the United Nations subject to political control, instead of a technically strong multi-stakeholder community.

1 - The NTIA Transfer: America Keeping Its Promises

⁵ Zittrain, Jonathan. *No, Barack Obama Isn't Handing Control of the Internet Over to China*, Available at <http://www.newrepublic.com/article/117093/us-withdraws-icann-why-its-no-big-deal>. Accessed on March 30th, 2014.

I - and the broader public interest coalition of which I am a member - welcome the Commerce Department's National Telecommunications and Information Administration's (NTIA) 'intent to transition key Internet domain name functions to the global multi-stakeholder community,' 'if the appropriate conditions are met'.

From the inception of ICANN⁶, the U.S. Government and Internet stakeholders envisioned that the United States' stewardship role in the IANA⁷ functions would be temporary. The Commerce Department's June 10, 1998 "Statement of Policy" stated that the U.S. Government "is committed to a transition that will allow the private sector to take leadership for DNS⁸ management."⁹ The NTIA proposal is strongly supported by decades of bipartisan policy, and consistent with the 2012 bipartisan Congressional resolutions - both unanimously approved - (H. CON. RES. 12710/S. CON. RES. 5011) to, I quote,

⁶ The Internet Corporation for Assigned Names and Numbers (ICANN) coordinates the Internet Assigned Numbers Authority (IANA) functions, which are key technical services critical to the continued operations of the Internet's underlying address book, the Domain Name System (DNS)." More at: <http://www.icann.org/en/about>. Accessed on March 30th, 2014.

⁷ ICANN's IANA functions include: "(1) the coordination of the assignment of technical protocol parameters including the management of the address and routing parameter area (ARPA) top-level domain; (2) the administration of certain responsibilities associated with Internet DNS root zone management such as generic (gTLD) and country code (ccTLD) Top-Level Domains; (3) the allocation of Internet numbering resources; and (4) other services." More at: <http://www.icann.org/en/about>. Accessed on March 30th, 2014.

⁸ "The DNS (Domain Name System) is the system used to translate alphanumeric domain names into Internet Protocol numbers. Simply put, the DNS converts the names typed in the Web browser address bar into IP addresses." So instead of typing 207.151.159.3, you can type www.internic.net. More at: <http://icannwiki.com/index.php/DNS> and <http://www.icann.org/en/about/learning/glossary> . Accessed on March 30th, 2014.

⁹ "Department of Commerce: National Telecommunications and Information Administration: Management of Internet Names and Addresses." Federal Register 63:111 (June 10, 1998) p. 31741. Available at http://www.ntia.doc.gov/files/ntia/publications/6_5_98dns.pdf. Accessed on March 30th, 2014.

¹⁰ U.S. House. 112th Congress. "H.Con.Res.127, Expressing the Sense of Congress Regarding Actions to Preserve and Advance the Multistakeholder Governance Model Under Which the Internet Has Thrived." (Version 4; Version Date: 9/10/2012). *Lib. of Cong.* Available at: <http://thomas.loc.gov/cgi-bin/query/D?c112:4:./temp/~c112BPbJ6e>. Accessed on March 30, 2014.

¹¹ and U.S. Senate. 112th Congress. "S.Con.Res.50, A Concurrent Resolution Expressing the Sense of Congress Regarding Actions to Preserve and Advance the Multistakeholder Governance Model Under Which

“preserve and advance the multistakeholder governance model under which the Internet has thrived.” Those resolutions affirmed the United States’ commitment to “ promote a global Internet free from government control and preserve and advance the successful multi-stakeholder model that governs the Internet today.”

Those resolutions were an act of leadership by the U.S Congress in advance of an event very relevant to our discussion today: the World Conference on International Telecommunications (WCIT), a meeting of the UN agency, the International Telecommunications Union (ITU). At WCIT, countries favoring greater governmental control of the internet sought to expand the ITU’s treaty to include decision-making on internet issues – a scenario where intergovernmental control could have potentially disastrous consequences for the open internet and the exercise of human rights. It was in this context that Congress affirmed the bipartisan U.S. commitment to the multi-stakeholder model of internet governance, which NTIA’s recent proposal further strengthens.

The NTIA proposal is not just the fulfillment of a historical promise, but also reflects the reality of the digital interconnected networks we call the internet. Both day-to-day management and long-term development of the internet have always been conducted through “multi-stakeholder” processes, driven by technical standards organizations, governments, private corporations, and civil society groups as connected stakeholders. The internet isn’t a single network. It is a patchwork quilt of networks and fiber cables

the Internet Has Thrived.” (Version 4; Version Date: 12/5/2012). *Lib. of Cong.* Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:sc50>. Accessed on March 30, 2014.

around the world, connected by common protocols and languages that have been hammered out in conference calls, working groups, and small rooms with whiteboards. The internet itself is multi-stakeholder, and its governance should be reflective of that underlying reality.

The NTIA proposal is pragmatic and has multiple safeguards that will ensure a smooth transition. The Department of Commerce has clearly stated that it will not accept any arrangement that fails to meet the guidelines it has proposed, which include:

- Supporting and enhancing the multistakeholder model;
- Maintaining the security, stability, and resiliency of the Internet DNS;
- Meeting the needs and expectations of the global customers and partners of the IANA services; and,
- Maintaining the openness of the Internet.

The Department of Commerce has said it will explicitly reject any proposal that replaces the NTIA's role with a government-led solution or an inter-governmental organization.

As trustees for overseeing the development of the transition plan, ICANN should ensure the proposal enforces NTIA's four principles, employs international human rights frameworks and processes, and strengthens diverse, multi-stakeholder engagement.

ICANN should further welcome the mature Internet technical¹² organizations to the table, develop robust checks and balances, and lay the groundwork for a transition to a truly

¹² *Internet Technical Leaders Welcome IANA Globalization Progress. An statement by IETF, IAB, RIRs, ccTLD ROs, ICANN, ISOC, and W3C.* Available at <http://www.icann.org/en/news/announcements/announcement-2-14mar14-en.htm> Accessed on March 31, 2014.

multi-stakeholder governance by the September 2015 deadline. Draft proposals should be discussed in an open and transparent manner between now and September 2015, looking to the Internet Governance Forum as a good example of process upon which to build.

NTIA's historic role has been to facilitate a smooth transition of the IANA functions to the global multistakeholder community. NTIA's role was always meant to be temporary and transitional, with the goal of completing the transition by 2000¹³. NTIA's four principles (as specified above) for that transition have already received broad support¹⁴ from the national and international community of experts and stakeholders who are committed to preserving a free and open Internet.

2 - Human Rights And Internet Governance: The Impact of Transition To Multi-Stakeholder Governance

The Universal Declaration on Human Rights¹⁵ echoes many of the same rights enshrined in the American tradition, such as freedom of expression and association, the right to life, liberty, and security, and the rights to privacy and access to public services. These and

¹³ National Telecommunications and Information Agency. *IANA Functions and Related Root Zone Management Transition Questions and Answers*, March 18, 2014. Available at <http://www.ntia.doc.gov/other-publication/2014/iana-functions-and-related-root-zone-management-transition-questions-and-answ>. Accessed on March 31, 2014.

¹⁴ Endorsements of the IANA Globalization Process Consolidated by ICANN. Available at <http://www.icann.org/en/about/agreements/iana/globalization-endorsements-1615-28mar14-en.pdf> and The GovLab SCAN – Special Issue – Reactions to the NTIA Announcement on Globalizing IANA Functions <http://thegovlab.org/the-govlab-scan-special-issue-reactions-to-the-ntia-announcement-on-globalizing-iana-functions/>. Accessed on March 31, 2014.

¹⁵ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Available at: <http://www.refworld.org/docid/3ae6b3712c.html>. Accessed on March 31, 2014.

many other rights are impacted daily by the Internet, and by the rapid advance of software and hardware that brings the network into an incredible range of cultures and geographies.

On the surface, arcane, dry technical issues related to the assigning of internet addresses to domain names may seem a long way off from the human rights world. But they are ultimately intertwined.

The original creators of the internet and the web made choices to create an “open” system. In some cases those were political choices, as in Free Software, but in other cases, they were technical choices. Open systems are easier to run, especially when you’re relying on weak network connections, slow computers, and small memory capacities. But in the creation of an open internet, and an open world wide web¹⁶, those the creators also enabled a powerful vehicle of self-expression and innovation that is dependent, in turn, on that very open architecture. The same freedoms that allow US college students to start Facebook - the freedom to connect without permission, using only a technical standard package negotiated by multi-stakeholder means - allow for the organization of political assembly and speech.

Digital networks can be used either as an engine of freedom or as an engine of oppression--or even both at once. The freedoms of expression and assembly online are not “natural occurring” freedoms. They are encoded in the network by those who control the network. They can be changed. And that is precisely why the administration of

¹⁶ For a comprehensive timeline of the world wide web see W3C’s “A Little History of the World Wide Web”. Available at <http://www.w3.org/History.html>. Accessed on March 30th, 2014.

internet functions can put human rights at risk if not handled carefully. This is why autocratic rulers wish to have total control inside their own borders. This is why anti-democracy regimes fear an open internet. This is why one of the first actions taken in crisis is to block Twitter, YouTube, and other communications tools. But a truly transparent, democratically structured oversight process will make it far harder to “turn off the internet” when it is convenient to a ruler.

The proposed DOTCOM Act¹⁷, intended to protect human rights and the free and open internet against repressive government control, could have the opposite effect: by forestalling the transfer of the IANA functions to the global multistakeholder community, it 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.

The NTIA proposal recognizes this risk. It recognizes that the internet cannot be owned by a single country. Especially a country that wants to use the internet to restrict individual freedom. By declaring the internet a global space where all stakeholders contribute on an equal footing, the NTIA proposal restricts the ability of dictators and autocrats to claim it as a sovereign space and take away the human rights of their citizens.

¹⁷ The Office of Representative Todd Rokita, *Rokita and Colleagues Seek Review of Obama Plan to Relinquish U.S. Oversight of the Internet*, 27 March 2014. Available at: <http://rokita.house.gov/press-release/release-rokita-and-colleagues-seek-review-obama-plan-relinquish-us-oversight-internet>. Accessed on March 30, 2014.

The parameters set forth by the NTIA for an acceptable transition plan—inclusiveness, effectiveness, responsiveness to user needs, and openness—serve as essential safeguards for guaranteeing that the internet remains a free and unfettered tool for realizing human rights, especially freedom of expression, for the next generation. As trustees for overseeing the development of the transition plan, ICANN should ensure the proposal enforces these four principles, employs international human rights frameworks, and strengthens diverse and equal multi-stakeholder engagement.

3 - The Alternative To The NTIA Transfer: International Treaty Organizations

In taking this proactive step, NTIA has full control over the process and is in a strong position 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 function to the global multistakeholder community could actually further empower critics who favor an international, government-centric model of internet governance.

The NTIA proposal is thus an act of US leadership, both moral and political. It places the US as the world's leader in innovative approaches to internet geopolitics. At the same time, it comes with a note of caution, since nothing may happen if the appropriate conditions for the transition are not met. NTIA's "historic stewardship" over the IANA functions, 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 something that is clearly a global resource.

By failing to transfer these functions until now, the US government has allowed the perception of imbalance - of a preferential US position - to fester in the internet governance discussions. This perceived imbalance has played into the hands of governments who would seek to undermine the free and open nature of the internet.

This imbalance has led authoritarian governments with a history of human rights violations and anti-democracy tendencies to demand equal oversight authority over the Internet and stronger control within their own borders or in multilateral fora. We can assume that they do not seek this authority in order to protect the online civil rights of their citizens. In committing to transfer the IANA functions to the global multistakeholder community, the United States is not opening the door for an Internet takeover by Russia or China. NTIA's proposal includes smart safeguards against such a scenario, and weakens the arguments about supposed U.S. hegemony that these countries have used in the past to demand greater control. By contrary, a "status quo" approach to ICANN and the administration of IANA functions could have immediate chilling effects on free speech, free assembly, and the freedom of expression.

Speaking pragmatically, the truth is that the United States cannot afford to maintain this symbolic control indefinitely. A change is going to come. The question is what type of change, and in what form. Tensions have already boiled over, and in October 2013 all of the key technical organizations that run key internet functions, including ICANN, the Internet Engineering Task Force (IETF), the World Wide Web Consortium (W3C), and the Internet Architecture Board (IAB), came together to release a consensus statement calling

for “the globalization of ICANN and IANA functions, towards an environment in which all stakeholders, including all governments, participate on an equal footing.¹⁸”

The effect of a policy resistance of to the multi-stakeholder reality of internet governance could be catastrophic. Less democratic countries might welcome a status quo approach from the US for the time being, as it would only increase the pressure to concentrate internet governance decisions in multilateral treaty venues such as the ITU, in which those countries have more influence. As experts such as Syracuse University’s School of Information Studies professor Dr. Milton Mueller have noted, if the US does not transition these key technical functions, “it is only a matter of time before other governments succeed in bringing the coordination and management of the Internet under the control of intergovernmental treaty organizations.¹⁹”

Final remarks

I would submit that we have a fairly simple choice, because we cannot allow the status quo to drive authoritarian control over the internet inside national borders. The choice is that we can either work with the existing, proven, neutral institutions that we have, or we can put our faith in a sub-organization of the United Nations or a similar treaty organization subject to outside political control.

¹⁸ ICANN. *Montevideo Statement on the Future of Internet Cooperation*. October 7, 2013. Available at <https://www.icann.org/en/news/announcements/announcement-07oct13-en.htm>. Accessed on March 30th, 2014.

¹⁹ PRNewswire. *Plan to End US Control of ICANN Submitted to Brazil Meeting on the Future of Internet Governance*, Available at <http://www.prnewswire.com/news-releases/plan-to-end-us-control-of-icann-submitted-to-brazil-meeting-on-the-future-of-internet-governance-248351751.html> . Accessed on March 30th, 2014.

The moment has arrived to make that choice, and the Administration has elected to work with those existing neutral institutions.

We at OTI and at PK welcome the NTIA's plans as a move that would alleviate this pressure, free the US to focus on more important work related to the evolution of the Internet Governance ecosystem and deter overreach by foreign governments. The NTIA clearly requires the transition proposals include broad support, input from diverse stakeholders, technical resilience and security, and maintain the openness of the internet. These demands serve as essential safeguards for guaranteeing the internet remains a free and unfettered tool for realizing human rights, especially freedom of expression, for the next generation.

Our organizations will watch closely and engage deeply – including next month at the *NetMundial*²⁰ internet governance meeting in Brazil – in the transition process to ensure that human rights are respected by any future internet governance arrangement and that the transition meets rigorous 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

²⁰ "NETmundial is a Global Multistakeholder Meeting on the Future of Internet Governance. The meeting is organized in a partnership between the Brazilian Internet Steering Committee (CGI.br) and /1Net, a forum that gathers international entities of the various stakeholders involved with Internet governance. This meeting will focus on the elaboration of principles of Internet governance and the proposal for a roadmap for future development of this ecosystem. The goal is to consolidate proposals based on these two topics. NETmundial represents the beginning of a process for the construction of such policies in the global context, following a model of participatory plurality". More at: <http://netmundial.br/about/>. Accessed on March 30th, 2014.

that the future of internet governance fosters, rather than undermines, the security, stability, resilience, and freedom of the global internet.

We all should continue working to implement the position of the United States on Internet governance that clearly articulates the long-standing 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.

The recent ICANN meeting in Singapore²¹, the *NetMundial* and IGF 2014 are essential milestones in this process. Our organizations will watch closely and engage in the process being led by ICANN to ensure that human rights are respected by any and all future Internet governance arrangements and that the transition meets standards of inclusiveness, transparency, and accountability.

Thank you for your time and consideration.

²¹ 49th ICANN Meeting. Available at <http://singapore49.icann.org/en/> Accessed on March 30th, 2014.

Summary of the

Verbal Statement of Carolina Rossini

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The views I represent today are the views of Open Technology Institute, the technology program of the New America Foundation, as well as Public Knowledge, an organization that preserves the openness of the Internet and the public's access to knowledge. Three are the key points I will explore in my oral statement: first, we welcome the U.S.

Department of Commerce's proposed transfer of oversight and nominal stewardship of critical resources - the modest functions of top-level numbering and name assignments to the global multi-stakeholder community - as a fulfillment of many years of U.S. promises to the international community. Second, we encourage the Subcommittee to view the oversight and nominal stewardship of key internet functions through the lens

of human rights, freedom of expression, and the spread of democratic ideals around the globe. Third, we believe that if the proposed transfer of oversight and nominal stewardship does not go through, the geopolitical outcome will be a transfer of the functions to a specialized agency of the United Nations subject to political control, instead of a strong multi-stakeholder community. In this current international context, the DOTCOM Act, which seeks to block the transition in the name of human rights, would paradoxically empower nations that do not respect human rights and that are using the United States' historic role in the Internet's management as an argument for the United Nations to step into Internet governance. We share the DOTCOM Act sponsors' goal of a free and open Internet, but the bill may actually threaten that goal and play into the hands of those who want to use the Internet as an instrument of political control rather than preserve it as a global platform for free expression and free information and economic flow. The pragmatic truth is that the United States cannot afford to maintain this symbolic control indefinitely. A change is going to come. The question is what change, and in what form. We at OTI and PK welcome NTIA's plans and we 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 standards of inclusiveness, transparency, and accountability. In the meantime, we welcome this Subcommittee's interest in and oversight of this important and complex issue, and look forward to working with its Members to ensure that the future of internet governance fosters the security, stability, resilience, and freedom of the global internet. Thank you for your time and consideration.