May 11, 2015

TO: Members, Subcommittee on Communications & Technology

FROM: Committee Majority Staff

RE: Legislative Hearing on "Stakeholder Perspectives on the IANA Transition"

I.   INTRODUCTION

On Wednesday, May 13, 2015, at 2:00 p.m. in 2322 Rayburn House Office Building, the Subcommittee on Communications and Technology will hold a hearing entitled "Stakeholder Perspectives on the IANA Transition."

Following the announcement by National Telecommunications and Information Administration (NTIA) that it intended to transition the U.S. government's role in the Internet's numbering functions to the multistakeholder Internet community, significant questions arose as to whether and how such a transition could occur. More than one year into the development of a transition plan – and with the existing contract set to expire unless NTIA acts to extend – much good work has been done, but many questions remain.

II.   WITNESSES

- Steve DelBianco, Executive Director, NetChoice;

- Danielle Kehl, Senior Policy Analyst, New America's Open Technology Institute;

- Audrey Plonk, Director, Global Cybersecurity and Internet Governance Policy, Intel Corporation;

- Matthew Shears, Representative and Director, Global Internet Policy and Human Rights Project, Center for Democracy and Technology; and,

- Brett Schaefer, Senior Research Fellow in International Regulatory Affairs, The Heritage Foundation.

III.   BACKGROUND

The Internet is organized using Internet Protocol (IP) addresses: a series of numbers separated by dots that identify the computers on which resources are located. Because IP addresses are not intuitive, the Domain Name System (DNS) provides Internet users with an addressing system that uses words rather than numeric IP addresses. A series of computer databases "resolve," or translate, between IP addresses and domain names: strings of words

separated by dots. For example, to access the U.S. House of Representatives website, an Internet user would type in "www.house.gov." The suffix ".gov" is the generic Top-Level Domain (gTLD), and "house" is the second-level domain. The DNS "resolves" www.house.gov to the proper Internet Protocol address (143.228.181.132), telling the user's browser where to find the information requested.

The DNS is hierarchical, with the root domain at the top. The root domain contains all of the top-level domains of the Internet, including generic top-level domains (gTLDs), which include ".gov," ".com," ".org," and ".net," and country code top-level domains (ccTLDs), such as ".us," ".ca," and ".de." Within the root domain, the root zone file contains information about the domain name servers for each gTLD, and is used to ensure that requests made to the servers are directed to the correct destination. Management of the root zone is controlled and coordinated by the Internet Assigned Number Authority (IANA) with oversight and approval of any changes by the NTIA.

On March 14, 2014, NTIA announced its intention to transition the IANA functions to the global multistakeholder community at the end of the existing contract, in September 2015.[1] NTIA characterized the move as a step to "support and enhance the multistakeholder model," asking ICANN to convene global stakeholders to develop a transition proposal. NTIA asserted that the intent of the U.S. Government and other Internet architects was always to transition the role away from the U.S. Department of Commerce and that the growing global support for a multi-stakeholder model made this the appropriate time to do so.

Perhaps the most vital part of this process will be the criteria used to assess any potential transition proposal. NTIA, in their announcement of the transfer, asserted that any acceptable proposal would garner wide community support and satisfy the following principles:

- Support and enhance the multistakeholder model;
- Maintain the security, stability, and resiliency of the Internet DNS;
- Meet the needs and expectations of the global customers and partners of the IANA services; and
- Maintain the openness of the Internet.

NTIA has repeatedly stated that they will not accept any proposal that does not meet these criteria or that would replace its role with a government-led or inter-governmental organization solution.

The Subcommittee on Communications and Technology held a hearing on April 2, 2014, to discuss the NTIA announcement and efforts by the multistakeholder community to meet the terms set forth by NTIA. At the hearing, the Subcommittee heard from NTIA and ICANN, as well as a panel of stakeholder witnesses. The discussion with stakeholder witnesses generated significant discussion around ICANN accountability and the topic of "stress tests," – a series of

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[1] NTIA is prohibited from spending appropriated funds to relinquish its role in IANA during FY 2015. *See* "Consolidated and Further Continuing Appropriations Act, 2015", Sec. 540(a), P.L. 113-235 (Dec. 12, 2014).

tests designed to simulate a set of "plausible, but not necessarily probable, hypothetical scenarios" in an effort to determine the resiliency of ICANN under any proposed solution.

Additionally, on June 5, 2015, Chairman Fred Upton led a group of six Republican Members in asking the Government Accountability Office to examine specific aspects of any IANA transition, including the national security implications for the United States, how to retain and enforce the Affirmation of Commitments, and whether NTIA should require ICANN to meet any additional criteria before NTIA approves a transition.

ICANN's next scheduled meeting is in Buenos Aires, Argentina from June 21 to 26. NTIA has requested that both the IANA Stewardship Transition Coordination Group (ICG) and Cross Community Working Group (CCWG)-Accountability provide timelines for completion and implementation of the respective plans by the end of June. The existing contract for the IANA functions expires on September 30, 2015; however, the contract can be extended by NTIA to accommodate a complete development and implementation process beyond September 30.

IV.   TRANSITION PROPOSAL DEVELOPMENT

Following NTIA's announcement, ICANN convened the multistakeholder Internet community to begin work on developing a proposal that would meet NTIA's criteria for a successor to its historical role in IANA. On July 3, 2014, ICANN announced the formation of the ICG, and the group began work to develop proposals for addressing the domain name aspects of the transition,[2] the numbering resources aspects of the transition,[3] and the protocol aspects of the transition.[4] Under the terms of the ICG, the individual community groups within the ICG would hold meetings and generate proposals for the transition. Ultimately, these proposals will be combined by the ICG and presented to ICANN for review for compliance with NTIA's stated criteria and the input from the multistakeholder community.[5]

To date, two of the three communities have produced final draft proposals to the ICG,[6] only the proposal of the group addressing domain names (CWG-Stewardship) remains outstanding. CWG-Stewardship released its first draft proposal for public comment on December 1, 2014. However, the community determined that public comment on the draft "clearly indicated that the group needed to further develop the details of its proposal and provide the

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[2] This group is called the "CWG-Stewardship" and its work can be found at https://community.icann.org/x/37fhAg.
[3] This group is called the "Consolidated RIR IANA Stewardship Proposal Team" or "CRISP Team" and its work can be found at https://www.nro.net/crisp-team.
[4] This group is called the "IANAPLAN Working Group" and its work can be found at http://www.ietf.org/iana-transition.html.
[5] *See* https://www.icann.org/resources/pages/process-next-steps-2014-06-06-en.
[6] *See* "Response to the IANA Stewardship Transition Coordination Group Request for Proposals on the IANA from the Internet Number Community", *available at* https://www.nro.net/wp-content/uploads/ICG-RFP-Number-Resource-Proposal.pdf; "Draft Response to the Internet Coordination Group Request for Proposals on the IANA protocol parameters registries", *available at* http://tools.ietf.org/html/draft-ietf-ianaplan-icg-response-09.

community with a revised proposal."[7] CWG-Stewardship released a second draft proposal on April 22, 2015, seeking to address commenters "concern over what was viewed as an overly complex structure that lacked details and assurances on accountability."[8] Comments on the second draft proposal are due on May 20, 2015, with a staff report due to the ICG by June 1.

In addition to the work on the IANA functions transition, a second, parallel effort to improve ICANN's accountability is also ongoing. Discussion of the impact of the removal of the historic U.S. government role and the protections embodied in both the contract for IANA and the "Affirmation of Commitments" between ICANN and NTIA, led to concerns that the governance structure of ICANN lacked the procedures and protections necessary to ensure that ICANN remains free from capture by any one portion of the multistakeholder system or a government. To develop proposals to improve ICANN accountability, ICANN established the "Enhancing ICANN Accountability Cross Community Working Group" (CCWG-Accountability). Despite some concern among stakeholders, the work of the CCWG-Accountability has been split into two streams of work – one that will contain changes that must take place at the same time as the IANA transition and a second stream that will contain changes for a later date. On May 4, 2015, the CCWG-Accountability released its proposed framework to increase ICANN accountability, seeking comment from the multistakeholder community.[9] The changes proposed by the group include:

- Changes to the ICANN mission statement to preclude ICANN regulation of services or content that rely on DNS and to clarify that ICANN's powers are enumerated, precluding ICANN's exercise of any authority not specifically mentioned in the bylaws;
- Addition of the commitments between ICANN and NTIA detailed in the "Affirmation of Commitments" to ICANN governing documents;
- Creation of "Fundamental Bylaws" that would require three-fourths of the ICANN board to approve any changes, along with a mechanism for the multistakeholder community to reject the changes;
- Significant changes to the ICANN appeal processes – known as the "Independent Review Process" and "Requests for Reconsideration";
- Changes to empower the constituent communities within ICANN to reconsider and reject the ICANN budget and operating plans and changes to ICANN's "standard bylaws," the power to approve changes to the "fundamental bylaws" before they can take effect, and the power to remove some or all of the members of ICANN board.

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[7] "2nd Draft Proposal of the Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions" *available at* https://www.icann.org/public-comments/cwg-stewardship-draft-proposal-2015-04-22-en (April 22, 2015).
[8] *Id.*
[9] "Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) - Input Needed on its Proposed Accountability Enhancements (Work Stream 1)" *available at* https://www.icann.org/public-comments/ccwg-accountability-draft-proposal-2015-05-04-en (May 4, 2015).

Completion of this work has become an additional criterion for NTIA approval of any proposal for a successful transition.[10]

V.   H.R. 805, DOTCOM ACT OF 2015

On February 5, 2015, Representative John Shimkus, along with thirteen co-sponsors, released H.R. 805, the "DOTCOM Act of 2015."

Section 1. Short Title.

This section provides that the bill may be cited as the "Domain Openness Through Continued Oversight Matters Act of 2015" or the "DOTCOM Act of 2015."

Section 2. NTIA Retention of DNS Responsibilities Pending GAO Report.

Subsection (a) prohibits the Assistant Secretary of Commerce for Communications and Information from relinquishing or agreeing to a proposal that relinquishes the responsibilities of NTIA over the Internet DNS functions until the Comptroller General submits the report required by subsection (b) of the Act.

Subsection (b) requires a report from the Government Accountability Office on the role of NTIA with respect to the DNS, including discussion and analysis of the implications of relinquishing the role, NTIA's criteria for proposals, the proposals received by NTIA, the processes used by NTIA and other agencies for evaluating the proposals, and any national security concerns raised by the relinquishment of NTIA's role. In addition, the report must include a definition of the term "multistakeholder" and any other terms necessary to understanding the report.

VI.   STAFF CONTACTS

If you have any questions regarding this hearing, please contact David Redl of the Committee staff at (202) 225-2927.

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[10] *See e.g.* Remarks by Lawrence E. Strickling, Assistant Secretary of Commerce for Communications and Information at the State of the Net Conference, *available at* http://www.ntia.doc.gov/speechtestimony/2015/remarks-assistant-secretary-strickling-state-net-conference-1272015 (January 27, 2015).