U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE

July 6, 2015

TO: Members, Subcommittee on Communications and Technology

FROM: Committee Majority Staff

RE: Hearing on "Internet Governance After ICANN 53"

I. INTRODUCTION

On Wednesday, July 8, 2015, at 10:00 a.m. in 2123 Rayburn House Office Building, the Subcommittee on Communications and Technology will hold a hearing entitled "Internet Governance After ICANN 53."

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. The global Internet community recently met in Buenos Aires, Argentina for the Internet Corporation for Assigned Names and Numbers' (ICANN) fifty-third meeting to continue discussion and planning for a transition of the Internet Assigned Numbers Authority (IANA) stewardship.

Additionally, work continues on implementation of ICANN' generic Top-Level Domain (gTLD) program. While a number of gTLDs have been brought online and are operational, many applications remain in processing and ICANN's procedures for resolving gTLD concerns continue to generate significant debate in the multistakeholder community.

II. WITNESSES

- Larry Strickling, Assistant Secretary for Communications and Information and Administrator of the National Telecommunications and Information Administration; and

- Fadi Chehadé, President and CEO, ICANN.

III. TRANSITION OF IANA STEWARDSHIP

A. Background

On March 14, 2014, National Telecommunications and Information Administration (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 Domain Name System (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 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, 2014, Chairman Fred Upton led a group of six Republican Members in asking the Government Accountability Office (GAO) 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.

On February 5, 2015, Representative John Shimkus, along with thirteen co-sponsors, released H.R. 805, the "DOTCOM Act of 2015." The DOTCOM Act requires the NTIA to continue to serve in its role as steward of the IANA functions in the Internet's DNS until thirty legislative days after the Assistant Secretary of Commerce for Communications and Information submits the report required by the Act. The report to must contain two certifications. First, the Assistant Secretary must certify that the proposal for transition that was submitted to NTIA by

[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).

ICANN meets NTIA's stated criteria for a successful successor to the U.S. government's role in IANA and that the changes to ICANN's bylaws that are required by the multistakeholder community as prerequisites to the IANA transition have been implemented by ICANN. The DOTCOM Act, as amended by the Committee, passed the House on June 23, 2015 by a vote of 378-25.

B. Discussion

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] All three communities have now produced final draft proposals for the ICG.[6]

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.[7] The changes proposed by the group include:

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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.
[7] "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).

- 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"; and
- 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.

Completion of this work has become an additional criterion for NTIA approval of any proposal for a successful transition.[8]

At ICANN 53, the multistakeholder community met in multiple sessions to discuss options for improving ICANN accountability. Among the concerns raised with the proposals are:

- How to ensure that stakeholder groups – supporting organizations (SOs) and advisory committees (ACs) in ICANN parlance – would have standing under California law to enforce the changes to the bylaws;
- How to incorporate the Government Advisory Committee (GAC) into the new ICANN structure without increasing its power relative to the other SOs and ACs; and,
- How to resolve outstanding questions regarding the potential for lawsuits that could impact the SOs and ACs.

IV. EXPANSION OF GENERIC TOP LEVEL DOMAINS

A. 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 provides Internet users with an addressing system that uses words rather than numeric Internet Protocol addresses. A series of computer databases "resolve," or link, Internet Protocol addresses with hierarchical "domain names": strings of alphanumeric "words" separated by dots.

[8] *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).

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. (Other top level domains include ".com," ".org," and ".net.") The domain name system "resolves" www.house.gov to the proper Internet Protocol address (143.228.181.132).

<table>
<tr><th colspan="5">Anatomy of an Internet Address or Uniform Resource Locator (URL)</th></tr>
<tr><td>http://</td><td>www.</td><td>thon</td><td>.org</td><td>/About</td></tr>
<tr><td>Protocol. Here, hypertext transfer protocol.</td><td>Subdomain.</td><td>Second-level domain.</td><td>Top-level domain.</td><td>Path.</td></tr>
<tr><td rowspan="2"></td><td colspan="2"></td><td colspan="2">Collectively: Domain Name.</td><td rowspan="2"></td></tr>
<tr><td colspan="3">Collectively: Host or Host Name.</td></tr>
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Although it began as a government program, in the 1990s, the U.S. government sought to reduce its involvement in the governance of the domain name system. In 1998, the Department of Commerce approved ICANN to manage the allocation and designation of Internet domain names and addresses. Under this arrangement, ICANN manages the number and type of gTLDs, designation of registry operators that operate TLDs, accreditation of registrars that offer second level domain registration, and operation of the domain name dispute resolution process. In the governance structure of the Internet naming space, a registry manages a TLD, maintaining the "zone files" that are the master list of domain names for the given top-level domain. Registrars, by contrast, offer services directly to the public for the registration of second-level domains within a TLD.

ICANN has been considering expanding the number of gTLDs since 2005. In 2008, it began the process of implementing this expansion by releasing a proposed Draft Applicant Guidebook outlining the process for applying for and introducing new gTLDs. Supporters of ICANN's efforts advocated that the addition of new gTLDs will promote competition and choice in the domain addressing market while providing new opportunites for organizing information on the Internet (e.g., ".hotels," ".restaurants," ".banks") or marketing products and services (e.g., ".apple," ".coca-cola").

Opponents of the expansion of the gTLD program were concerned that an increase in the number of TLDs would exacerbate the existing potential for abuse of the domain name system, such as cybersquatting. To protect brand and trademark identity on the Internet, companies currently engage in a number of practices, such as registering common misspellings of a domain name or filing for their brand name in multiple TLDs. For example, Google, Inc. has not only registered google.com, but also has gogle.com. Critics of the expansion of the gTLD program note that for trademark holders, each new gTLD that is approved and implemented will present another top-level domain in which they must register their trademarks as second level domains in order to protect them.

This concern is not new to the debate over TLDs. During the ICANN process of considering expansion of the gTLD program, the Justice Department's Antitrust Division raised

the concern that the introduction of new gTLDs could "impose substantial additional domain registration costs on many consumers" because registrants of a particular gTLD frequently register the same domain in all or most available TLDs to protect their brands from exploitation.

Finally, because the addition of new TLDs also brings the potential for second level domain registration issues, ICANN requires a "sunrise period" during which holders of trademarks can register early to reserve their domain name in the new TLD. In the event that a rights holder misses the sunrise window, there are also dispute resolution procedures to protect the rights of intellectual property holders.

B. Discussion

In total, ICANN received applications for 1,932 new gTLDs. At ICANN 53, ICANN reported that, to date, 660 new gTLDs had been "delegated" – the term of art for placing a new TLD into the root thus making it operational.[9] Of the original 1,932 applications, 522 have been withdrawn and ICANN expects an additional 133 to be withdrawn. However, there are a number of applications that remain in processing that have drawn considerable attention.

Opposition to Amazon.com's application for the .AMAZON gTLD has drawn particular attention as the challengers are governments. Brazil and Peru objected to the application by Amazon.com for the TLD, claiming sovereign rights to "Amazon". While ICANN developed rules to protect certain geographic names, "Amazon" and other equivalent terms were not included on any of the protected lists. ICANN suspended the .AMAZON application after ICANN's Governmental Advisory Committee (GAC) produced a consensus recommendation to reject Amazon.com's application – indicating that no government supported award of the TLD to Amazon.com. The United States abstained in the vote and issued a statement asserting that it "does not view sovereignty as a valid basis for objecting to the use of terms."[10] The matter is not yet officially terminated, and Amazon.com continues to explore options to move forward with the TLD.

There also remains significant discussion over how ICANN will treat the .wine and .vin (wine, in French) gTLD applications. A number of wine-producing regions have expressed particular concern over the use of the names of vinticultural regions (*e.g.* "Napa," "Champagne," and "Bordeaux"). Additionally, some TLD applications were submitted on behalf of particular communities. For example, the Cleveland Clinic submitted an application for .MED. A number of this type of applications remain unresolved, including one submitted for .CPA by the American Institute of Certified Public Accountants.

Finally, as described above, ICANN requires a "sunrise period" when a new domain is delegated, during which trademark holders are given the first opportunity to register their trademarks as domains. No sunrise period has generated as much discussion as the sunrise of the .SUCKS domain. Described by some as "extortion," Vox Populi, the operator of the .SUCKS

[9] *See* Atallah, Akram, Global Domains Division Update (22 June 2015) *available at* https://buenosaires53.icann.org/en/schedule/mon-gdd/presentation-gdd-22jun15-en.
[10] http://www.ntia.doc.gov/files/ntia/publications/usg_nextsteps_07052013_0.pdf

registry, charged trademark holders $2,500 per domain to ensure that [their brand].sucks is not registered by a competitor.[11] The sunrise period for .SUCKS ended on June 1, 2015.

V. STAFF CONTACTS

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

[11] Hutchinson, Lee, "'.sucks' registrations begin soon—at up to $2,500 per domain", ARS TECHNICA (*available at* http://arstechnica.com/information-technology/2015/03/sucks-tld-to-accept-sunrise-registrations-soon-but-theyll-be-pricey/) (Mar. 16, 2015).