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**A CALIFORNIA PUBLIC BENEFIT NONPROFIT CORPORATION**


**BEFORE THE U.S. HOUSE OF REPRESENTATIVES**

**COMMITTEE ON ENERGY AND COMMERCE**

**SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY**


**HEARING:**

**INTERNET GOVERNANCE PROGRESS AFTER ICANN53**


**WEDNESDAY, JULY 8, 2015**

Mr. Chairman, Ranking Member, and members of the Committee, I am Fadi Chehadé, the President and CEO of ICANN, the Internet Corporation for Assigned Names and Numbers. Thank you very much for the invitation to testify before you today on "Internet Governance Progress after ICANN53". I am very pleased to be testifying before you today.

Significant progress was made on the IANA Stewardship transition process at the ICANN53 meeting held last month in Buenos Aires, Argentina. The multistakeholder community achieved an important milestone, as all three operating communities have now submitted their proposals to the IANA Stewardship Transition Coordination Group for consideration. On the Enhancing ICANN Accountability review, the group held three face-to-face working sessions during ICANN53, and is close to converging on a consensus proposal on empowering the ICANN community in holding ICANN accountable.

I was last before you in April 2014, just weeks after the Department of Commerce's National Telecommunications and Information Administration announced its intent to continue its ongoing transition of Internet governance oversight to the multistakeholder model. It called upon the ICANN community to convene a process to develop a proposal that meets a clear set of criteria for the transition of the NTIA's stewardship of the IANA functions to the multistakeholder community and that will ensure that no government-led solution or intergovernmental organization could gain control of the IANA functions. Since that time, the multistakeholder

community has fully engaged and met the NTIA's call to action. There has been tireless participation from a broad and diverse set of stakeholders, both on the transition work as well as a complementary process that is reviewing how ICANN's accountability can be enhanced and strengthened in light of the removal of the historical backstop that the IANA Functions Contract represented to many in the community.

While supporting the transition work, ICANN has also maintained a strong focus on maintaining operational excellence in its work, including in the management of the IANA functions and the development of the Internet's Domain Name System.

**Background**

As NTIA Administrator Lawrence Strickling and I testified before this Committee last year, along with others, the NTIA's announcement was a long time coming. In 2000, NTIA entered into the IANA (or Internet Assigned Numbers Authority) Functions Contract with ICANN. Less than two years earlier, ICANN was purpose-built to perform the IANA functions, which consist of the coordination of unique Internet identifiers (domain names, IP numbers and protocol parameters). ICANN has performed the IANA functions pursuant to its no-fee contract with the U.S. government ever since, while maintaining the security, stability and resiliency of the Internet. This technical mandate does not give ICANN control over content on the Internet; instead it is key to maintaining a single, global, unified and interoperable Internet.

At the time of ICANN's formation, it was envisioned that the U.S. Government would transition its stewardship role over the key unique Internet identifier functions within two years. This temporary arrangement lasted far longer than anyone anticipated, but ICANN is now recognized as mature enough to perform its work under a multistakeholder-based stewardship model as opposed to any single government control. The successful completion of the transition is essential to the upholding of the multistakeholder model for Internet policy and governance.

### ICANN53 Milestone: All Operating Communities Complete Proposals

In the past 15 months, the multistakeholder community has stepped up to the task that NTIA laid before it. Across the transition and accountability work, stakeholders have logged more than 263 meetings/calls, many of which were ICANN-funded face-to-face meetings, over 13,000 working hours of meetings/calls, not including drafting/document development and over 21,000 mailing list exchanges on these two processes. At ICANN53 alone, over 40 hours of working or engagement sessions were held on the transition and accountability processes in 11 separate working or engagement sessions, in addition to scheduled discussions of the transition and accountability work across nearly all of the stakeholder groups within the ICANN community.

The community participation in the transition-related work has come from a broad range of stakeholders, including the technical community, 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 are among the participants, with companies such as AT&T, Cisco, Google, Intel, Microsoft, Neustar, Verisign and Verizon, as well as industry trade groups include the U.S. Chamber of Commerce, the Motion Picture Association of America and the U.S. Council for International Business attending meetings and providing inputs into the processes.

After community consultation, an IANA Stewardship Transition Coordination Group, or ICG, was formed with 30 members from across a variety of stakeholders, including not only the customers of the IANA functions, but also representatives from the business community, civil society, governments, root server operators, and security and stability advisory members.  The ICG, in turn, submitted a request for proposals from each of the operational communities that are in direct operational or service relationships with ICANN as the IANA functions operator.  Each of these three operational communities quickly organized discussions – many happening outside of ICANN – to respond to the ICG:

- The protocol parameters community, through the Internet Engineering Task Force, conducted an open dialogue in which all could participate. This community delivered its response to the ICG in January of this year.
- The numbering community, through a team convened by the five Regional Internet Registries (from North American, Asia-Pacific, Europe, Africa and the Latin American/Caribbean regions), held open dialogues throughout the

communities they serve. The team also delivered its proposal in January of this year.

- The naming community formed a Cross-Community Working Group, made up of business, operators, governments and civil society, to develop its proposal.  That proposal was finalized in early June 2015.  At ICANN53, each of the five of the organizations that chartered that Cross-Community Working Group (referred to as the CWG-Stewardship) unanimously approved that proposal.

Now that all three communities served by the IANA functions have completed their proposals, it is now time for the ICG to combine the three operational community proposals into one proposal for community feedback. NTIA has specified that the proposal must meet certain criteria, which are:

- 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.

In addition, the NTIA made clear that it will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution.

The ICG expects that, after opportunity for public comment on the coordinated proposal for the transition of the IANA Functions Stewardship, a final proposal will be delivered to the ICANN Board in October 2015, at ICANN's 54th Public Meeting in Dublin.

## **ICANN53 Milestone: Continued Focused Effort on Enhancing ICANN Accountability**

When NTIA made its announcement, many in the ICANN community questioned whether ICANN could remain accountable without the perceived backstop of NTIA in the absence of the IANA Functions Contract.  As a result, ICANN initiated the Enhancing ICANN Accountability process, another cross-community effort, to arrive at recommendations for how ICANN's accountability mechanisms can be enhanced or newly developed to address the community concerns. NTIA is supportive of this effort, and has made clear that the issues of accountability are related to the transition of the stewardship over the IANA functions; NTIA will only consider the stewardship transition proposal alongside recommendations on how ICANN's accountability can be improved.

The group performing the Enhancing ICANN Accountability review has broad representation across the multistakeholder community, with members from business, civil society, governments and others.  Asst. Secretary Strickling served as one of the selectors of experts to advise the accountability working group, including experts on global accountability and governance. The group has 25 designated

members and over 130 participants from across the globe. Their work is open, transparent and fully accessible around the globe.

In May 2015, the group issued its first document for public comment.  Though the document did not contain consensus-based recommendations, it outlined the key areas for enhancement as well as proposed paths to implement those enhancements.  The main areas of focus include:

- ICANN community consideration and ability to reject ICANN's budgets, strategic plans and operating plans, as well as changes to ICANN Bylaws.
- The development of "fundamental" bylaws – particularly those housing accountabilty commitments – which would require community assent as well as heightened thresholds for ICANN Board approval.
- Importing key provisions of the Affirmation of Commitments between ICANN and the Department of Commerce into the ICANN Bylaws, such as the reviews specified in that document.
- The ability to remove individual ICANN Board members or to recall the entire Board.
- Modifications and enhancements to the Independent Review Process and the Reconsideration Process, which are ways to challenge decisions taken by ICANN.

The cross-community group working on Enhancing ICANN Accountability is now in the process of considering the public comment received on the proposed changes,

and is working towards achieving consensus on recommendations.  During

ICANN53, there were three face-to-face working sessions of the cross-community

working group, as well as opportunities to discuss the draft report with

stakeholders across the ICANN community.  Assistant Secretary Strickling also had

an opportunity to provide inputs to the group during ICANN53, providing guidance

on what the NTIA expects to see within the final report, including addressing how

the recommendations meet the NTIA criteria.

The group is aware of the need to "stress test" their proposed solutions against key

potential risks, and the draft report contained extensive detail on that stress testing

work.  Building on the stress test work, both the ICANN Board and Assistant

Secretary Strickling identified the need for an impact analysis of the final

recommendations to be included as part of the final report – much like the

regulatory impact analysis work performed in administrative and regulatory

environments. Work is already underway to address these and other inputs

received through the public comment process.

The cross-community working group on accountability has an intensive face-to-face

working session scheduled on July 17-18, and is working to have a new document

available for public comment by the end of this month.  After public comment, the

group expects to submit a final proposal to the chartering organizations for

approval in Dublin at ICANN54.  Upon approval, the accountability

recommendations will be transmitted to the ICANN Board.

**The Coordinated Multistakeholder Community – The Next Steps**

Though both the ICG and the accountability group are expected to transmit proposals to the ICANN Board in October, the work will not end there. First, the ICANN Board must transmit both proposals together to NTIA for consideration. For planning purposes, ICANN assumes that the DOTCOM Act of 2015 (H.R. 805) will become law and will guide next steps. Most significantly, ICANN needs to work with the community to make sure that the required changes to the Bylaws to give effect to changes from both the accountability group and the ICG have been adopted. Work is already underway to appropriately plan for developing the necessary Bylaws in coordination with the ICANN community. ICANN understands that adoption of the Bylaws is a necessary condition for completion of the transition. ICANN understands that the NTIA will not relinquish the IANA Functions Contract unless and until the Bylaws are adopted and enforceable.

ICANN will also work with the operating communities to perform appropriate planning work to prepare for the transition, including refinement of SLAs, system development and other tasks that may be required.

Implementation of the recommendations and improvements from the Enhancing ICANN Accountability work will also require more than the adoption of Bylaws. As the consensus-based recommendations of the accountability group are finalized, ICANN commits to work with all stakeholders to implement those improvements.

While I know that there are concerns of ICANN's willingness to take on changes, and fear that ICANN will not actually implement the accountability recommendations after the transition, I can assure you that ICANN is committed to implement the recommendations. One of the key enhancements that is expected through the Enhancing ICANN Accountability process is for the community to have a stronger voice and more ability to require ICANN to abide by its Bylaws. With the Bylaws revisions that will have to be adopted through this process as a precondition for the transition, the community will have meaningful paths to hold ICANN accountable to all of its Bylaws-mandated commitments in the event ICANN fails to meet those obligations. It is my goal and expectation that will never happen.

**ICANN Is Ready for This Responsibility**

Some of you here today have been following ICANN since we had a handful of employees, a 21-person board and were still finding our feet. Today, ICANN has 300+ employees, thousands of active community members, and hundreds of people heavily involved in discussion around the IANA stewardship transition. The U.S. government has been with us through this maturation process – because of your interest and support, we are the organization we are today.

During my tenure over the last three years, we have worked to harden our processes and bolster the strength of ICANN through increasing the number of people who are engaged in the community, broadening the management team, and bringing in new hires from some of the biggest organizations in the world. For

example, last year a former CIO within large publicly traded companies, including Walmart and Edwards Lifesciences, joined ICANN as our Chief Innovation and Information Officer.

I would like to address a concern raised in the Committee's Final Report on the DOTCOM Act regarding ICANN's enforcement of its contracts with registries and registrars. ICANN has heard the community's call for improvements in our Contractual Compliance efforts, and in October 2014 created the role of Chief Contract Compliance Officer, reporting directly to me and serving on ICANN's Global Leadership team. This new role is also responsible for exploring ways that ICANN can work with others to help safeguard registrants and the global Internet community in ways that may go beyond pure contractual enforcement.

**Contractual Compliance Advancements**

One of the key areas of focus of the Chief Contract Compliance Officer has been in working with ICANN's Accredited Registrars and the broader ICANN Community on achieving common understandings of the meaning as well as enforcement of key contractual provisions. One example is Section 3.18.1 of the 2013 Registrar Accreditation Agreement, which requires registrars to maintain an abuse point of contact to receive "reports of abuse involving Registered Names sponsored by Registrar, including reports of Illegal Activity," and to "take reasonable and prompt steps to investigate and respond appropriately" to any reports of abuse. Section 3.18.2 of the RAA requires each registrar to establish and maintain a dedicated

abuse point of contact, monitored 24 x 7, to receive reports of illegal activity by law enforcement, consumer protection, quasi-governmental or similar authorities. It also requires the review of well-founded reports of illegal activity submitted to these contacts within 24 hours by an individual who is empowered by the registrar to take necessary and appropriate action in response to the report.

There are widely divergent views within the ICANN multistakeholder community regarding the proper interpretation of these provisions of the 2013 RAA. Our contractual compliance department is actively engaged in discussions with registrars, the intellectual property community and other stakeholders with the goal of clarifying the interpretation and enforcement of provisions in the 2013 RAA requiring registrars to investigate and respond appropriately to abuse reports, including reports of illegal activity.   ICANN's Chief Contract Compliance Officer has held a number of meetings and telephone calls, including with members of the Registrar Stakeholder Group; representatives of the Intellectual Property Constituency and intellectual property owner representatives including the MPAA, the RIAA and INTA; members of civil society; various parties that have submitted abuse reports under the 2013 RAA; and other interested parties, to solicit their views on these matters, with the goal having ICANN provide further guidance on the interpretation and enforcement of these provisions.

ICANN encourages registrars to establish a cooperative working relationship with intellectual property owners and others who submit abuse reports and find

constructive ways to resolve difficult issues surrounding infringement and other illegal activities on websites. ICANN believes that voluntary cooperative efforts can provide a path forward for solving difficult problems facing our multistakeholder community.

ICANN was never granted, nor was it ever intended that ICANN be granted, the authority to act as a regulator of Internet content (nor of any other area). ICANN was specifically established as a private organization, not a regulatory body, and ICANN derives its authority in this area solely by contract. ICANN's mission and mandate, as set forth in its bylaws, is "to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular, to ensure the stable and secure operation of the Internet's unique identifiers." ICANN's mission statement sets forth a limited remit that is largely technical in nature. ICANN is not empowered to act as a global regulator of content and illegal activity throughout the world.

**ICANN Governance Practices Provide Strong Baseline for Future**

ICANN's governance practices are best in class. We've heard that from leading academics on governance. These best practices protect ICANN against capture by any specific interest or entity, and include:

- Staggered board member terms, which guards against all – or even a majority – of votes of the Board being up for election in any single year.

- The selection of the Board is dispersed across the ICANN community, with no single entity controlling selection of a majority of votes on the Board.  Even the Nominating Committee, which is the single largest selector, selects at most three seats in any single year. The Nominating Committee itself is reconstituted each year.

- Within the community, there are no policy recommendations without an open process and opportunities for public comment.  Policy recommendations are developed through open working groups, with public comment requirements, to ensure that a broad range of participants have an opportunity to review and respond.

- The multistakeholder community is very diverse, and processes are open to new/unaffiliated participants.

- ICANN works hard to mitigate other risks of capture in system, including working with the community to prioritize and meter work to mitigate any volunteer fatigue.

- Early engagement of the government stakeholders in policy work is encouraged alongside all other stakeholders.

- We require strict adherence to providing statements of interest for all participating in the multistakeholder model.

The way ICANN was been built, the way ICANN is organized and the way ICANN operates means that supporting the multistakeholder model is the best way to ensure that it continues to be impossible for any company, any government, or any group of entities alone to control ICANN.  The best way to safeguard the Internet we all want – a free, open, secure, stable and resilient Internet – is to ensure ICANN is strong, independent and thriving.

## ICANN is a Model of Multistakeholder Governance: The Rest of the World is Watching

If the ICANN community succeeds in the transition, we will diffuse arguments that are being strongly used now by governments that seek to expand their perceived limited and advisory role in Internet governance while one other single government enjoys a special role. Success will also lessen support for the creation of intergovernmental mechanisms for Internet policy development at the UN General Assembly, or for governments to expand control over the management of core Internet resources and possibly fragmenting the Internet.  I stand with you on making sure that the stewardship role that the NTIA is transition is not now, nor ever, susceptible to being led by any government, group of governments, or intergovernmental organization.  Similarly I stand with you that no other stakeholder or group of stakeholders should be in a position to exercise undue influence over ICANN.

I thank you for your continued commitment to ICANN, and to the multistakeholder model of Internet governance that ICANN represents.  Allowing for the privatization of the managment of the domain name system, and transitioning the stewardship of the key Internet functions, will engender worldwide support for the multistakeholder model.  The proposal development itself is a triumph of the multistakeholder model, and I eagerly await the outcomes of these community processes.

Thank you for inviting me to testify.  I am happy to answer any questions you might have.