Daniel Castro

Senior Analyst

Information Technology and Innovation Foundation (ITIF)

"Should the Department of Commerce Relinquish Direct Oversight Over ICANN"

Before the

Committee on the Judiciary

Subcommittee on Courts, Intellectual Property and the Internet

April 10, 2014

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 interest 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 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.

Endnotes

---

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.

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.