

Testimony of
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Committee on Energy and Commerce
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“Internet Governance Progress After ICANN 53”

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Chairman Walden, Ranking Member Eshoo, and members of the Subcommittee, thank you for this opportunity to testify on behalf of the National Telecommunications and Information Administration (NTIA) regarding NTIA’s role in the Internet’s domain name system (DNS) and the transition of NTIA’s stewardship over certain DNS technical functions. I am pleased to appear before you to update you on the current status of the transition planning process as Internet stakeholders work to develop a proposal that will ensure the stability, security, and openness of the Internet.

I. Background

For the past two decades, United States policy has reinforced the unique, decentralized nature of the Internet by supporting private sector management and operation of the Domain Name System (DNS).¹ The DNS allows users to identify websites, mail servers, and other

¹ The White House, “Memorandum for the Heads of Executive Departments and Agencies,” (July 1, 1997), available at: <http://clinton4.nara.gov/WH/New/Commerce/directive.html>. See also, NTIA, “Statement of Policy,

Internet destinations using easy-to-understand names (*e.g.*, www.ntia.doc.gov) rather than the numeric network addresses (*e.g.*, 170.110.225.163) necessary to retrieve information on the Internet. In this way, it functions similar to an “address book” for the Internet.

NTIA’s goal – over the course of successive Democratic and Republican Administrations – has been to support private sector leadership of the domain name system through the multistakeholder approach. U.S. policy is firmly grounded in the belief that the Internet is a global resource and that its governance, policymaking and standards development should fully reflect the diversity of Internet users. To ensure that the increasingly diverse Internet user community has a voice in decisions affecting the Internet, the U.S. endorses an open and transparent process, based on Internet community consensus that starts from the bottom. This multistakeholder approach to Internet governance – in which technical experts, civil society, private industry, and governments make policy decisions on a consensus basis – is the best mechanism for maintaining an open, resilient, and secure Internet. NTIA greatly appreciates the long-standing bipartisan support for the multistakeholder approach expressed by Congress.²

For years, some authoritarian countries have opposed this multistakeholder approach and sought to increase governmental control over the Internet through bodies such as the International Telecommunication Union (ITU), a specialized agency of the United Nations. We remain strongly opposed to such efforts. The U.S. government firmly believes that the private sector should lead on policy decisions that impact the Internet, not an intergovernmental body

Management of Internet Names and Addresses,” (White Paper), 63 Fed. Reg. 31741 (1998), *available at*: <http://www.ntia.doc.gov/federal-register-notice/1998/statement-policy-management-internet-names-and-addresses>.

² See H.Con.Res. 127 and S.Con.Res. 50 (2012), stating “the consistent 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.” See also, S. Res. 71 (2015), stating “the United States remains committed to the multistakeholder model of Internet governance” and that “the [IANA] transition process demonstrates that the United States supports and is committed to the multistakeholder model of Internet governance.”

like the U.N. The Internet is better off if the private sector is innovating and developing the technology to solve problems, rather than an international, intergovernmental organization.

II. Internet Corporation for Assigned Names and Numbers (ICANN)

A 1997 Executive Memorandum directed the Secretary of Commerce to privatize the Internet DNS.³ To implement this directive, NTIA conducted an extensive public comment process and subsequently issued a statement of policy on the privatization of the Internet DNS – called the White Paper.⁴ To accomplish the policy objectives of the White Paper, NTIA stated that it was prepared to enter into an agreement with a new not-for-profit corporation formed by private sector Internet stakeholders to coordinate and manage policy for the Internet DNS. Private sector interests formed NewCo for this purpose, which was subsequently re-named the Internet Corporation for Assigned Names and Numbers (ICANN). In the fall of 1998, NTIA and ICANN entered into a Memorandum of Understanding (MOU) to transition technical DNS coordination and management functions to the private sector.⁵

The MOU did not simply turn over management of the DNS to ICANN. Rather, the MOU outlined a process to design, develop, and test mechanisms, methods, and procedures to ensure that the private sector had the capability and resources to assume important responsibilities related to the technical coordination and management of the DNS. The MOU

³ The White House, “Memorandum for the Heads of Executive Departments and Agencies,” (July 1, 1997), available at: <http://clinton4.nara.gov/WH/New/Commerce/directive.html>.

⁴ NTIA, “Statement of Policy, Management of Internet Names and Addresses,” (White Paper), 63 Fed. Reg. 31741 (1998), available at: <http://www.ntia.doc.gov/federal-register-notice/1998/statement-policy-management-internet-names-and-addresses>.

⁵ Memorandum of Understanding between the U.S. Department of Commerce and Internet Corporation for Assigned Names and Numbers (Nov. 25. 1998), available at: <http://www.ntia.doc.gov/other-publication/1998/memorandum-understanding-between-us-department-commerce-and-internet-corporat>.

evolved through several iterations and revisions as ICANN tested these principles, learned valuable lessons, and matured as an organization.⁶

Since the formation of ICANN, NTIA has worked with Internet stakeholders to improve ICANN's transparency and accountability to the community of stakeholders it serves. In 2009, NTIA and ICANN entered into the Affirmation of Commitments (Affirmation),⁷ which concluded the MOU between the two parties and established an accountability framework for regular and recurring multistakeholder reviews of ICANN's performance. Among the key elements of the Affirmation are mechanisms for Review Teams comprised of key customers and stakeholders to review ICANN's performance on a regular basis. NTIA has actively participated in the two Accountability and Transparency Reviews that have been completed thus far and has witnessed improved performance after ICANN implemented key recommendations from these reviews. NTIA believes that ICANN has made significant progress in fulfilling the commitments established by the Affirmation.

NTIA has no contractual authority to exercise traditional regulatory oversight over ICANN, nor does NTIA play a role in the internal governance or day-to-day operations of ICANN. NTIA participates, along with more than 100 other national governments, on the Governmental Advisory Committee (GAC), which is one of various groups providing advice and input for the ICANN Board of Directors.

III. Internet Assigned Numbers Authority (IANA) Functions

⁶ For additional background, see, NTIA, DOC/ICANN Agreements, *available at*: <http://www.ntia.doc.gov/page/docicann-agreements>.

⁷ "Affirmation of Commitments by the United States Department of Commerce and the Internet Corporation for Assigned Names and Numbers" (September 30, 2009), *available at* http://www.ntia.doc.gov/files/ntia/publications/affirmation_of_commitments_2009.pdf.

The continued efficient operation of the Internet also requires the smooth operation of a set of interdependent technical functions – the Internet Assigned Numbers Authority (IANA) functions. The IANA functions include: (1) the coordination of the assignment of technical Internet protocol parameters; (2) the administration of certain responsibilities associated with DNS root zone management; (3) the allocation of Internet numbering resources; and, (4) other services related to the management of the .ARPA and .INT top-level domains (TLDs).

In 2000, NTIA entered into a sole-source, no-cost-to-the-government contract with ICANN, designating it to perform the IANA functions. NTIA fulfilled this temporary role not because of any statutory or legal responsibility, but as a temporary measure at the request of the President. Indeed, Congress never designated NTIA or any other specific agency responsible for managing the Internet DNS. NTIA and ICANN subsequently entered into contracts for the performance of the IANA functions in 2001, 2003, and 2006. In 2012, NTIA awarded ICANN the current IANA functions contract after conducting a full and open competitive procurement process. The base period of performance for this contract is October 1, 2012 to September 30, 2015. The contract also provides for two option periods of two years each; however, the parties may bilaterally agree to change the terms of the option periods provided they are not extended past September 30, 2019, the contract's overall period of performance. ICANN, as the IANA functions operator, applies the policies developed by the customers of the IANA functions.

From the inception of ICANN, the U.S. government and Internet stakeholders envisioned that the government's stewardship role in the IANA functions would be temporary. As NTIA made clear at the time of the White Paper, it intended only to procure the IANA functions

services until such time as the transition to private sector management of the Internet DNS was complete.⁸

IV. Final Steps in the Privatization of the DNS

After approximately 17 years, we are now close to taking the final steps required to complete privatization of the DNS. On March 14, 2014, NTIA announced its intent to complete the privatization provided that certain key conditions are met. NTIA called upon ICANN to convene a multistakeholder process to develop a transition plan that has broad community support and addresses four key principles that must be in place before NTIA could change its current role.⁹ Specifically, the proposal must 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. In addition, NTIA explicitly stated that it would not accept a proposal that replaces the NTIA role with a government-led or an intergovernmental organization solution. In testimony before this Subcommittee in 2014, NTIA further elaborated on each of these conditions.¹⁰ Before any transition takes place, the businesses, civil society, and technical experts of the Internet must present a plan that has broad multistakeholder support and satisfies the conditions NTIA outlined in the announcement.

⁸ White Paper

⁹ “NTIA Announces Intent to Transition Key Internet Domain Name Functions” (Mar. 14, 2014), *available at*: <http://www.ntia.doc.gov/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions>.

¹⁰ Testimony by Lawrence E. Strickling before the Subcommittee on Communications and Technology, Committee on Energy and Commerce, United States House of Representatives, hearing entitled “Ensuring the Security, Stability, Resilience, and Freedom of the Global Internet” (Apr. 2, 2014), *available at*: <http://www.ntia.doc.gov/speechtestimony/2014/testimony-assistant-secretary-strickling-hearing-ensuring-security-stability-re>.

Following the March 2014 announcement and since then, Internet stakeholders from the United States and beyond have responded positively and demonstrated the importance of the transition to achieving our broader Internet governance goals. For example, AT&T said “[t]his is an important step in the ongoing evolution of the global Internet.”¹¹ Microsoft called the transition “a significant and welcome development.”¹² Human rights organizations argued that the transition will “facilitate the exercise of human rights online.”¹³ Numerous other stakeholders in the United States and elsewhere responded with similar support.¹⁴

Since NTIA’s March 2014 announcement, Internet stakeholders have responded with great energy to develop a transition plan. The transition proposal process has been open to all interested parties and has operated in an open and transparent manner, with all proceedings and documents freely available to the public. In August 2014, stakeholders established an IANA Stewardship Transition Coordination Group (ICG), representing more than a dozen Internet stakeholder communities, as a convener of the process to develop a transition proposal for the IANA functions that will ensure the stability, security, and openness of the Internet.¹⁵ In September 2014, the ICG issued a Request for Transition Proposals for each of the three primary IANA functions, *i.e.*, the protocol parameters, numbering, and domain name-related functions, to

¹¹ AT&T Public Policy Blog, “The Continuing Evolution of the Global Internet” (Mar. 14, 2014) (emphasis added), available at: <http://www.attpublicpolicy.com/international/the-continuing-evolution-of-the-global-internet/>.

¹² David Tennenhouse, Microsoft on the Issues, “Microsoft Applauds US NTIA’s Transition of Key Internet Domain Name Functions” (Mar. 17, 2014) (emphasis added), available at: <http://blogs.microsoft.com/on-the-issues/2014/03/17/microsoft-applauds-us-ntias-transition-of-key-internet-domain-name-functions/>.

¹³ Access, Center for Democracy & Technology, Freedom House, Human Rights Watch, The Open Technology Institute at New America Foundation, Public Knowledge, “Congress Should Support U.S. Plan to Alter Administration of Internet” (Apr. 1, 2014) (emphasis added), available at: <https://freedomhouse.org/article/congress-should-support-us-plan-alter-administration-internet#.VJmLdl4AFA>.

¹⁴ For additional stakeholder responses, see, Report on the Transition of the Stewardship of the Internet Assigned Numbers Authority (IANA) Functions (Jan. 2015), available at: http://www.ntia.doc.gov/files/ntia/publications/iana_report_013015.pdf, p. 6.

¹⁵ See IANA Stewardship Transition Coordination Group, available at: <https://www.ianacg.org/>.

be developed by the communities and parties most directly affected by each of the primary functions. In addition, a Cross Community Working Group (CCWG) on Accountability, composed of appointed representatives from ICANN's Supporting Organizations (SOs) and Advisory Committees (ACs) and open to all interested parties as participants, is examining how to enhance ICANN's accountability in light of the transition.¹⁶ This process is divided into two work streams. The first is identifying accountability measures that need to be in place before the IANA transition and the second is addressing accountability measures that should be adopted and implemented by ICANN in the longer term.

At the recently-concluded ICANN meeting in Buenos Aires, the CWG-Stewardship's charting organizations (ccNSO, gNSO, SSAC, GAC) approved the naming proposal. With the protocol parameter and numbering communities having already submitted their proposals in January 2015, the ICG must now combine these proposals into a consolidated transition proposal and then seek public comment on all aspects of the plan. The ICG's role is crucial because it must build a public record on how the three customer group submissions tie together in a manner that ensures NTIA's criteria are met and institutionalized over the long term.

In May 2015, the CCWG published its draft proposed enhancements to ICANN's accountability framework for public comment. During the June 2015 ICANN meeting in Buenos Aires, the CCWG and the broader ICANN community engaged in vigorous discussions. The CCWG-Accountability will convene again in Paris this July in an attempt to coalesce on an accountability plan that ultimately will be submitted to NTIA alongside the stewardship transition proposal. NTIA looks forward to a successful outcome of both of these important processes.

¹⁶ See ICANN Announcements, "Proposed Charter for Enhancing ICANN Accountability Cross Community Working Group (CCWG) Submitted for Consideration" (Nov. 5, 2014), *available at*: <https://www.icann.org/news/announcement-2014-11-05-en>.

These two multistakeholder processes – the IANA transition planning and enhancing ICANN accountability – are directly linked, and NTIA has repeatedly said that both issues must be addressed before any transition takes place. ICANN has indicated that it expects to receive both the ICG transition and CCWG accountability proposals at roughly the same time and that it will forward them promptly and without modification to NTIA.¹⁷

Throughout the process, NTIA has monitored and participated in the discussions as appropriate to ensure that the community continues to work in a collaborative fashion to meet the conditions established in 2014. We have posed questions for stakeholders to consider as they continue to develop their proposals to ensure that they fully consider the ramifications of their plans and address the principles NTIA established for the transition.¹⁸ The discussions at ICANN meetings and elsewhere give me confidence that Internet stakeholders are working diligently to develop a proposal that not only considers appropriate accountability mechanisms but also maintains the stability and openness of the Internet DNS.

V. Timing and Next Steps

NTIA has never set a deadline for the transition, but September 30, 2015, the current expiration date for the base period of the IANA contract, has been a natural target for stakeholders to work toward. However, NTIA has repeatedly stated that the stakeholders should take whatever time they need to develop a transition plan that fully meets the conditions. Given the status of the various work streams, the time necessary for the U.S. government to evaluate

¹⁷ ICANN, “ICANN 52 Board Statement on ICANN Sending IANA Stewardship Transition and Enhancing ICANN Accountability Proposals to NTIA” (Feb. 12, 2015), *available at*: <https://www.icann.org/news/announcement-3-2015-02-12-en>

¹⁸ Remarks by Lawrence E. Strickling, State of the Net Conference, Washington, DC, (Jan. 27, 2015), *available at*: <http://www.ntia.doc.gov/speechtestimony/2015/remarks-assistant-secretary-strickling-state-net-conference-1272015>. *See also*, NTIA, “Stakeholder Proposals to Come Together at ICANN Meeting in Argentina” (Jun. 16, 2015), *available at*: <http://www.ntia.doc.gov/blog/2015/stakeholder-proposals-come-together-icann-meeting-argentina>.

the plan, and the effort needed for the community to implement the proposal, it has become clear that we will need to extend the current IANA contract beyond September 30, 2015.

In May 2015, I sent a letter to the chairs of the transition and accountability working groups requesting that they provide NTIA by the end of June with an update on the status of the transition planning and associated timeframes, including the community's views as to how long it will take to finalize the transition plan and implement it after it is approved.¹⁹ We are taking this information into account in order to determine the appropriate extension time period for the current contract. Following the submission of the final transition and accountability proposals, NTIA will ensure that the public and Congress is fully apprised of the specific details of the proposal.

We appreciate Congressional efforts to work in a bipartisan, collaborative fashion on legislation to ensure that the transition of our role with respect to the Internet Domain Name System progresses in a transparent, responsible and timely manner. The DOTCOM Act, as passed by the House and the Senate Committee on Commerce, Science, and Transportation, would ensure that the transition fully meets the conditions NTIA outlined and that appropriate ICANN accountability measures are in place. Working together in a bipartisan manner will reaffirm long-standing U.S. support for the multistakeholder model of Internet governance.

To date, NTIA has submitted two written progress reports to this Committee and others that provide detailed updates on the transition, and will continue providing reports on a quarterly basis.²⁰ NTIA looks forward to continuing to work collaboratively with you and all stakeholders

¹⁹ Letters from Lawrence E. Strickling to Co-Chairs of the CCWG and ICG (May 6, 2015), *available at*: <https://community.icann.org/display/acctcrosscomm/NTIA+Letter+to+CCWG> and <https://community.icann.org/display/gnsocwgdstwrdsdp/NTIA+Letter+to+ICG>.

²⁰ These reports and other NTIA publications on this topic can be found at: <http://www.ntia.doc.gov/category/iana-functions>.

to ensure that the United States fulfills its long-standing commitment to completing the privatization of the management of the DNS in a timely and responsible manner. NTIA believes that the successful completion of the transition will strengthen the multistakeholder model and ensure that the Internet remains an engine of social and economic empowerment both at home and abroad.

Thank you. I look forward to answering your questions.

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