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

March 15, 2016

TO: Members, Subcommittee on Communications and Technology

FROM: Committee Majority Staff

RE: Hearing on "Privatizing the Internet Assigned Number Authority"

I.   INTRODUCTION

On Thursday, March 17, 2016, at 10:15 a.m. in 2123 Rayburn House Office Building, the Subcommittee on Communications and Technology will hold a hearing entitled "Privatizing the Internet Assigned Number Authority."

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 Marrakech, Morocco for the Internet Corporation for Assigned Names and Numbers' (ICANN) fifty-fifth meeting to continue discussion and planning for a transition of the Internet Assigned Numbers Authority (IANA) stewardship.

II.   WITNESSES

- Dr. Alissa Cooper, Chair, IANA Stewardship Transition Coordination Group;
- Mr. Steve DelBianco, Executive Director, NetChoice;
- The Honorable David A. Gross, Former U.S. Coordinator, International Communications and Information Policy, Wiley Rein LLP;
- Ms. Audrey Plonk, Director, Global Security and Internet Governance Policy, Intel Corporation;
- Mr. Matthew Shears, Representative and Director, Global Internet Policy and Human Rights Project, Center for Democracy and Technology; and,
- Ms. Sally Shipman Wentworth, Vice President of Global Policy Development, Internet Society.

III.   TRANSITION OF IANA STEWARDSHIP

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 September 2015. 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 has held a series of hearings to discuss the NTIA announcement and efforts by the multistakeholder community to meet the terms set forth by NTIA. At the hearings, the Subcommittee has heard from NTIA and ICANN, as well as a variety of stakeholders. 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. The report, released in August 2015, analyzed the process used by the working groups and stakeholder community to develop a proposal for the transition. GAO's findings concluded the approach used to propose mechanisms addressing potential risks were consistent with general risk management principles. The report noted that NTIA had not determined a specific evaluation framework for the final submitted proposal from ICANN and recommended several evaluation frameworks that could be used.

NTIA submitted comments in the report that it will use the relevant frameworks to guide its assessment of the final proposal.[1]

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 must contain two certifications. First, the Assistant Secretary must certify that the proposal for transition that was submitted to NTIA by 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.

On August 17, 2015, NTIA Administrator Larry Strickling announced that after evaluation of the community's progress developing a transition plan, NTIA would be extending the contract with ICANN for one additional year. The current contract is now set to expire September 30, 2016,[2] with the option to extend the contract for three additional years if needed. NTIA stated the extension of the contract would allow for additional time for the remaining work to be completed, review by the U.S. Government, and implementation if the plan is ultimately approved.[3]

Discussion

Following NTIA's March 2014 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,[4] the numbering resources aspects of the transition,[5] and the protocol aspects of the transition.[6] 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 would 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.[7] All three communities

---

[1] GAO Report to Congressional Requesters, "Internet Management: Structured Evaluation Could Help Assess Proposed Transition of Key Domain Name and Other Technical Functions" http://www.gao.gov/assets/680/672055.pdf.

[2] NTIA is prohibited from spending appropriated funds to relinquish its role in IANA during FY 2016. *See* "Consolidated and Further Continuing Appropriations Act, 2016," Sec. 539(a), P.L. 114-113 (Dec. 18, 2015).

[3] *See* "An Update on the IANA Transition", https://www.ntia.doc.gov/blog/2015/update-iana-transition.

[4] This group is called the "CWG-Stewardship" and its work can be found at https://community.icann.org/x/37fhAg.

[5] 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.

[6] This group is called the "IANAPLAN Working Group" and its work can be found at http://www.ietf.org/iana-transition.html.

[7] *See* https://www.icann.org/resources/pages/process-next-steps-2014-06-06-en.

produced final draft proposals for the ICG[8] and a summary report on comments received on the ICG proposal were published November 30, 2015.[9]

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 by governments. 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 (Work Stream 1) and a second stream that will contain changes for a later date (Work Stream 2). On February 23, 2016, the CCWG-Accountability forwarded its Final Supplemental Proposal on Work Stream 1 Recommendations to the ICANN Chartering Organizations for approval. 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"; 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.

During the ICANN 55 meeting, five out of the six Chartering Organizations approved the CCWG-Accountability Proposal. The Government Advisory Committee (GAC) held extensive discussions on how the accountability mechanisms incorporate the GAC into the new ICANN structure. Some governments held concerns that specific recommendations of the proposal did not give the GAC enough power participating in future decisions of ICANN. Ultimately, the

---

[8] *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.
[9] *See* https://www.ianacg.org/icg-files/documents/Public-Comment-Summary-final.pdf

GAC did not delay the transition process and submitted a statement of non-objection to the ICANN Board.

On March 10, 2016, the ICANN Board of Directors approved the transmission of the CCWG-Accountability Proposal and the IANA Stewardship Transition Proposal to NTIA. NTIA has begun review of the proposal to determine whether it meets the criteria set forth when the transition was initially announced.[10] NTIA has previously committed to providing Congress with a period of time to review the proposal before the transition would be effectuated. After a period of about 90 days, NTIA will issue an evaluation of the plan and provide Congress with this additional time to review the evaluation and proposal.

IV.   STAFF CONTACTS

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

---

[10] *See* https://www.ntia.doc.gov/blog/2016/reviewing-iana-transition-proposal