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STAKEHOLDER PERSPECTIVES ON THE IANA TRANSITION

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

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[1] The attachment to Ms. Kehl's statement can be found at: *http://docs.house.gov/meetings/if/if16/20150513/103448/hhrg-114-if16-wstate-kehld-20150513.pdf*.

STAKEHOLDER PERSPECTIVES ON THE IANA TRANSITION

WEDNESDAY, MAY 13, 2015

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 2:19 p.m., in room 2322 of the Rayburn House Office Building, Hon. Greg Walden (chairman of the subcommittee) presiding.

Members present: Representatives Walden, Latta, Barton, Shimkus, Blackburn, Lance, Guthrie, Olson, Kinzinger, Bilirakis, Johnson, Long, Ellmers, Collins, Cramer, Eshoo, Doyle, Clarke, Loebsack, Matsui, McNerney, Lujan, and Pallone (ex officio).

Staff present: Ray Baum, Senior Policy Advisor for Communications and Technology; Leighton Brown, Press Assistant; Andy Duberstein, Deputy Press Secretary; Gene Fullano, Detailee, Telecom; Kelsey Guyselman, Counsel, Telecom; Grace Koh, Counsel, Telecom; David Redl, Counsel, Telecom; Charlotte Savercool, Legislative Clerk; Jessica Wilkerson, Oversight Associate, O&I; Jeff Carroll, Democratic Staff Director; David Goldman, Democratic Chief Counsel, Communications and Technology; Lori Maarbjerg, Democratic FCC Detailee; Margaret McCarthy, Democratic Senior Professional Staff Member; and Ryan Skukowski, Democratic Policy Analyst.

OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. WALDEN. Now that we have killed the lights, we will call the subcommittee on Communications and Technology to order, and welcome our witnesses here today, and our colleagues. Thanks for your patience with our late start. We had a vote on the floor, as you know, but we appreciate your being here today, and look forward to your testimony.

From the time the Administration announced their intent to transition IANA functions from ICANN to the international multistakeholder community, I have had very serious concerns about the potential risks associated with that move. We have said time and again that this is far too important to rush, and that we must carefully consider all of the consequences and outcomes before we ring a bell that cannot be un-rung.

This subcommittee has been committed to oversight of the transition process, and ensuring that there are safeguards in place to improve the odds of a successful transition, and preserve the Internet

we all committed to protecting. Last Congress we held a hearing on this topic and passed the Dot Com Act out of the full Committee almost exactly a year ago. The goals of the Dot Com Act are consistent with our position. It is the appropriate role of this subcommittee to oversee the NTIA, and, in this case, ensure that it thoroughly evaluates any proposal. As part of this oversight, we have already asked the GAO to begin an inquiry into the process that examines the existing contract, risks to be considered, and any safeguards that can be put into place to reduce the threats to the future operations and functions of the Internet.

Many have come to us to emphasize the importance of the IANA transition to the continued success of the multi-stakeholder model of governance, and to urge us to be mindful of the way the international community perceives our actions. We recognize these considerations, but we also feel it would be irresponsible to ignore the very real risks associated with a relinquishment of the U.S. role in Internet governance, no matter how symbolic. This is why we have taken the measured approach that we will discuss today.

NTIA put forward a set of criteria that they say any acceptable transition proposal must meet, all of which are essential to ensuring a vibrant Internet, should NTIA transition IANA to the multi-stakeholder community. NTIA should be applauded for this, and for its willingness to stick to these criteria, despite the difficulty in meeting them. Our goal, through this legislation, and our efforts in the subcommittee, is to ensure that these conditions are met, and that the myriad unforeseen complications that could arise in meeting them are addressed.

I am pleased to report the staff from both sides of the aisle have been working together to produce an amendment to the Dot Com Act that meets these goals that we all share without unduly burdening the agency as it works towards its goal. While NTIA works within its proper role in the multi-stakeholder model, we too are working with our proper role as oversight authority. While we have not reached agreement on final text, our discussions have been very promising, and there is an important role for Congress in this transition, and I commend the staff for their hard work.

I would also like to take a moment to touch on the timeline of the transition. It seems that everyone, including NTIA Administrator Larry Strickling, has acknowledged that the important work needed to facilitate a transition cannot be done before the existing contract expires on September 30, 2015. I urge NTIA to exercise the 2-year renewal option on the contract. Doing so allows the deliberative process to continue without artificial pressure or time constraints, and this won't provide any additional hurdle to the transition itself. Should NTIA and ICANN come to agreement on an acceptable proposal before the 2-year period is up, the contract can be cancelled to facilitate that transition.

I am pleased to have our panel of stakeholder witnesses here today to give us an update on their views of this transition. In the past year thousands of hours of hard work have taken place, many by our witnesses at the witness table today, to move this forward. Our last hearing gave voice to concerns that have been incorporated into the work of the multi-stakeholder working groups, and this is an opportunity for us to once again play our role in the proc-

ess. I thank the witnesses for being here, and I look forward to your expertise.

[The prepared statement of Mr. Walden follows:]

PREPARED STATEMENT OF HON. GREG WALDEN

From the time the administration announced their intent to transition the IANA functions from ICANN to the international multi-stakeholder community, I've had very serious concerns about the potential risks associated with the move. We've said time and again that this is far too important to rush, and that we must carefully consider all of the consequences and outcomes before we ring a bell that cannot be unrung.

This subcommittee has been committed to oversight of the transition process and ensuring that there are safeguards in place to improve the odds of a successful transition and preserve the Internet we are all committed to protecting. Last Congress, we held hearings on this topic and passed the DOTCOM Act out of the full Committee almost exactly a year ago. The goals of the DOTCOM Act are consistent with our position—it is the appropriate role of this subcommittee to oversee the NTIA, and in this case ensure that it thoroughly evaluates any proposal. As part of this oversight, we've already asked the GAO to begin an inquiry into the process that examines the existing contract, risks to be considered, and any safeguards that can be put into place to reduce threats to the future operations and functions of the Internet.

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Mr. WALDEN. With that, I would recognize the gentlelady from California, my friend, the Ranking Member of the Subcommittee, Ms. Eshoo.

OPENING STATEMENT OF HON. ANNA G. ESHOO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. ESHOO. Thank you, Mr. Chairman, and good afternoon to all the members, and to all of our witnesses. We welcome you here, and we thank you for your willingness to come and share your thoughts with us about—this is an important topic. Earlier this year Singapore's Minister of Communication and Information, Dr. Yaacob Bin—Ibrahim stated that "no one person, organization, or even country has a monopoly on the expertise and wisdom needed to meet the challenges that we are facing on the Internet on a day to day basis."

I agree with that quote, and his thought. It is why Congress, on a bipartisan, bicameral basis, has consistently stated that the United States should continue to preserve and advance the multi-stakeholder governance model under which the Internet has thrived. Our leadership in the IANA transition is critical, but I think inserting a unilateral role for our government, as the Dot Com Act does, undermines the legitimacy of the multi-stakeholder model, and it emboldens those that don't agree with us. Some call them our enemies, but I think that emboldens them.

For nearly 20 years it has been U.S. policy to transition the government's role in administering the domain name system to the multi-stakeholder global community, and by requiring the GAO to study the pros and cons of making such a transition, the Dot Com Act fails to recognize this history. Equally concerning is the opposition from the stakeholder community, including NetChoice's Steve DelBianco, who is here, and is going to be testifying today, that a post-analysis by GAO of the transition proposal is no longer necessary.

The success of the IANA transition depends on built-in mechanisms for transparency and accountability, and a commitment by ICANN to resist—Mr. Chairman, I don't think the committee is in order. That means stop gabbing, to my left. It is distracting.

The success of the IANA transition depends on built-in mechanisms for transparency and accountability, and a commitment by ICANN to resist any expansion of the role government or inter-governmental organizations may play in ICANN's deliberations. Now, if the majority shares these goals, and I believe that you do, then we should work together on a bipartisan alternative to the Dot Com Act which provides a reasonable period of time for Congress, and the general public, to review the IANA transition proposal. With responsible oversight, a successful transition of those functions will preserve the Internet's guiding principles of openness, of security, of stability, and resiliency, and ensure ICANN cannot be exposed to government capture.

And, again, I would like to thank the panel of witnesses. They are really esteemed individuals in each one of their spheres of influence, and I think that each one of them understands the Internet's guiding values, and the importance of the multi-stakeholder model. So, again, I thank you, and, Mr. Chairman, I yield back the balance of my time, unless someone else would like it. Doris, would you like my time? I would be glad to yield to you, to the gentlewoman from California.

Ms. MATSUI. Thank you very much, my fellow colleague. Got the wrong thing here. In 2012, with strong bipartisan congressional backing, the Administration's position was strengthened in re-affirming the current multi-stakeholder approach that has allowed the Internet to flourish here in the United States and around the world. Congress must stay united moving forward. I am pleased to hear that the Administration will not support any proposal that undermines the openness of the Internet. With over two billion users, we all know the Internet has become a necessity, and not a luxury. It plays a dominant role in the world economy. We need to continue to promote innovation and openness of the Internet around the globe. That has been the hallmark of U.S. policy. I believe the multi-stakeholder approach must continue to define Internet governance, and I yield back the balance of my time.

Mr. WALDEN. Gentlelady yields back the balance of her time. The Chair recognizes the gentleman from Ohio, the Vice-Chair of the Subcommittee, Mr. Latta.

OPENING STATEMENT OF HON. ROBERT E. LATTA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. LATTA. Well, thank you very much, Mr. Chairman, and thank our witnesses for being with us today. The Internet has quickly integrated into our everyday lives, and has become a central platform for job creation, education, business development, health care, and free expression. Therefore, the preservation of the Internet's openness and freedom should remain a high priority as NTIA prepares to transition the U.S. Government's role in the Internet's—numbering functions to a global multi-stakeholder community.

I thank the gentleman, my friend from Illinois, for introducing the Dot Com Act to ensure proper oversight of this transition. This bill will safeguard our national security interests, and allow citizens to continue to freely navigate the Internet. I look forward to hearing from our witness. And, Mr. Chairman, I would, at this time, yield to the gentleman from Illinois the balance of my time.

Mr. SHIMKUS. Thank you. I want to thank Chairman Walden and Chairman Upton for holding this hearing today. While we all use the Internet, few Americans, and I am included—few Americans truly understand the underlying Internet architecture. Perhaps that is because a system that has been in place has worked so well that we don't need to think about it. The Internet remains a free and open place to exchange information and ideas, and the goal of my legislation has always been to preserve that for future generations.

What we wanted to do with the Dot Com Act has always been to exercise vigorous oversight on the transition, and make sure it is done right, the old trust but verify statement. As a legislative body, specifically in the Telecom Subcommittee, we have authority and responsibility to oversee the activities of NTIA. We get one bite at the apple with this. We would be negligent in our responsibilities to not sure that NTIA, and the Administration, is living up to its promises.

NTIA says the proposal must, and this is from them, support and enhance the multi-stakeholder model, maintain the security, sta-

bility, 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. I have concerns that these requirements that NTIA has put forth are vague at best, but allowing Congress a chance to review any proposal would hold the Administration's feet to the fire before any transition could occur. If the proposal isn't as promised, and ICANN hasn't made the necessary changes to facilitate the transition, then Congress has the chance to engage in other legislative avenues to ensure that Americans will continue to access a free and open Internet.

Bipartisan staff discussions are ongoing, and we are hopeful that an agreement can be reached to hold NTIA accountable to their own criteria and move it to the floor, and to the President's desk. We just have to be careful, by exercising congressional oversight of NTIA, because there is no turning back once this moves forward. And, Mr. Chairman, I would like to submit for the record an article that came out today, "What Is In A Domain Name?" by Peter Roff, and it was in U.S. News & World Report.

Mr. WALDEN. Without objection.

[The information appears at the conclusion of the hearing.]

Mr. SHIMKUS. And I yield back my time.

Mr. WALDEN. Gentleman yields back the balance of his time. Chair recognizes the Ranking Member from New Jersey, Mr. Pallone, for 5 minutes.

OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Mr. Chairman. The subject of today's hearing is the transition of the Internet Assigned Numbers Authority, or IANA, and this function is sometimes called the Internet's phone book of Internet names and numbers, and, more simply, it is what allows Internet users to easily navigate the Web. The Internet is an unprecedented platform for economic opportunity and democratic free expression. It is used by three billion people around the globe. And because this phone book has worked so well, very few of us ever have to think about how it works, we just know it works. And that is a credit to a successful Internet governance model that uses a multi-stakeholder approach to decision-making. We all want this success story to continue, and that is why the U.S. Government has taken steps over the past two decades to get out of the way and allow the private sector to assume management of the domain name system. Put another way, we think the future of the Internet should be determined by businesses, civil society, and technical experts.

Both Republican and Democratic Administrations have supported the idea that the Internet should be governed through a decentralized bottom-up process that is free from government control, and Congress too has embraced this vision. In 2013, the House voted unanimously in support of a bill making it official U.S. policy to "preserve and advance the successful multi-stakeholder model that governs the Internet." I personally believe that the transition of the IANA functions to the global multi-stakeholder community helps achieve that goal.

Since NTIA announced last March its intention to relinquish control of the IANA contract, they have made significant progress to plan for this transition. They have also made impressive strides to enhance accountability for ICANN. NTIA has clearly and consistently articulated principles for the transition, in keeping with the U.S. Government's support for the multi-stakeholder model, and an open global Internet. I believe Congress has a bipartisan interest in seeing the IANA transition executed consistent with these principles.

We all have a shared interest in transparency and accountability, and therefore thank my Republican colleagues, especially Chairman Walden and Mr. Shimkus, for working with us to address concerns with the DOTCOM Act, and I look forward to continuing our shared responsibility, conduct rigorous oversight of NTIA, and to ensure the agency lives up to its commitments for the transition. So, again, thank you to the witnesses today for sharing their perspectives that they are going to on the proposals that have been put forward, and the work that remains to be done. And thank you to both the Chairman and our Ranking Member, Ms. Eshoo, for putting this together, and the work that we are going to do together on this.

I think Mr. Doyle and Ms. Matsui—you have already spoken, right? Does anyone else want any time? He says he doesn't, so, all right, I yield back. Thank you.

Mr. WALDEN. Gentleman yields back the balance of his time. Thank you for your kind comments. We look forward to continuing our work together.

Now we will go to our witnesses, and we will start with Steve DelBianco, Executive Director of NetChoice. We are delighted to have you with us today. Turn on that mic, pull it up close, and we look forward to your testimony, sir. Go ahead.

STATEMENTS OF STEVE DELBIANCO, EXECUTIVE DIRECTOR, NETCHOICE; DANIELLE KEHL, SENIOR POLICY ANALYST, NEW AMERICA'S OPEN TECHNOLOGY INSTITUTE; AUDREY PLONK, DIRECTOR, GLOBAL CYBER SECURITY AND INTERNET GOVERNANCE POLICY, INTEL CORPORATION; MATTHEW SHEARS, REPRESENTATIVE AND DIRECTOR, GLOBAL INTERNET POLICY AND HUMAN RIGHTS PROJECT CENTER FOR DEMOCRACY AND TECHNOLOGY; AND BRETT SCHAEFER, SENIOR RESEARCH FELLOW IN INTERNATIONAL REGULATORY AFFAIRS, THE HERITAGE FOUNDATION

STATEMENT OF STEVE DELBIANCO

Mr. DELBIANCO. Chairman Walden, Ranking Member Eshoo, members of the Committee, thank you very much for having yet another important hearing on this transition. I am deeply involved at ICANN, 30 meetings and five times elected as the policy chair for the businesses constituency, and partly on the inspiration of your hearing last year, I got deeply involved in the transition planning. I represent the commercial stakeholders globally on the transition planning team.

This was a year ago in April when you held the first hearing on NTIA's plan to transition oversight, and I think that what that fo-

cused on was the fact that, over 17 years, our government has protected ICANN's multi-stakeholder model from government encroachment, and really helped ICANN to mature. The analogy I suggested to you last year is that the U.S. built this car called IANA in the 1990s, we handed the car keys to ICANN in 1998, when we created ICANN, but we kept the ownership papers, we kept the title close. We monitored their driving and their care of the vehicle for those last 17 years. But, look, it is just not sustainable for the U.S. alone to hold that title forever, especially in a post-Snowden political climate, which really has nothing to do with the DNS, but politically, it is connected.

So the NTIA asked the community for proposals to replace the stewardship role for IANA, and the global multi-stakeholder community responded to the challenge. We have had hundreds of meetings in the last several months, tens of thousands of person hours have gone in, often overnight, since we cycle through different time zones for our friends in Asia, and all around the world, and I can tell you I have learned to keep my mic on mute after 2:00 in the morning.

Our community proposals are an excellent start. I summarized them in my testimony. Let me give you some highlights. We are giving the—for the first time we are giving the community new powers to challenge the Board's decisions and actions via the independent review panel that can issue binding decisions. We are allowing the community to veto bylaws changes proposed by the Board of Directors to veto strategic plans and budgets proposed by ICANN's Board, the power to remove and individual director, and better still, to spill the entire Board if they are not listening to the community.

Now, we assessed whether these new powers give the community the accountability we need in the face of stress tests, and, Chairman Walden, you indicated a certain appreciation for that in the first hearing. Good news, they answered quite well. We did 26 stress tests, and the new mechanisms I have just described allow the community to have the powers we needed to challenge the Board decision and hold them accountable. But there were some stress tests that needed even further changes.

Last June this Committee raised some very stressful questions of our own, drawing on the Dot Com Act to put together a set of requests for GAO, Government Accountability Offices, to analyze the risks and implications for national security in U.S. agencies. Both our stress tests that I talked to you about, and your third GAO question asked, what happens if ICANN quits the affirmation of commitments? That is a great question, because they can quit with 120 days' notice, particularly if they don't have to stay in it to keep the IANA contract. So we took ICANN's commitments in the affirmation, and the periodic reviews of the community, and have baked them into ICANN's bylaws as part of the proposal we released last week. And earlier I said that if ICANN tried to take those commitments out of the bylaws, the community can block that change.

Another is we channeled your second GAO question, another one that came from the Dot Com Act. Said, what if the Government Advisory Committee changed to majority voting for its advice that they give to ICANN? This would truly expand government's power.

We said, in the working group, that changing ICANN bylaws was essential so that we only are obligated to seek a mutually acceptable solution to this government advice if the government advice came over with consensus. So let them change their voting method, but only consensus carries that obligation.

Turning back to the proposals that I had earlier, we need details that we haven't provided yet. We were still in draft one, and the entire global stakeholder community has to review what we have come up with, so it will not happen by September 2015 IANA deadline. The timeline I have got here—and in my testimony shows that your Committee's good work on requesting GAO to start its analysis last June is really going to pay off.

They have been at it for several months. I have had two extensive, exhausting meetings with GAO, they are asking great questions, and it would be immensely valuable to see the GAO analysis during the comment period we are having right now, and a second one this summer, that would be a more valuable form of the Dot Com Act than having GAO only start their analysis when we are finished, and after the community has already developed their proposals. So, even with the extension, we really worry that ICANN's Board and management will resist the reforms that we are talking about, because they are tough medicine. Mr. Schaefer will address that in his testimony later on.

The role of Congress in this transition could be critical. We think you ought to insist that NTIA require ICANN to accept and implement the final form of our proposals for new accountability as a condition of getting the IANA transition, and that is why my chart has showed them in the upper right hand corner, to accept and implement, and it will be up to NTIA to make sure that that is the case. We would like you to support, and encourage, and insist upon NTIA to do that.

And I will conclude by saying this is, as you have indicated, our last chance to use the leverage that we are about to relinquish, because this driver is about to turn 18. It is time to sign over the title to this car, but not until we are sure that ICANN is answerable to the community we designed it to serve.

[The prepared statement of Mr. DelBianco follows:]

Statement of

Steve DelBianco,
Executive Director

NetChoice

Testimony before the

U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Communications & Technology

May 13, 2015

Stakeholder Perspectives on the IANA Transition

I am Executive Director of NetChoice, an association of leading online and e-commerce businesses.[1] At state, federal, and international levels, NetChoice promotes the integrity and availability of the Internet. We've participated in 30 ICANN meetings and I'm serving my 5th term as policy chair for the ICANN Business Constituency. I've attended eight Internet Governance Forum (IGF) meetings and testified in six Congressional hearings on ICANN and Internet governance, including before this committee last April – the very first Congressional hearing on the administration's announced transition.

NetChoice members are hugely invested in the topic of today's hearing. We require a secure Internet address system that's resilient to cyber attacks and online fraud. We need an Internet that works the same around the globe – free from discriminatory regulation and taxation. And we need Internet policies that are predictable and enforceable, allowing innovation while protecting consumers. I will focus on three points relevant to this committee:

1. Over 17 years and through three administrations, the US government has protected the ICANN multistakeholder model from government encroachment and helped ICANN mature towards independence. However, it is not sustainable for the US to retain its unique role forever. At our government's request, the Internet community has drafted transition proposals, applied 26 stress tests, and published the drafts for review by the broader Internet community.
2. NTIA's principles and requirements for this transition are appropriate to design new mechanisms to oversee core Internet functions, to hold ICANN accountable, and to prevent government capture *after* the transition. However, we worry about resistance from ICANN's board and management when it comes to approval and implementation of the community's proposals.
3. Congress' role in this transition starts with asking questions about proposed accountability mechanisms and potential stress tests, such as this committee has done. It includes asking the Government Accountability Office (GAO) to analyze risks and implications of transition, which this committee has also done. The next step is to insist that the Commerce Department require that ICANN accept and implement the multistakeholder proposals *as a condition of the transition*.

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[1] See http://www.NetChoice.org. This statement reflects the view of NetChoice and does not necessarily represent the views of any individual member company.

1. How we got here: United States Government Stewardship of ICANN and IANA

America invented the core Internet technologies and promptly gave them to the world. Internet hosts were appearing internationally by the 1980s. The 1990's saw the explosion of commercial uses of the Internet, based on a naming and numbering system also created in the United States. In 1998, the Clinton administration sought to privatize and internationalize the Domain Name System (DNS) with this directive in the *White Paper*:

> "The President directed the Secretary of Commerce to privatize the Domain Name System in a way that increases competition and facilitates international participation in its management."
>
> "The US Government is committed to a transition that will allow the private sector to take leadership for DNS management."[2]

In the 17 years since, it's been a long road from American invention to internationalized private-sector leadership by an entity the US established for the task: the Internet Corporation for Assigned Names and Numbers (ICANN). Three administrations and several Congresses have worked to help ICANN mature and protect the vision of private-sector leadership from growing pressure for control by governments, who saw the growth of the Internet and assumed that its governance required an inter-governmental solution.

The transition to an independent ICANN was expected to take a few years, but the National Telecommunications and Information Administration (NTIA) made several extensions of its oversight arrangements, the latest of which expired in September 2009. At the time, NetChoice was among those calling for another extension so that ICANN could develop permanent accountability mechanisms.

Instead, NTIA and ICANN unveiled a new agreement, the *Affirmation of Commitments.*[3] The *Affirmation* established periodic reviews giving all stakeholders – including governments – a defined oversight role in assessing ICANN's performance. The *Affirmation* gave the global Internet community what was promised: independence for ICANN in a framework where governments were alongside private sector stakeholders.

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[2] The "White Paper" on Management of Internet Names and Addresses, US Department of Commerce, Jun-1998, see http://www.ntia.doc.gov/ntiahome/domainname/6_5_98dns.htm

[3] Affirmation of Commitments, 2009, http://icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm

But concerns about the US role in naming and numbering remained after the execution of the *Affirmation*, because NTIA retained its contracting role for the Internet Assigned Numbers Authority (IANA). The IANA contract is deemed essential to ICANN and therefore provided NTIA leverage to hold ICANN to its *Affirmation* obligations.

However, ICANN can quit the *Affirmation* with just 120 days notice. And within a year of signing, ICANN's then-chairman told a group of European parliamentarians that he saw the *Affirmation* as a temporary arrangement ICANN would like to eventually terminate.[4]

All of this to say that ICANN needs a persistent and powerful reminder that it serves at the pleasure of global stakeholders; that ICANN has no permanent lock on managing the Internet's name and address system. We said at the time that ICANN's role in IANA functions should disappear if it were to walk away from the *Affirmation of Commitments*.

Since the UN created the Internet Governance Forum (IGF) in 2005, IGF meetings have become increasingly productive, yet some governments still want the UN to oversee DNS tasks handled by ICANN and IANA. In its July-2010 statement to the UN, China's government asked the UN and IGF to " solve the issue of unilateral control of the Critical Internet Resources." By 'unilateral control', China means US custody of the IANA contract. And 'Critical Internet Resources' include IP addresses, root servers, and the policymaking for domain names.

China was not alone in its desire for the migration of ICANN and IANA functions to the UN's International Telecommunication Union (ITU). ITU leadership did not like a model where governments share power with industry and civil society, and warned ICANN that sooner or later governments would take greater control of the organization.

In 2011, a group of governments proposed their own replacement for US oversight and ICANN's model of private sector leadership. India, Brazil, and South Africa declared it was time for "establishing a new global body" located "within the UN system" to "oversee the bodies responsible for technical and operational functioning of the Internet". [5] In contrast, both houses of Congress unanimously affirmed a resolution in 2012 stating, "the consistent and unequivocal

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[4] Peter Dengate Thrush, in response to a question from Steve DelBianco, at event hosted by European Internet Foundation in Brussels, June 22, 2010.

[5] Recommendations of IBSA Multistakeholder meeting on Global Internet Governance, September 2011, at http://www.culturalivre.org.br/artigos/IBSA_recommendations_Internet_Governance.pdf

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."[6]

Clearly, the last 17 years of "transition" have seen significant improvements in globalizing ICANN and IANA, although there have certainly been some challenges. Along the way, some governments and intergovernmental organizations have criticized the US role and openly coveted taking over that role. But throughout, the US Congress and multiple administrations have stayed with the vision of multistakeholder, private-sector leadership for Internet addressing and policymaking. And our government has used its contractual tools to improve ICANN's performance and to hold the organization to the accountability measures in the *Affirmation of Commitments*.

Still, the US continued to work towards full privatization of ICANN and IANA, at a deliberate pace and with measurable progress. Then came 2013 and Edward Snowden's revelations of US government surveillance. While not at all related to the Domain Name System or to Internet addressing, the Snowden situation was conflated with US oversight of ICANN and IANA in order to amplify international demands for globalization of these institutions.

2. NTIA's Announced Transition for IANA functions and ICANN Accountability

In March 2014 the Commerce Department announced that it would transition its stewardship of the Internet Assigned Numbers Authority (IANA) functions to the global multistakeholder community. The positive global response was immediate, signaling that this move, at this time, might relieve the intense pressure from foreign governments demanding an end to the unique US role in IANA oversight.

NTIA asked ICANN to develop a transition plan to shift stewardship of IANA functions into the hands of "the global multistakeholder community," saying the transition proposal must have broad community support and satisfy four principles in replacing NTIA's role[7]:

- Support and enhance the multistakeholder model

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[6] H.Con.Res.127 and S.Con.Res.50 - Expressing the sense of Congress regarding actions to preserve and advance the multistakeholder governance model under which the Internet has thrived, Aug 20, 2012

[7] Press Release, "NTIA Announces Intent to Transition Key Internet Domain Name Functions", March 14, 2014, at http://www.ntia.doc.gov/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions

- Maintain the security, stability, and resiliency of the Internet DNS
- Meet the needs and expectation of the global customers and partners of IANA services
- Maintain the openness of the Internet

NTIA also added a statement that it would not give up IANA control if the plan developed by ICANN would place other governments in the legacy role of the United States.

At the same time, NTIA and most stakeholders recognized that the existing contract between NTIA and ICANN provides a broader accountability framework for ICANN, and that accountability enhancements should be developed and adopted in parallel with the transition.

With the experience of the last 17 years, it's appropriate for the US government to impose these principles and to prevent any government-led organization from replacing the former US role *after* the transition is complete. Building on the work of your April 2014 hearing and the 2014 DOTCOM Act, this committee added 5 critical questions to be analyzed by the Government Accountability Office (GAO) last June[8]:

1. What are the U.S. national security implications of relinquishing NTIA's role in IANA?
2. NTIA has stated that it will not allow another government to step into the role the United States now plays. Is there a risk that despite NTIA assurances that another government could assume this role? What mechanisms can the multi-stakeholder community propose that would eliminate the chances of such an outcome?
3. The current IANA contract, along with the Affirmation of Commitments between ICANN and NTIA, ensure certain obligations are met by ICANN in carrying out its functions. What affirmative commitments should the U.S. government require from ICANN before finalizing its transition of control of the IANA function? How can the U.S. government ensure that these commitments are enforceable?
4. What other risks should be considered by NTIA as it analyzes proposals to replace U.S. government involvement in IANA? What are the risks if the U.S. retains NTIA's role?
5. In announcing the proposed transition, the Department of Commerce set forth the four criteria referenced above. What (if any) additional criteria should NTIA insist be met as a pre-condition to relinquishing its role in IANA?

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[8] Letter to GAO from House Commerce Committee Chairmen Upton and Walden, and members Blackburn, Shimkus, Kelly, and Rokita, 5-Jun-2014, at http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/letters/20140605GAO.pdf

Since NTIA's 2014 announcement and Congressional hearings last April, the Internet community and ICANN have developed two tracks to respond to the challenge:

> **IANA Stewardship track**: Placing the global Internet community in the role historically held by NTIA in the IANA contract with ICANN.
>
> **ICANN Accountability track**: Giving the global Internet community more power to hold the ICANN corporation accountable, since NTIA will lose the leverage associated with the IANA contract.

On each track, the community is comprised of representatives of ICANN's recognized Advisory Committees and Stakeholder Organizations, including business, governments, and civil society.

The IANA Stewardship Track: ICANN structured the IANA track to have a large community group (CWG) for naming functions, plus a smaller working group (ICG) comprised of community representatives and selected outside experts. They began meeting in October 2014 and have published draft proposals for replacing the NTIA's role in all three IANA functions: numbers, protocols, and domain names.

The numbers and protocol proposals were quickly developed by the customer groups concerned with those functions, and published their draft proposals in January 2015. The naming function proposal is more complicated and involves multiple stakeholder groups with existing contractual arrangements with ICANN. In late April, the naming group published its 2nd draft proposal, including these key elements:

- Create a new legal entity to contract with ICANN to operate IANA naming functions
- Establish a customer committee to monitor the performance of IANA functions
- Establish a periodic review of the IANA Functions, embedded in ICANN bylaws
- Empower the community select a new operator for the IANA Functions, if needed

Finally, the IANA naming proposal acknowledged its reliance upon enhanced community powers to hold ICANN to new obligations developed by the ICANN Accountability Track.

The ICANN Accountability track: ICANN stakeholders named representatives to a cross-community working group (CCWG) that began meeting in December 2013. (I serve as the representative of Commercial Stakeholders on the CCWG). After more than a hundred meetings over 5 months, we published a draft proposal giving the community new powers to ensure ICANN the corporation was answerable to more than just itself. New powers for the community include the ability to:

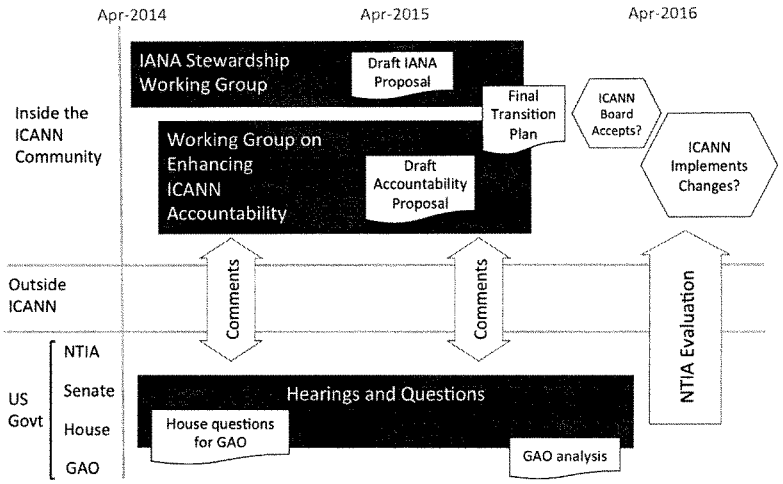
- Challenge board actions via Independent Review Panels whose decisions can be binding
- Veto bylaw changes proposed by the ICANN board
- Veto strategic plans and budgets proposed by the ICANN board
- Control the periodic reviews required by the *Affirmation of Commitments*
- Remove individual ICANN board directors
- Recall the entire ICANN board, as a last-resort measure

Independent legal counsel is advising the working group on ways to give these powers to the 'community' of Advisory Committees and Stakeholder Organizations and to draft the necessary changes to ICANN bylaws. That includes bringing into the bylaws key commitments and reviews from the NTIA's last remaining bilateral agreement with ICANN – the 2009 *Affirmation of Commitments*. Bylaws amendments also include changes indicated by stress testing. One amendment would restrict ICANN from straying outside its narrow technical mission. Another would limit the power of governments to affect policy, by clarifying that only *consensus* advice from the Government Advisory Committee would obligate ICANN to try and find a mutually acceptable solution.

3. Next Steps in the Transition

The IANA stewardship 2nd draft proposal was published April 22 and the accountability draft proposal was published May 4. The global Internet public can submit comments and questions thru ICANN's meeting in Buenos Aires in June. Discussions there will contribute to revised proposals for one or both transition tracks. We will also need to implement critically important measures (known as Work Stream 1) and plan for implementing additional measures identified for Work Stream 2.

Some ICANN Advisory Committees and Stakeholder Organizations may not be ready to approve the final proposal until after the ICANN meeting in October 2015. That means NTIA will need to extend the IANA contract beyond its September 30, 2015 expiration. Once the community has approved proposals for IANA and ICANN accountability, it's up to NTIA and Congress to assess whether those proposals meet the test, before allowing the IANA contract to expire. Below is a simplified illustration of the timeline and actors:



The GAO analysis you requested last year could be extremely valuable as part of public review and revision of the draft proposals just published. Seeing the GAO analysis now would be more useful than having GAO publish new criteria to evaluate community proposals only *after* they were developed and reviewed by the multistakeholder community.

4. Accountability Enhancements Suggested by Stress Testing

In my testimony before this committee for its April 2014 hearing, I described 8 stress tests that should be applied to a post-transition ICANN[9]. Chairman Walden, NTIA leadership and many in the Internet community quickly embraced stress testing as a prudent means to allow community planning to proceed, while informing and evaluating the proposals against potential threats. Thanks to this committee's request to the Government Accountability Office (GAO) last June, GAO is examining stress tests in their ongoing analysis, and asked probing questions in the two meetings they requested with NetChoice.

[9] See Stress Tests, pages 7-10 at NetChoice Testimony before the House Energy & Commerce Committee, Subcommittee on Communications and Technology – *Ensuring the Security, Stability, Resilience, and Freedom of the Global Internet*, 2-Apr-2014

As the accountability group noted about stress tests:

> The purpose of these stress tests is to determine the stability of ICANN in the event of consequences and/or vulnerabilities, and to assess the adequacy of existing and proposed accountability mechanisms available to the ICANN community.
>
> Also, note that the CCWG-Accountability charter does not ask that probability estimates be assigned for contingencies. The purpose of applying tests to proposed accountability measures is to determine if the community has adequate means to challenge ICANN's reactions to the contingency.

Beginning with 8 stress test scenarios that NetChoice presented to your committee last April, the accountability and IANA stewardship groups added 18 more, sorted into 5 categories:

I. Financial Crisis or Insolvency

ICANN becomes fiscally insolvent, and lacks the resources to adequately meet its obligations. This could result from a variety of causes, including financial crisis specific to the domain name industry or the general global economy. It could also result from a legal judgment against ICANN, fraud or theft of funds, or technical evolution that makes DNS obsolete.

II. Failure to Meet Operational Obligations

ICANN fails to process change or delegation requests to the IANA Root Zone, or executes a change or delegation over the objections of stakeholders

III. Legal/Legislative Action

ICANN is the subject of litigation under existing or future policies, legislation, or regulation. ICANN attempts to delegate a new TLD, or re-delegate a non-compliant existing TLD, but is blocked by legal action.

IV. Failure of Accountability

Actions (or expenditure of resources) by one or more ICANN Board Members, CEO, or other Staff, are contrary to ICANN's mission or bylaws. ICANN is "captured" by one stakeholder segment, including governments via the GAC, imposing its agenda on all other stakeholders or abusing accountability mechanisms to block processes.

V. Failure of Accountability to External Stakeholders

ICANN modifies its structure to avoid obligations to external stakeholders, such as terminating the *Affirmation of Commitments*, terminating presence in a jurisdiction where it faces legal action, moving contracts or contracting entities to another jurisdiction. ICANN delegates, subcontracts, or otherwise abdicates its obligations to a third party in a manner that is inconsistent with its bylaws or otherwise not subject to accountability. ICANN merges with or is acquired by an unaccountable third party.

The community working groups created a team focused on applying these stress tests using draft proposals for new community powers. For some stresses causes by external events, new accountability measures could help the community challenge the board's preparation and reaction, but could not completely mitigate the impact on ICANN. One stress test regarding country-code domains could not be completed pending policy development by the country-code supporting organization.

Overall, the stress test team determined that proposed new accountability measures were a significant improvement compared to existing measures, and would give the community adequate powers to challenge ICANN's decisions and actions. Two particular stress tests are worth exploring in this hearing, since they identified critical risks of having ICANN quit the *Affirmation of Commitments,* and avoiding expansion of governmental influence over ICANN.

4.1 Proposal to bring *Affirmation* commitments and reviews into ICANN bylaws

In our April 2014 testimony, the very first stress test that we proposed was where ICANN decides to quit the *Affirmation of Commitments*, which it may do with just 120 days notice.[10] Moreover, this committee asked about making *Affirmation* obligations enforceable, as part of question #3 sent to GAO last June. The accountability group was also significantly concerned about this stress test and said in its proposal:

> After the IANA agreement is terminated, the *Affirmation of Commitments* will become the next target for elimination since it would be the last remaining aspect of a unique United States oversight role for ICANN.[11]

Once the IANA contract is gone, the *Affirmation* stands out and would be targeted for elimination by governments who resent the US having a unique, bilateral relationship with ICANN. Against this contingency, the accountability group examined *Affirmation* items to determine if they were already part of ICANN bylaws. This resulted in a proposal to add key *Affirmation* commitments to the Core Values in ICANN bylaws:

> Ensure that decisions made related to the global technical coordination of the DNS are made in the global public interest and are accountable, transparent and should respect the bottom-up multistakeholder nature of ICANN.
>
> Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment that enhances consumer trust and choice.
>
> ICANN shall perform and publish analyses of the positive and negative effects of its decisions on the public, including any financial or non- financial impact on the public, and the positive or negative impact (if any) on the systemic security, stability and resiliency of the DNS.
>
> ICANN shall adhere to transparent and accountable budgeting processes, providing advance notice to facilitate stakeholder engagement in policy decision-making, fact-based policy

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[10] See Stress Test 1, on page 8 at NetChoice Testimony before the House Energy & Commerce Committee, Subcommittee on Communications and Technology – *Ensuring the Security, Stability, Resilience, and Freedom of the Global Internet*, 2-Apr-2014

[11] p.51 at draft report of Cross Community Working Group on Enhancing ICANN Accountability, 4-May-2015

> development, cross-community deliberations, and responsive consultation procedures that provide detailed explanations of the basis for decisions, including how comments have influenced the development of policy consideration, and to publish each year an annual report that sets out ICANN's progress against ICANN's Bylaws, responsibilities, and strategic and operating plans.
>
> ICANN shall provide a thorough and reasoned explanation of decisions taken, the rationale thereof and the sources of data and information on which ICANN relied.
>
> ICANN shall maintain the capacity and ability to coordinate the Internet DNS at the overall level and to work for the maintenance of a single, interoperable Internet.
>
> Operate as a multi-stakeholder, bottom-up private sector led organization with input from the public, for whose benefit ICANN shall in all events act.

Affirmation section 8b generated questions during the Senate Commerce Committee hearing in February 2015. 8b commits ICANN to "remain a not for profit corporation, headquartered in the United States of America with offices around the world to meet the needs of a global community." The community working group concluded this commitment was reflected in current ICANN articles of incorporation and in bylaws Article XVIII section 1:

> "OFFICES. The principal office for the transaction of the business of ICANN shall be in the County of Los Angeles, State of California, United States of America. ICANN may also have an additional office or offices within or outside the United States of America as it may from time to time establish."

While ICANN's board *could* propose a change to this bylaws provision, the newly-empowered community could block the proposed change. We are also considering whether bylaws Article 18 Section 1 should be listed as a "Fundamental Bylaw," where any change would require approval by 75% of community members.

As part of this stress test analysis, the accountabilty working group also proposed bringing the 4 periodic community reviews from the *Affirmation* into ICANN's bylaws:

ICANN's accountability & transparency

Preserving security, stability and resiliency

Promoting competition, consumer trust, and consumer choice

The extent to which WHOIS services meet legitimate needs of law enforcement

These reviews are proposed for addition to ICANN bylaws, modified to give the community access to ICANN internal documents and control over review team composition. In addition, the IANA stewardship group proposed an IANA Functions Review be added to the bylaws. When combined with proposed new powers to challenge ICANN board decisions, these bylaws changes would enable termination of the *Affirmation of Commitments*.

4.2 Proposal to limit ICANN obligations to advice from governments

In our April 2014 testimony, NetChoice also described stress tests where global governments could increase their sway over ICANN policies and decisions[12]. This concern was echoed in this committee's question #2 posed to GAO last June. In the accountability group this stress test generated much interest since it addresses ICANN's response to government advice in the context of NTIA's statement regarding the transition: "NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution".[13] This stress test was applied to existing and proposed accountability measures:

Stress Test	Existing Accountability Measures	Proposed Accountability Measures
Governments in ICANN's Government Advisory Committee (GAC) could amend their operating procedures to change from consensus decisions to majority voting for advice to ICANN's board. Consequence: Under current bylaws, ICANN must consider and respond to GAC advice, even if that advice were not supported by consensus. A majority of governments could thereby approve GAC advice that restricted free expression, for example.	Current ICANN Bylaws (Section XI) require ICANN to try to find "a mutually acceptable solution" for GAC advice. This is required for any GAC advice, not just for GAC consensus advice. Today, GAC adopts formal advice according to its Operating Principle 47: *"consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection."*[14] But the GAC may at any time change its procedures to use majority voting instead of its present consensus.	One proposed measure is to amend ICANN bylaws (Article XI Section 2, item 1j) to require trying to find a mutually agreeable solution only where GAC advice was supported by GAC consensus. The GAC could change its Operating Principle 47 to use majority voting for formal GAC advice, but ICANN bylaws would require trying to find a mutually agreeable solution only on advice that had GAC consensus. GAC can still give ICANN advice at any time, with or without consensus.

Some government representatives in the working group opposed this change to ICANN bylaws. That is not unexpected, since some government representatives have previously voiced dissatisfaction with the present consensus method of approving Government Advisory Committee (GAC) advice. It is entirely plausible that the GAC could change its method of

[12] See Stress Tests 6 and 7, on page 9 at NetChoice Testimony before the House Energy & Commerce Committee, Subcommittee on Communications and Technology – *Ensuring the Security, Stability, Resilience, and Freedom of the Global Internet*, 2-Apr-2014

[13] NTIA Announces Intent to Transition Key Internet Domain Name Functions, 14-Mar-2014, at http://www.ntia.doc.gov/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions

[14] ICANN Government Advisory Committee (GAC) - Operating Principles, October, 2011, at https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles

approving advice at some point, and it is entirely within their right to do so. On the other hand, several governments supported the change, including a forceful statement from NTIA[15]:

> As a threshold matter, the USG considers the stress test both appropriate and necessary to meet the requirement that the IANA transition should not yield a government-led or an intergovernmental replacement for NTIA's current stewardship role.
>
> Finally, we interpret the proposed stress test as capturing this important distinction in GAC advice, with an appropriate remedy in the form of a Bylaws amendment to reinforce the ICANN community's expectation that anything less than consensus is not advice that triggers the Bylaw provisions.

This historic transition creates the opportunity for the community to obtain accountability enhancements that the ICANN board would not likely approve if those enhancements were proposed after the leverage of the IANA contract is gone. By the same token, the GAC would not welcome this bylaws change if it were proposed at some point after the IANA transition.

This transition is the best opportunity to pursue difficult and sometimes controversial changes to ensure that ICANN is accountable to the entire community it was created to serve. By the same token, this transition is the last opportunity for the US government to use its leverage to get ICANN to accept and implement the community's proposed accountability enhancements.

5. Ensuring that ICANN accepts and implements the community proposals

In September 2014 all ICANN advisory committees and stakeholder groups wrote a joint letter raising questions about ICANN's proposed accountability process[16]. ICANN responded by asking whether and why the community seemed to lack trust in ICANN's board and management. The Business Constituency's reply is remarkable for its clarity on why the community needs new measures to hold ICANN accountable[17]:

> First, this discussion is not about whether the community 'trusts' the current ICANN board. It's about trusting future boards — after we no longer have the leverage/influence of the US Government to rely upon. This IANA transition is the community's chance to

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[15] Email from Suzanne Radell, Senior Policy Advisor, NTIA, 19-Mar-2015, at http://mm.icann.org/pipermail/accountability-cross-community/2015-March/001711.html

[16] Joint questions, https://www.icann.org/en/system/files/correspondence/cooper-et-al-to-chehade-crocker-03sep14-en.pdf

[17] p. 3, Business Constituency comment on Enhancing ICANN Accountability Process, 27-Sep-2014, at http://www.bizconst.org/wp-content/uploads/2014/09/BC-comment-on-Enhancing-ICANN-Accountability-Process.pdf

establish mechanisms to rein-in a future board that would put ICANN's corporate interests ahead of the community. We are not suggesting that a future board would do so. Rather, we are acknowledging that the board is obliged to protect the corporation's interests first, as required by ICANN bylaws:

> Section 7: Directors shall serve as individuals who have the duty to act in what they reasonably believe are the best interests of ICANN and not as representatives of the entity that selected them.

Should there be any confusion about whether the bylaws refer to 'ICANN' as the corporation or the community, see ICANN's *Management Operating Principles* (2008):

> "The third and perhaps most critical point of tension is between the accountability to the participating community to perform functions in keeping with the expectations of the community and the corporate and legal responsibilities of the Board to meet its fiduciary obligations. The ultimate legal accountability of the organization lies with the Board, not with the individuals and entities that make up the ICANN community."[18]

The Business Constituency had it right: ICANN's present bylaws do not hold the board accountable to the community. Before the US government lets go of the oversight leverage inherent in the IANA contract, it must ensure that ICANN accepts and implements the proposals needed to keep the ICANN corporation accountable to the global multistakeholder community that ICANN was created to serve.

These stress tests point the way to handle unforeseen situations long after the US government lets go the leverage of the IANA contract. It's imperative to empower the Internet community to challenge ICANN decisions on situations that will arise in the decades ahead. That leads us to the final segment of our testimony, on the role for Congress in this transition.

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[18] ICANN Accountability & Transparency Frameworks and Principles, Jan-2008, p.5, at https://www.icann.org/en/system/files/files/acct-trans-frameworks-principles-10jan08-en.pdf

6. The DOTCOM Act and Congress's Role in Ensuring an Accountable ICANN

Members of this committee are right to raise questions and concerns about this transition, proposed accountability mechanisms, and potential stress tests. Members of this committee also introduced the DOTCOM Act at last April's hearing, seeking to insert a GAO analysis phase in between the community's proposal and NTIA's approval. Today, it seems that events have overtaken the need for the GAO to begin a lengthy analysis *after* the community proposals are sent to NTIA.

The introduction of the DOTCOM Act in 2014 stimulated the pointed questions sent to GAO last June by Chairmen Upton and Walden, and members Blackburn, Shimkus, Kelly, and Rokita. Those questions include critical matters also in DOTCOM, such as national security concerns and implications for other US agencies. As noted earlier, GAO staff is already doing their analysis and met twice with NetChoice to delve into community powers and stress tests.

The global Internet community has devoted thousands of hours developing draft proposals for the transition, and is facing additional work to consider public comments, revise proposals, and plan for implementation. In support of this multistakeholder model, it would be helpful to ask GAO to quickly publish their analysis of your 5 questions relating to implications and risks that should be considered in planning the transition.

Publishing the GAO analysis you requested, at this time, would be valuable to inform public comment and revision of the draft proposals just published.

Moreover, I respectfully submit that this committee—and the rest of Congress—can be most influential and helpful by insisting that NTIA require ICANN to accept and fully implement the multistakeholder community proposals *as a condition of the IANA transition*.

To prepare ICANN for a future independent of US government contracts, the Internet community needs to hold ICANN accountable, with powers like shareholders have over corporations, voters over their elected officials, and members over their trade associations.

There are a lot of details left to decide, but the present draft transition proposals are a good start. This transition can realize the *White Paper* vision for an ICANN that is led by, and accountable to its multistakeholder communities, including the private sector, civil society, and technology experts – along with governments. Together, we can bring connectivity, content, and commerce to the next billion global Internet users and to future generations of Americans.

Mr. WALDEN. Thank you very much. Turn over the titlement. Who is paying for the insurance? That is what I want to know.

Mr. DELBIANCO. That is the expensive part, Mr. Chairman.

Mr. WALDEN. That is the expense. Anybody with a teenage knew that.

We are going to go now to Danielle Kehl, who is the Senior Policy Analyst at the New America's Open Technology Institute. Danielle, we welcome you, and thank you for participating in our hearing today.

STATEMENT OF DANIELLE KEHL

Ms. KEHL. Thank you, Chairman Walden, Ranking Member Eshoo, and members of the Subcommittee. As a researcher and active participant in global Internet governance issues, I appreciate the Committee's desire to preserve a free and open Internet, and believe that a swift and orderly IANA transition is key to achieving that goal.

While I share the Committee's concern that if the IANA transition goes badly it could harm Internet freedom, the best way to prevent that outcome, and to ensure the continued stability of the Internet's domain name system, is to support the ongoing process. The U.S. Government's oversight role has long been a political target, an exaggerated symbol that overshadows our good intentions in the global Internet governance space, and it is time to step aside, which will ultimately help us in our ongoing efforts to prevent government overreach on other Internet governance issues.

The first point that I would like to emphasize today is that this is the right time for the IANA transition to happen, and without unnecessary delay. The transition is long overdue, both historically and politically. It is the logical conclusion of the sequence that began in 1998, when the U.S. Government first announced that it would privatize the DNS, and it is a formal recognition that the Internet is now a truly global network.

There is broad consensus that no single country should have exclusive jurisdiction over the Internet's core infrastructure, and that the system needs to evolve in ways that benefit users all around the world. That is why a wide range of Internet stakeholders support the decision to complete the transition to a community-based non-governmental institution. As former FCC Commissioner Robert McDowell put it, it is time to get the government out of the Internet governance business. And we can't forget that NTIA made it clear from the very beginning that this oversight role would be temporary. The justifications for it in 2015 are considerably weaker than they were in 1998.

There is also significant evidence that if NTIA had not voluntarily decided to begin the transition, other Internet stakeholders would have tried to force its hand. For all these reasons, the decision last year to initiate the transition and establish a community-drive multi-stakeholder process is the only way to ensure that the transition happens in such a way that it addresses both the needs of the global community and the interests of the U.S. Government.

Second, the process of developing the transition and accountability proposals, as I think my colleagues on the panel will also say, is proceeding reasonably well. Last year, NTIA laid out five

clear principles that any transition plan must meet, and the development of this plan is receiving significant input from a wide range of stakeholders. Yes, the process is complex, but there is still reason to believe that when the dust settles, there will be a real community consensus about what the transition should look like, and that it will include appropriate safeguards to ensure the system's ongoing stability. And NTIA is firmly positioned to reject any proposals that fail to meet its criteria.

At the heart of all of this is the question of ICANN accountability. Specifically, after it is freed from U.S. Government oversight, what will prevent ICANN from taking on a global governance role far outside of its core commitments? There are important issues that need to resolve, including how to make sure that the community has the means to correct any misuses of ICANN's power. But these questions are best addressed through the existing accountability process, whose working group recently released its initial draft proposal, 142 pages, for review.

So, finally, while I share the Committee's concern that the stakes are high, legislation like the Dot Com Act is not necessary, and, although surely unintentional, could actually make it substantially more difficult for the U.S. Government to make sure that the transition happens smoothly. Imposing a delay would appear to be an act of bad faith, and it will be poorly received internationally. It will look like an attempt to substitute the U.S. Government's judgment for the global community's. Preventing NTIA from completing the transition is also inconsistent with the previous statements that were mentioned in opening remarks about unanimous support for the multi-stakeholder Internet governance model. And, finally, it would play into the hands of foreign governments who seek to undermine the system, and strengthen their opposition to the U.S. on a broad range of free expression issues.

To conclude, I think we are all in agreement that the IANA transition is a significant opportunity for the United States and for Internet users worldwide, and we appreciate the Committee's engagement on this incredibly important issue. But the best way to ensure that it goes well, and to achieve our broader shared goal of protecting a free and open Internet is to let the community complete its work before deciding what the next step should be. Thank you, and I look forward to your questions.

[The prepared statement of Ms. Kehl follows:]

Statement of Danielle L. Kehl
Senior Policy Analyst, New America's Open Technology Institute

Before the U.S. House of Representatives
Subcommittee on Communications and Technology
of the Energy and Commerce Committee

Hearing on "Stakeholder Perspectives on the IANA Transition"

May 13, 2015

Chairman Walden, Ranking Member Eshoo, and members of the subcommittee:

Thank you for giving me the opportunity to testify today on the IANA transition. I represent New America's Open Technology Institute (OTI), where I am a Senior Policy Analyst responsible for leading OTI's Internet governance portfolio. New America is a nonprofit civic enterprise dedicated to the renewal of American politics, prosperity, and purpose in the digital age through big ideas, technological innovation, next generation politics, and creative engagement with broad audiences. OTI is New America's program dedicated to technology policy and technology development in support of digital rights, social justice, and universal access to open and secure communications networks.

I am speaking to you today on behalf of OTI, but also as a member of civil society who has both studied and participated directly in a variety of Internet governance processes. In 2014, I served as a member of the U.S. delegation to the International Telecommunication Union's Plenipotentiary Conference in Busan, South Korea, advising on a range of Internet-related issues. I have also participated in multi-stakeholder events like the annual Internet Governance Forum and as part of the Bestbits Coalition, an international network of civil society organizations dedicated to advancing broadly shared civil society interests in Internet governance.

We appreciate the Committee's desire to preserve a free and open Internet, and believe that a swift and orderly IANA transition is key to achieving that goal and strengthening the multi-stakeholder Internet governance system. While we share the Committee's concern that if the IANA transition goes badly, it could harm Internet freedom, attempting to delay or interfere with the transition through Congressional action would undermine — rather than strengthen — the U.S. government's ability to protect Internet freedom and ensure the continued stability of the Internet's Domain Name System (DNS). I have three main points to make today:

- First, although the stakes are considerable, the timing is right for the IANA transition to happen without unnecessary delay;
- Second, the process of developing the transition and accountability proposals from the different elements of the community is proceeding reasonably well;
- Finally, while we share the Committee's concern that the stakes for this transition are high, legislation like the DOTCOM Act is not necessary, and could in fact make it substantially more difficult for the U.S. government to ensure that the transition happens in a way that meets both our interests and those of the global Internet community.

I. The Timing is Right for the IANA Transition

Although the stakes are considerable, the timing is right for the IANA transition to happen as soon as possible. The IANA transition is the logical culmination of the sequence initiated in 1998, when the U.S. government began the privatization of the Internet's Domain Name System through an NTIA-issued statement of policy known as the DNS "White Paper."[1]

[1] "Statement of Policy on the Management of Internet Names and Addresses," United States Department of Commerce, June 5, 1998, *available at* http://www.ntia.doc.gov/federal-register-notice/1998/statement-policy-management-internet-names-and-addresses. In the White Paper, NTIA indicated that it was "prepared to recognize, by entering into agreement with, and to seek international support for, a new, not-for-profit corporation ["NewCo"]

The transition has important symbolic significance, as a formal recognition by the United States that the Internet — which the United States government helped usher into existence 30 years ago — is now truly a global public trust.[2] There is broad consensus today that the Internet's core infrastructure should not be the special purview of any one country's exclusive jurisdiction, but rather needs to evolve in ways that benefit all users, world-wide.[3] That's why the decision to complete this transition to a community-based, non-governmental institution has been met with support from a broad range of Internet stakeholders in the private sector, civil society, foreign governments, and the technical community.[4] It's "time to get the [U.S.] government out of the Internet governance business," as former FCC Commissioner Robert McDowell put it.[5]

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formed by private sector Internet stakeholders to administer policy for the Internet name and address system [and] to undertake various responsibilities for the administration of the domain name system now performed by or on behalf of the U.S. Government or by third parties under arrangements or agreements with the U.S. Government." NTIA set forth a number of conditions that would have to be met before the government would "recognize" any such entity. NewCo was to be "headquartered in the United States, and incorporated in the U.S. as a not-for-profit corporation," operating "for the benefit of the Internet community as a whole." It would undertake to "set policy for allocat[ing] IP number blocks to regional Internet number registries," "oversee operation of the authoritative Internet root server system," and "develop policy for determining the circumstances under which new TLDs are added to the root system." Governance of the new corporation was to be private (i.e., non-governmental), operating under what NTIA referred to as the "multi-stakeholder model of Internet governance." NTIA furthered specified that NewCo would managed by a Board of Directors "balanced to equitably represent the interests of "IP number registries, domain name registries, domain name registrars, the technical community, Internet service providers (ISPs), and Internet users (commercial, not-for-profit, and individuals) from around the world."

[2] Since 2004, roughly 1.8 billion people have come online, with another 500 to 900 million people predicted to join the online population by the year 2017. The vast majority of these new Internet users reside outside the United States in Europe as well as in countries across the Global South. In parallel to the growth of the network itself, the ecosystem of multi-stakeholder and multilateral Internet governance organizations has also grown exponentially. What was once a handful of technical organizations and policy-making forums has transformed in the past decade into a sprawling and decentralized system of both regional and global institutions and convenings. "World development indicators," World Bank, 2013 estimates, Sourced from the International Telecommunication Union (ITU), "World telecommunication/ICT development report" and database, and World Bank estimates; "Offline and Falling Behind: Barriers to Internet Adoption," *McKinsey & Company*, September 2014, *available at* http://www.mckinsey.com/insights/high_tech_telecoms_internet/offline_and_falling_behind_barriers_to_internet_adoption.

[3] Even members of the U.S. Senate were fairly unanimous during a February 2015 hearing on the IANA transition in asserting that there should be no government control in the operation of this part of the Internet ecosystem. "Hearing: Preserving the Multistakeholder Model of Internet Governance," U.S. Senate Committee on Commerce, Science, and Transportation, February 25, 2015. For additional discussion of that hearing, *see* David Post & Danielle Kehl, "Senate Hearings on the IANA Transition Provide Troubling Insight Into Policymakers' Priorities," *New America's Open Technology Institute,* March 2, 2015, *available at* http://www.newamerica.org/oti/senate-hearings-on-the-iana-transition-provide-troubling-insight-into-policymakers-priorities/.

[4] For a list of statements of support for the IANA transition, *see* "Report on the Transition of the Stewardship of the Internet Assigned Numbers Authority (IANA) Functions," *National Telecommunications and Information*

From the very beginning, NTIA made it clear that its continued role in procuring the IANA functions would be temporary, stressing that it intended to stay involved only "until such a time as the transition to private sector management of the DNS was complete."[6] Although the U.S. government has handled the evolution of the Internet and its governance systems well so far, the justifications for a special role for the U.S. government in managing that evolution are considerably weaker in 2015 than they were in 1998. This is a consequence of both the Internet's vastly expanding global reach, and of questions about the U.S. government's ability to claim any kind of neutral "stewardship" role for itself with respect to Internet affairs.[7]

Indeed, there is considerable evidence that if NTIA had not voluntarily decided to begin the transition, other Internet stakeholders, including foreign governments and important elements of the technical community, would have tried to force its hand. In October 2013, for example, the heads of a number of key non-governmental Internet governance organizations, including ICANN, the Internet Engineering Task Force, and the five Regional Internet Registries, publicly voiced their concerns about the United States' waning credibility as the steward of the IANA functions in the Montevideo Statement on the Future of Internet Cooperation. The statement expressed "strong concern over the undermining of the trust and confidence of Internet users globally due to recent revelations of pervasive monitoring and surveillance" and "called for accelerating the globalization of ICANN and Internet Assigned Numbers Authority (IANA) functions, towards an environment in which all stakeholders, including all governments,

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Association, January 31, 2015, at 6-9, *available at* http://www.ntia.doc.gov/files/ntia/publications/iana_report_013015.pdf.

[5] Robert M. McDowell, "Opportunities, Threats, Internet Governance and the Future of Freedom," *The Hudson Institute*, March 19, 2014, *available at* http://www.hudson.org/research/10181-opportunities-threats-internet-governance-and-the-future-of-freedom.

[6] "Statement of Policy on the Management of Internet Names and Addresses,"

[7] *See, e.g.*, Milton Mueller, "Do the NSA Revelations Have Anything to Do With Internet Governance?" *Internet Governance Project*, February 19, 2014, *available at* http://www.internetgovernance.org/2014/02/19/do-the-nsa-revelations-have-anything-to-do-with-internet-governance/. (Mueller argues that the NSA disclosures "threaten… in a very fundamental way the claim that the US had a special status as neutral steward of Internet governance.")

participate on an equal footing."[8] Their reaction is due in no small part to the 2013 revelations about the National Security Agency's surveillance activities, which exacerbated tensions that already existed within the global Internet governance community regarding the U.S. government's privileged relationship with ICANN.[9]

For all of these reasons, NTIA's strategic decision to initiate the transition last year, establishing a multi-stakeholder process to let the community figure out how to make it work, is the only viable way to ensure that the transition happens in a way that addresses both the needs of the global community of Internet users and the interests of the U.S. government. We cannot go back on the promises that we have made, nor should we.

II. The Transition Process is Proceeding Well, and the Key Area to Focus on is Enhancing ICANN Accountability

The process of developing the transition and accountability proposals from the different elements of the community is proceeding reasonable well. NTIA has laid out five clear principles that any transition plan must meet, including that it must maintain the openness of the Internet and that it cannot replace NTIA's role with any governmental or intergovernmental solution.[10]

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[8] "Montevideo Statement on the Future of Internet Cooperation," *Internet Corporation for Assigned Names and Numbers*, October 7, 2013, *available at* https://www.icann.org/en/news/announcements/announcement-07oct13-en.htm.

[9] Historically, many countries have objected to the way ICANN operates and its ties to the U.S. government. In 2011, for example, India proposed the creation of a UN Committee for Internet-Related Policies (CIRP) that would have placed many of the policymaking functions performed by ICANN and issues discussed at the Internet Governance Forum under the purview of a 50-country government committee with four advisory groups (for civil society, the technical and academic community, businesses, and international and intergovernmental organizations) to "advise and assist" them—an inversion of the ICANN model. See "India's Proposal for a United Nations Committee for Internet-Related Policies (CIRP)," Statement by Mr. Dushyant Singh, Honorable Member of Parliament, India, Sixty Sixth Session of the UN General Assembly, October 26, 2011, *available at* http://itforchange.net/sites/default/files/ITfC/india_un_cirp_proposal_20111026.pdf. Efforts have also been made to bring some or all of the tasks related to the management of the DNS under the oversight of the International Telecommunication Union, the UN specialized agency responsible for the interoperability of global telecommunications networks.

[10] IANA Functions and Related Root Zone Management Transition Questions and Answers," *National Telecommunications and Information Association*, March 18, 2014, *available at* http://www.ntia.doc.gov/other-publication/2014/iana-functions-and-related-root-zone-management-transition-questions-and-answ.

The development of this plan is receiving a significant amount of attention and input from a wide range of stakeholders.[11] Although the process is complex, there is still reason to believe that when the dust settles, there will be a real community consensus on the structure of the transition, with appropriate safeguards to ensure the ongoing stability of the system.[12] And NTIA is positioned firmly to reject any transition proposals that fail to meet those criteria or that might undermine the free and open Internet.

The biggest area of concern right now surrounds the question of ICANN accountability after it is freed from U.S. government oversight.[13] NTIA's ability to re-open the IANA contract procurement has given it leverage to extract specific promises from ICANN over the past two decades concerning the organization's governance and decision-making structure and operations — which observers and participants in ICANN's activities over the years have been virtually unanimous in describing as an important "backstop" to keep ICANN within its mandate. Whoever controls the DNS will inevitably be subject to pressure from a variety of directions to use this leverage to broaden the scope of its enforcement powers, to reach elements of Internet communications (*e.g.*, message content) beyond those elements necessary for the smooth functioning of the DNS and its narrow name-resolution function. Going forward, what will

[11] To guide the process, NTIA directed ICANN to convene the transition process, leading to the creation of an IANA Stewardship Transition Coordination Group (ICG) with representation from over a dozen Internet stakeholder communities. In September 2014, the ICG asked for transition proposals from the multistakeholder community, requesting separate ones for each of the three primary IANA functions: protocols, numbers, and domain-name related functions. These proposals will eventually be reconciled to create a single, consolidated proposal. In parallel to the transition proposal development, ICANN launched a process to enhance ICANN accountability, which would focus "on ensuring that ICANN remains accountable in the absence of its historical contractual relationship with the U.S. Government." For more information, *see* https://www.icann.org/stewardship/coordination-group, IANA Stewardship Transition Coordination Group, "Request for Proposals," September 8, 2014, *available at* https://www.icann.org/en/system/files/files/rfp-iana-stewardship-08sep14-en.pdf; "IANA Stewardship Transition and Enhancing ICANN Accountability," *available at* https://www.icann.org/stewardship-accountability#processes.

[12] *See, e.g.*, Matthew Shears, "Protect the Internet: Support the IANA Transition," *The Center for Democracy and Technology*, January 7, 2015, *available at* https://cdt.org/blog/protect-the-internet-support-the-iana-transition/.

[13] For a full discussion of ICANN accountability concerns, *see* David Post & Danielle Kehl, "Controlling Internet Infrastructure: The 'IANA Transition' and Why It Matters for the Future of the Internet, Part 1," *New America's Open Technology Institute*, April 2015, *available at* http://www.newamerica.org/oti/controlling-internet-infrastructure/.

prevent ICANN from inserting itself into global law-enforcement or governance roles far removed from its core commitment to ensuring that the DNS runs smoothly and efficiently? ICANN has not been constituted and organized for the purpose of setting global copyright, consumer protection, fraud, pornography, or trademark policy, and although its leadership has publicly disclaimed any interest in such a role, some of the corporation's recent actions suggest otherwise.[14]

There are, therefore, important issues that need to be resolved in order to ensure that ICANN continues to stay within the "picket fence"[15] after U.S. government oversight is relinquished, including strengthening independent review mechanisms and making sure that there is a means for the community to correct any abuses or misuses of ICANN's power. But these questions are best addressed through the existing accountability process, whose working group has only recently released its initial draft proposal for public comment.[16]

III. The DOTCOM Act Could Undermine the U.S. Government's Ability to Ensure a Smooth and Successful IANA Transition

Finally, while we share the Committee's concern that the stakes for this transition are high, legislation like the DOTCOM Act is not necessary, and could in fact make it substantially

[14] *See, e.g.*, David Post, "ICANN, copyright infringement, and 'the public interest,'" *The Washington Post*, March 9, 2015, *available at* http://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/03/09/icann-copyright-infringement-and-the-public-interest/ (discussing recent attempts by the Motion Picture Association of America and the Recording Industry Association of America to enforce copyright infringement through ICANN).

[15] The limitations on ICANN's policy-making authority through the implementation of a "Consensus Policy Development Process" are known, to ICANN insiders, as the "picket fence." Appendix A of the original ICANN By-Laws describes this policy development process in detail.

[16] The Cross Community Working Group on Enhancing ICANN Accountability published its initial draft report on "Proposed Accountability Enhancements" on May 4, 2015, and has requested public comments by June 3, 2015. For more information on the report, *see* https://www.icann.org/public-comments/ccwg-accountability-draft-proposal-2015-05-04-en.

more difficult for the U.S. government to ensure that the transition happens in a way that meets both our interests and those of the global Internet community.[17] The better strategy is to focus efforts on ensuring that the transition is carefully planned, and that it contains robust accountability mechanisms.

Imposing a one-year delay would appear to be an act of bad faith on the part of the United States government, and will be poorly received internationally.[18] It will look like an attempt to substitute the U.S. government's judgment for that of the global multi-stakeholder community, which could undermine U.S. credibility in the process. Preventing NTIA from completing the transition is also inconsistent with previous statements of support for the global multi-stakeholder model of Internet governance — and the recognition that there should be no privileged role for governments in that system — which both the House and Senate adopted unanimously in 2012.[19]

Finally, such a move would play into the hands of governments seeking to undermine the multi-stakeholder model of Internet governance — especially those whose views regarding free expression on the Internet are inimical to those of the United States — and strengthen their opposition to the United States' positions on this and a broader range of Internet policy issues. It could further empower critics like China and Russia, who have long favored a governmental or

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[17] *See, e.g.*, letter from Access, the Center for Democracy and Technology, Freedom House, Human Rights Watch, the Open Technology Institute at the New America Foundation, and Public Knowledge to Honorable Rep. Howard Coble Chairman of the Judiciary Committee's Subcommittee on Courts, Intellectual Property, and the Internet, April 9, 2015, *available at* https://www.newamerica.org/oti/oti-sends-letter-to-congress-on-the-dotcom-bill-and-the-iana-transition/.

[18] Christian Dawson, "DOTCOM Act Could Slow IANA Transition Process," *Internet Infrastructure Coalition*, May 14, 2014, *available at* http://www.i2coalition.com/dotcom-act-could-slow-iana-transition-process/; Natalie Green, "How the DOTCOM Act Could Endanger Rather Than Protect Internet Freedom," *New America's Open Technology Institute*, April 10, 2014, *available at* https://www.newamerica.org/oti/how-the-dotcom-act-could-endanger-rather-than-protect-internet-freedom/.

[19] H. CON. RES. 127/S. CON. RES. 50 recognizes that "given the importance of the Internet to the global economy, it is essential that the Internet remain stable, secure, and free from government control" and "this and past Administrations have made a strong commitment to the multi-stakeholder model of Internet governance and the promotion of the global benefits of the Internet." The resolution was passed by both the House and Senate prior to the International Telecommunication Union's 2012 World Conference on International Telecommunications.

intergovernmental approach to Internet governance and would relish the opportunity to claim authority over the IANA functions through the ITU or another government-dominated entity.

IV. Conclusion

The IANA transition is a significant opportunity for the United States and for the global community of Internet users, and we appreciate the Committee's interest in and engagement on this important issue. But the best way to ensure that the transition goes well — and to achieve our broader shared goal of protecting the free and open Internet — is to let the community complete its task before deciding what the next step should be. Thank you, and I look forward to your questions.

[The attachment to Ms. Kehl's statement has been retained in committee files and can be found at: *http://docs.house.gov/meetings/if/if16/20150513/103448/hhrg-114-if16-wstate-kehld-20150513.pdf.*]

Mr. WALDEN. Thank you, Ms. Kehl. Appreciated your comments and your insights.

Go now to Audrey Plonk, who is the Director of Global Cyber Security and Internet Governance Policy for the Intel Corporation. Ms. Plonk, we are delighted to have you before the Committee. Please go ahead.

STATEMENT OF AUDREY PLONK

Ms. PLONK. Apologies. Good afternoon, Chairman Walden, Ranking Member Eshoo, and members of the Subcommittee. Thank you for the opportunity to testify today. I am Audrey Plonk, Director of Global Cyber Security and Internet Governance Policy at Intel. I am here to express Intel's unequivocal support for the successful and timely transition of the stewardship of the IANA functions contract in support of the multi-stakeholder community. Intel has actively followed and participated in the transition process.

Technology advances built on U.S. innovation have driven unprecedented economic growth in the U.S. and abroad. Intel has been at the center of this innovation for more than 40 years. In 2014 Intel did $55.9 billion of business, and employed 170,000 people worldwide, 60,000 in the United States. Though Intel is incorporated here, our presence, impact, and revenues span the globe.

I cannot stress enough the importance of trust to our current and future success. We have observed a trend toward diminished trust in the U.S. Government and U.S. companies, both at home and abroad. Any real or perceived failure in the transition in the form of an externally imposed or mandated delay will only heighten mistrust in the U.S. Government, and embolden governments threatened by a free and open Internet, to the detriment of the many Internet technology companies headquartered in this country.

Intel is not a provider of domain name services, nor a registry, or a registrar. We are not a contracted party to ICANN. Quite simply, we design and manufacture the computing power of the Internet. Though the IANA functions are extremely important, they are fundamentally administrative, and involve updating and maintaining three related, but separate, registries, names, numbers, and protocols.

The IANA neither makes policy, nor exercises judgment. It simply follows a mechanical process to maintain and update these registries according to explicitly defined rules. Without these functions, connected devices will not fully realize their potential to improve the lives of everyone on Earth. Today those rules are developed through multi-stakeholder processes through which all interested and affected parties participate. Much of the global debate on Internet governance centers on this process, and whether it is sufficient to govern the Internet going forward.

The most widely supported alternative to multi-stakeholder governance is multi-lateral governance, in which an intergovernmental body, such as the United Nations, makes governance decisions. In this scenario, the overall influence of the United States government is diminished to a single vote, and the ability for direct participation from industry and civil society is largely eliminated. Again, any real or perceived failure in the transition emboldens hostile

governments to push this process toward the United Nations, or another intergovernmental body.

Recognizing this, the U.S. Congress has consistently and publicly supported multi-stakeholder Internet governance, as was previously mentioned in opening statements. In 2012 Congress unanimously passed a resolution to preserve, and advance, a successful multi-stakeholder model that governs the Internet today. And just last year, thanks to the foresight and leadership of this Committee, this policy was reaffirmed in H.R. 1580, which passed the House unanimously. It is Intel's view that the transition of the IANA functions is, in fact, advancing multi-stakeholder governance in line with this stated policy.

The transition is on an excellent path. As of today, there are four proposals, two complete from numbers and protocols, and two in draft format from names and accountability, covering all aspects of the transition. Most importantly, especially for this committee, and for congressional oversight, these proposals have been, and will continue to be, developed in a completely open and transparent fashion. Anyone with an interest can review and comment, and access the entire record of past discussion to understand how decisions were reached.

The Internet doubles in size every 10 ½ months, and has done so for 30 years. Technology is changing all the time. Keeping up with that rate of exponential growth requires all the parts of the Internet to be continuously improved. Not only the technical functions, but the political and policy functions as well. We can't leave the politics and policies in the 20th century while the technology advances into the 21st.

The transition is entering its final stages. We ask that you support allowing the names community and the accountability working group the time they need to arrive at a responsible and well considered outcome, recognizing that the uncomplicated proposals from numbers and protocols communities are complete. This approach reinforces the U.S. Government's commitment to multi-stakeholder outcomes during this critical time for Internet evolution and Internet governance. Our collective success depends upon a global, open, interoperable, trustworthy, and stable Internet as a platform for the connected devices that Intel builds.

Thank you, and I look forward to your questions.

[The prepared statement of Ms. Plonk follows:]

WRITTEN STATEMENT FOR THE RECORD OF

AUDREY PLONK

DIRECTOR, GLOBAL CYBERSECURITY AND INTERNET GOVERNANCE POLICY
INTEL CORPORATION

BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES SUBCOMMITEE ON COMMUNICATIONS AND TECHNOLOGY

ON "STAKEHOLDER PERSPECTIVES ON THE IANA TRANSITION."

May 13, 2015

Good morning Chairman Walden, Ranking Member Eshoo and other members of the Committee. Thank you for the opportunity to testify today. My name is Audrey Plonk, Director of Global Cybersecurity and Internet Governance Policy, and I am pleased to address the Committee on the important issue of transition of stewardship of the Internet Assigned Numbers Authority (IANA) contract from the U.S. government to the global multistakeholder community. I appreciate the Committee's ongoing leadership on this subject. Intel fully supports Congress's commitment to multistakeholder Internet governance. Part of that commitment is to respect and abide by the work done by stakeholder groups in developing IANA transition proposals. In my testimony I will touch upon Intel's interest and stake in the transition, the current status of the transition, and some next steps.

Background

First, I would like to provide some background on my experience and Intel's commitment to a global, open, interoperable, trustworthy and stable Internet. As the Director of Global Cybersecurity and Internet Governance policy, I lead a global team of policy experts focused on Internet policy issues and governance, cybersecurity, and privacy. I also work with business units across Intel as the company creates technology across the breadth of the global digital infrastructure (PCs, laptops, tablets, phones, servers, networking equipment, internet of things sensors and software).

Prior to joining Intel in 2008, I led the Organisation for Economic Co-operation and Development's (OECD) security policy work on critical information infrastructure protection and malware. In that role, I served as liaison to the Asia-Pacific Economic Cooperation Telecommunications and Information Working Group, the International Telecommunication Union and the Internet Governance Forum. From 2003 to 2006, I worked as a consultant for the U.S. Department of Homeland Security's National Cyber Security Division, primarily focusing on international security policy issues in their International Affairs Division.

Personal computing has entered a new era. Instead of relying on a single device, we are surrounded by multiple devices at home and work—laptops, a family computer, smartphones, tablets, TVs—they all help us stay connected and be more productive.

At Intel, we see technology as more than just a practical tool. Intel is a world leader in computing innovation. The company designs and builds the essential technologies that serve as the foundation for the world's interconnected computing devices. Connectivity to a global, open, interoperable, trustworthy and stable Internet is critical to realizing the promises of this new computing area. And successful multistakeholder Internet governance system – including the successful and timely transition of the IANA functions contract to the community - is key. There is little, if any, disagreement about what kind of Internet we want in the future. The challenge is to translate those principles – global, open, interoperable, stable and trustworthy - into an actionable transition plan that meets the multistakeholder communities' needs. Fortunately, the process to date has

demonstrated that there are many mechanisms available to achieve the desired outcomes of the community – a testament to the stable and favorable conditions provided by incorporating in the U.S and in California.

Intel's interest in the IANA transition

Intel is neither a provider of domain name services, nor a registry or registrar. In short, we are not a contracted party to ICANN. Quite simply, we design and manufacture the computing power of the Internet. We rely on the IETF to define protocols that we build into technology to produce Internet connectivity and services; we rely on the global Internet Protocol addressing system of the Regional Internet Registries (RIRs) to allocate addresses so networks can grow and customers can utilize them; and we expect domain names to resolve reliably so that users and businesses across can find services by name. Without these functions, connected devices will not fully realize their value to improve the lives of everyone on earth.

The IANA function—the maintenance of registries of unique Internet names and numbers, often likened to a phone book—is a purely mechanical. The IANA neither makes policy nor exercises judgment; it simply follows an explicit process to maintain and update the registries according to externally defined rules. The policymaking role for Internet identifiers is tripartite, residing with the multistakeholder community as convened and organized by the Internet Engineering Task Force (IETF) for Protocols, the Regional Internet Registries (RIRs) for Numbers, and the Generic Names Supporting Organization (gNSO) and Country Code Names Supporting Organization (ccNSO) for generic and country-code top-level domains, respectively. While the "customers" of the IANA function are the multistakeholder community, ICANN has performed the IANA function under contract to, and under the oversight of, the National Telecommunications & Information Administration, (NTIA). The transition underway will replace the NTIA as ICANN's contractual counterparty, aligning the oversight, contract, and "customer" relationships under the multistakeholder community. This is the outcome that the U.S. government, the global Internet industry, and the rest of the global multistakeholder community desire: that ICANN's new overseer will be the multistakeholder representatives of the Internet technical, operational, and business communities, as intended and defined by the Department of Commerce in ICANN's bylaws seventeen years ago.

The fundamental assumption upon which Intel's business plan rests is that the Internet will continue to grow at rates similar to those experienced the over past fifteen years. Vigorous competition across national borders has driven Internet growth at a rate never before experienced in the ICT sector. By contrast, government-owned corporations predominated in the telecommunications industry of the nineteenth and twentieth centuries, and the lackluster competition resulted in very slow growth. A recent report from the Organisation of Economic Cooperation and Development (OECD) found: *The performance of the Internet market model contrasts sharply with that of traditional regulated forms of voice traffic exchange. If the price of Internet transit were stated in the form of an equivalent voice minute rate,*

it would be about USD 0.0000008 per minute—five orders of magnitude lower than typical voice rates. This is a remarkable and under-recognized endorsement of the multi-stakeholder, market driven nature of the Internet.[1]

This vigorous competition in the multistakeholder marketplace and multistakeholder self-governance of the Internet has been foundational in fueling the Internet's success. The management of resources, the development of standards, and the implementation of policies has been and distributed between industry, academia, government, and civil society. Intel and our peers throughout the ICT industry benefit from this governance ecosystem and the political stability, innovation and dynamic growth it has provided. The Internet must continue its rapid growth to support the Internet of Things, in which computational power will reside in the objects around us, such as GPS watches and connected home appliances. Consumers, demanding ever greater volumes of data and connectivity will receive this data and view it on a device with a screen, or otherwise analyze and draw value from it, whether personally, or via Internet-connected agents, acting on their behalf. Other technologies speeding this era of integration include wearable computing, natural-language recognition, nanotechnology, quantum computing, and virtual reality. In short, this twenty-first century era of computing relies upon the Internet being global, open, interoperable, trustworthy and stable.

The global business context

The ICT industry is global. In 2014, Intel generated $56 billion in revenue – 6% growth from 2013. Though Intel is incorporated in the United States, our presence, impact and revenue span the globe. I cannot stress enough the importance of trust to Intel's current and future success. We have observed a trend toward diminished trust in U.S. companies and the U.S. government both at home and abroad. For us, this manifests in policies restricting access to markets, mandating that data be held locally, and mandating that technology be designed and manufactured within a particular economy. These are very troubling trends, and if unaddressed, will substantially diminish Internet's rate of growth, and the revenues of business globally. We believe that the prompt transition of the stewardship of the IANA functions is critical to preserving and advancing trust in both the Internet and the global technology providers innovating its future. US technology companies like Intel have created tremendous economic benefits by helping to build the global digital infrastructure, and continued trust in this digital infrastructure is critical for the country's economic growth.

Long before NTIA's announcement last April, the International Telecommunications Union (ITU) has been trying to expand its remit of "telecommunications" to encompass the Internet and related technologies. Champions from free-market economies and technology industries have thus far

[1]Weller, D. and B. Woodcock (2013), "Internet Traffic Exchange: Market Developments and Policy Challenges", *OECD Digital Economy Papers*, No. 207, OECD Publishing.
http://dx.doi.org/10.1787/5k918gpt130q-en; p. 6

staved off that threat to growth. However, there are other sides to the story. First, much of the developing world has yet to make the same economic strides as their developed counterparts. As a result the ITU has become a battleground in which more developed economies use the "digital divide" issue to recruit proxies in their attempts to regulate and equalize control of Internet infrastructure. Second, there are a small group of countries (China, Russia, Iran) that advocate centralized control (one or a small set of countries dominate) of Internet governance, but these centralization proposals do not have broad support. The final group of countries – best described as "multilateralists" - seek more control from governments, but not necessarily centralism. Their main motivation is to equalize critical decision-making authority by governments (one country, one vote) and reduce the misperceived preeminence of US law and government involvement in critical decision-making. They are not necessarily opponents of "multistakeholderism", but clearly believe that private industry, largely based in the US, has a stronger share of decisions today on themes that are public in nature including sensitive areas like privacy and security. Multilateralists tend to favor the international organizations and treaties as the locus for governments to decide (UN, ITU, etc.).

In parallel with this transition, the United Nations is conducting the 10-year review of the World Summit on the Information Society (WSIS +10). Throughout this process, which began last year and ends in December, the multistakeholder governance process has been under scrutiny from across the globe. During last year's Plenipotentiary Conference (PP-14) in Busan, South Korea, the IANA transition provided a sense of trust and confidence for the global community that resulted in limited impact to the direct role of the ITU in Internet governance and related topics such as security. I believe that continued trust and confidence in the transition will help achieve a successful outcome – one in which Internet governance continues through multistakeholder processes - in December during the WSIS +10 review. Unnecessary or externally imposed delay in the transition may turn the tides against multistakeholder governance and drive countries toward more multilateral approaches.

Fortunately, the U.S. Congress has consistently and publicly supported multistakeholder Internet governance. In 2012, in advance of the WCIT, Congress unanimously passed a resolution (Sen. Con. Res. 50) to "... preserve *and advance* the successful multistakeholder processes that govern the Internet today" (emphasis added). Just last year, thanks to foresight and leadership of this committee, this policy was reaffirmed in H.R. 1580 which stated, "it is the policy of the United States to preserve *and advance* the successful multistakeholder processes that governs the Internet" (emphasis added). It passed the House of Representatives unanimously. In our view, this transition is advancing multistakeholder governance in line with Congress' views.

Intel's view on the practicalities of the transition

The multistakeholder community has made substantial progress toward a transition plan in little more than one year. From the time of NTIA's announcement, the community has mobilized into a series of committees and groups working

tirelessly to construct the best possible arrangement for the management of the Internet's unique identifiers. In addition to developing three transition proposals, one for each of the IANA functions, a parallel process has been underway to propose structural and procedural reforms to enhance ICANN accountability to the multistakeholder community. As of today's hearing, the following reflects the status of the transition proposals:

> Two of the three IANA functions communities – Numbers and Protocols - have submitted transition plans for their functions to the Independent Coordination Group (ICG). Both plans were subject to extensive review by the multistakeholder community and have reached consensus in their current form.
>
> The third function community – Names – released their second draft proposal on April 22nd – it is open for public comment until May 20th.
>
> The parallel process by the Cross Community Working Group on Accountability released their first formal draft proposal on May 4th – it is open for comment until June 3.

In summary, there are currently four proposals – two complete and two in draft format – for all aspects of the transition.

Transition plans of the three IANA functions

The three IANA functions vary in their level of complexity and dependence on ICANN. The Names community is delayed but grappling with the most complex issues of the three communities. Much of this complexity results from their interdependence on the output of the Cross-Community Working Group (CCWG) developing a proposal to enhance ICANN's overall accountability. Most stakeholders feel that the output of the CCWG must be either agreed upon or in place before the contractual relationship regarding domain names is transitioned.

Most importantly, especially for this Committee and Congressional oversight, all of these proposals have been and will continue to be developed in a completely open and transparent fashion. Anyone with an interest can review and comment, and access the entire record of past discussion to understand how decisions were reached.

Numbers

On January 15th, the CRISP team delivered their final transition plan to the IANA Stewardship Coordination Group (ICG). The proposal called for three primary elements: 1) ICANN to continue as the initial IANA Functions Operator for the IANA Numbering Services, via a contract with the RIRs; 2) establishment of a Service Level Agreement governing the technical quality of the service; and, 3) Establishment of a Review Committee composed of representatives from each RIR. Since this proposal was completed, the Numbers community has developed a draft SLA for the IANA numbering function. The public comment period for this draft closes on June 14, 2015.

Protocols

On January 15th, the IETF's IANAPLAN Working Group (IANAPLAN WG) delivered their final proposal for transition of the stewardship to the ICG. The fundamental tenets of the proposals are as follows:

- No new organizations or structures are required. Over the years since the creation of ICANN, the IETF, ICANN, and IAB have together created a sufficient system of agreements, policies, and oversight mechanisms. This system has worked well without any operational involvement from the NTIA, and merely needs to be transitioned from a non-binding MoU to a binding two-party customer-provider contract.
- IANA protocol parameters registry updates will continue to function day-to-day, as they have been doing as long as the IANA has existed. The IETF community is very satisfied with the current arrangement with ICANN. RFC 2860 remains in force and has served the IETF community very well. RFC 6220 has laid out an appropriate service description and requirements.
- However in the absence of the NTIA contract a few new arrangements are needed in order to ensure the IETF community's expectations are met. Those expectations are the following:
  - The protocol parameters registries are in the public domain. It is the preference of the IETF community that all relevant parties acknowledge that fact as part of the transition.
  - It is possible in the future that the operation of the protocol parameters registries may be transitioned from ICANN to subsequent operator(s). It is the preference of the IETF community that, as part of the NTIA transition, ICANN acknowledge that it will carry out the obligations established under C.7.3 and I.61 of the current IANA functions contract between ICANN and the NTIA [NTIA-Contract] to achieve a smooth transition to subsequent operator(s), should the need arise. Furthermore, in the event of a transition it is the expectation of the IETF community that ICANN, the IETF, and subsequent operator(s) will work together to minimize disruption in the use the protocol parameters registries or other resources currently located at iana.org.

Names

The current proposal from the Cross Community Working Group – Stewardship outlines a new structure of governance under which the IANA function for Names is held by a subsidiary of ICANN. Specifically the proposal recommends the following elements:

Creating a separate legal entity that would be a "wholly owned subsidiary" of ICANN – in legal terms, an "affiliate." This entity would be known as the Post Transition IANA (PTI). The creation of PTI ensures both functional and legal separation within the ICANN organization.

Establishing a contract between PTI and ICANN that would give PTI the rights and obligations to operate the IANA functions for Names.

Establishing a Customer Standing Committee (CSC) that is responsible for monitoring performance according to contractual requirements and service

level expectations, resolving issues directly with the operator or escalating them if they cannot be resolved.
Establishing a series of issue resolution mechanisms to ensure that problems are resolved effectively.
Ensuring ICANN accepts input from multistakeholder community with respect to the annual IANA operations budget.
Establishing a framework to approve changes to the Root Zone environment (with NTIA no longer providing oversight).
Establishing a multistakeholder IANA Function Review (IFR) to conduct periodic and special reviews of PTI. The results of the IFR are not prescribed or restricted and could include recommendations to the ICANN Board to terminate or not renew the IANA Functions Contract with PTI.

Intel recognizes the complexities faced by the Names community and commends the work undertaken to advance toward a solution. While there are many details that remain to be discussed and agreed upon (e.g., will the PTI execute all three IANA functions or just Names), the basic framework provided in this draft presents a viable path forward toward resolution. We expect to gain further insights into this proposal and how it relates to the Accountability proposal during next month's ICANN meeting.

ICANN accountability and the transition

The current draft from the CCWG released two weeks ago unquestionably advances multistakeholder governance through proposals advancing the following four objectives:

- An empowered community- making sure ultimate power and responsibility for ICANN's actions rest with the global community;
- An effective but constrained ICANN Board- making sure the members of the executive body of ICANN can be held responsible, and in the extreme removed from office;
- Core values and Missions enshrined in By-Laws- critical governing rules and principles (such as some of the Affirmation of Commitments) that can only be changed by super-majorities and ratified by the community; and
- Independent review mechanisms- a means for the community, people and entities to challenge actions (or inactions) taken by ICANN.

We are greatly encouraged by the direction of this draft; it does an excellent job of addressing the objectives. For example, changes will be made to make the ICANN Board more responsive to advice from the advisory committees. However, this obligation would only to apply to advice from the Government Advisory Committee (GAC) that has been developed by consensus. This helps ensure that a simple or even greater majority of countries will not be able to exert undue influence over ICANN.

Some important details still need to be worked out. For instance in order for some of the Supporting Organizations (SOs) and Advisory Committees (ACs) that

represent the stakeholder communities to ICANN to exercise their full rights, legal advisors recommend they structure themselves as unincorporated associations under California law. This added effort (reorganizing the communities themselves as well as ICANN) will require some additional work from the CCWG, the SOs and ACs in consultation with legal counsel. However we are quite confident that end product will make ICANN more open, accountable, transparent and resistant to undue influence from both private and government entities.

I believe that the best outcome of this process is the analysis and understanding it has provided of existing legal mechanisms afforded the community under U.S. and California law. There are various mechanisms available to achieve the desired outcomes of the community – a testament to the stable and favorable conditions provided by incorporating in the U.S.

Timeframe

There is significant discussion around the timing of the transition and the degree to which an extension of the current contract between NTIA and ICANN will be required. I cannot predict what the multistakeholder community will request on this matter. However, I know they are working hard to address the very important issue of timing. Regardless of what timeframe is decided, the plan should rest squarely in the hands of the multistakeholder community developing the proposals. It is critical Congress provide support for the multistakeholder governance process, as the alternatives – equalized control through an intergovernmental body like the ITU - are far worse for companies like Intel, individual users of the Internet, and American economic growth.

Next steps

The passage of time and the changing global landscape ensure that we cannot turn back the clock, and any delay will be counterproductive. Intel fully supports Congress's commitment to multistakeholder governance. As evidenced by history, this governance process best supports our overall goal of enabling a global, open, interoperable, trustworthy and stable Internet. Part of Congress's commitment is to respect and abide by the work done by stakeholder groups in developing IANA transition proposals. The transition is entering its final stages and I expect the ongoing discussions, leading up to and during next month's ICANN meeting in Buenos Aires, to significantly advance the transition process, ideally culminating in a conclusion to the community deliberations. We ask that you complete the uncomplicated Numbers and Protocols transitions on schedule, while allowing Names and Accountability the time they need to arrive at a responsible and well-considered outcome. This approach reinforces the U.S. government's commitment to multistakeholder outcomes during this critical time for the Internet's evolution and global Internet governance.

Thank you.

Mr. WALDEN. Thank you. We appreciate your testimony.

We will go now to Mr. Matthew Shears, the Representative and Director of Global Internet Policy and Human Rights Project, Center for Democracy and Technology. Mr. Shears, delighted to have you here with us today. We look forward to your comments.

STATEMENT OF MATTHEW SHEARS

Mr. SHEARS. Thank you. Chairman Walden, Ranking Member Eshoo, and members of the Subcommittee, thank you for your invitation to testify today. CDT has been deeply involved in the IANA functions transition process since the announcement by NTIA over a year ago. We recognized, as did NTIA, and numerous other stakeholders, that this transition of stewardship over the domain name system was not only important in its own right, but would have significant consequences for international Internet governance and the future of open participatory stakeholder driven governance processes.

I have had the pleasure of participating in the work of both the working group on the IANA transition of the domain names community, as well as the working group on enhancing ICANN's accountability. The IANA transition and ICANN accountability working groups are dealing with very complex challenges. Replacing the oversight role of NTIA is not a simple matter, nor is changing the governance structure of an organization, let alone one as unique as ICANN. Yet the global multi-stakeholder community, comprising businesses, governments, the technical community, civil society, academia, individual users, has risen to the challenge.

Through my work in both working groups, it has become clear to me that these disparate stakeholders are united by shared goals, the continued stability, security, and resiliency of the DNS, and an IANA function that continues to operate in a neutral, fully accountable and transparent manner. It is also clear that this process could not have proceeded without the input of this broad cross-section of the global multi-stakeholder community, and the range of technical, legal, and policy expertise that it brings. After many months of hard work, both the IANA transition and ICANN accountability proposals are now out for public comment.

The two working groups have been working in parallel, but the issues they address are deeply intertwined. The working group on enhancing ICANN's accountability is focused on finding ways to empower the ICANN community, its supporting organizations and advisory committees through increased oversight of ICANN processes and governance. These accountability reforms are also critical to the success of the IANA transition proposal.

The current proposal for the IANA transition places the operation of IANA functions within a subsidiary of ICANN, thereby avoiding needing to create an external entity. In this proposal, ICANN will serve as the contracting entity for the IANA functions, and the subsidiary as the operator. It is clear that, for the proposal to work, ICANN, as the new IANA functions oversight body, must be held accountable so that it provides neutral and transparent oversight of the IANA functions. However, this will only be credibly possible with an ICANN community that is more empowered than it is today. It is, therefore, absolutely essential that the proposed

accountability enhancements are embraced and committed to by ICANN and its Board, both at the time of the transition and beyond. These community powers will also guard against capture and mission creep. The new accountability enhancements will make more explicit the narrow mission and purpose of the organization, and will make those delineations harder to change.

New measures, including the ability to question budgets and strategic plans, will be key to keeping in check what ICANN does and how it fulfills its role in the Internet ecosystem. The community will be able to veto changes to bylaws, ensuring that neither ICANN's relationship to the IANA functions, nor these important accountability reforms, can be changed at the whim of the Board, now, or in the future. The community will be able to recall individual Board members, as well as the entire Board, making the Board members more directly accountable to the stakeholders that selected them. These powers will ensure that the leadership of ICANN remains responsive to the global community, and does not take its role in the DNS for granted.

The IANA transition is a culmination of a long planned move to multi-stakeholder management to the DNS. The transition also supports the U.S. Government's commitment to multi-stakeholderism and international Internet policy, as my colleague, Ms. Kehl, described. The NTIA's role in overseeing the IANA functions has been a major point of contention over the years. It will be increasingly hard to credibly refute the calls for a controlling role for government in Internet governance if we do not complete a successful transition.

To conclude, CDT expects, and indeed is working hard to ensure, that the global multi-stakeholder community will develop a transition proposal that satisfies NTIA's principles and stakeholder expectations, safeguards against capture or undue influence by stakeholders, and continues to maintain the stability, security, and resiliency of the DNS. The transition proposal must be accompanied by governance reforms that ensure the accountability of ICANN to the global community, and that keep it closely tethered to its mission and mandate. Thank you.

[The prepared statement of Mr. Shears follows:]

13 May 2015

Statement of **Matthew Shears**
Director, Global Internet Policy and Human Rights Director Project
Center for Democracy & Technology

Before the U.S. House of Representatives Committee on Energy and Commerce
Subcommittee on Communications & Technology

Stakeholder Perspectives on the IANA Transition

Chairman Walden, Ranking Member Eshoo, and members of the subcommittee:

The Center for Democracy & Technology is pleased to submit testimony to the House Energy and Commerce Committee Subcommittee on Communications and Technology, to provide our perspectives on the IANA Transition. CDT works to preserve the open, user-controlled nature of the Internet and to champion human rights online. We support laws, corporate policies, and technology tools that protect the privacy of Internet users, and advocate for stronger legal controls on government surveillance. We believe in the power of the Internet. Whether it's facilitating entrepreneurial endeavors, providing access to new markets and opportunities, or creating a platform for free speech, the Internet empowers people around the world.

CDT has been deeply involved in the Internet Assigned Numbers Authority (IANA) functions transition process since the announcement by National Telecommunications Information Administration (NTIA) over a year ago. We recognized, as did the NTIA and numerous other stakeholders, that this transition of stewardship over the Domain Name System (DNS) was not only important in its own right, but would have significant consequences for international Internet governance and the future of open, participatory, stakeholder-driven governance processes. I have had the pleasure of participating in the work of the both the Working Group on the IANA transition for the domain names community as well as the Working Group on enhancing Internet Corporation for Assigned Names and Numbers' (ICANN) accountability.

Today, I will cover several key points, including perspectives on the two working groups, the importance of the accountability reforms, why ICANN should not hold the IANA functions in perpetuity, and what CDT expects to see in the final transition proposal.

The IANA transition and ICANN accountability working groups are dealing with very complex challenges. Replacing the oversight role of the NTIA is not a simple matter, nor is changing the governance structure of an organization as unique as ICANN. Yet the global multistakeholder community – comprising

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businesses, governments, the technical community, civil society, academia, ICANN Board and staff, and outside legal counsel – has risen to the challenge. Through my work in both working groups, it has become clear to me that these disparate stakeholders are united by shared goals: the continued stability, security, and resiliency of the DNS, and an IANA function that continues to operate in a neutral, fully accountable, and transparent manner.

The IANA transition working group is responsible for developing a proposal for the future operation and oversight of the IANA functions, which necessarily raises questions about the future of ICANN's role in the IANA functions. The accountability working group is focused on developing proposals for strengthening accountability mechanisms for ICANN in all of its operations.

As these proposals evolved, the two working groups have worked closely together, ensuring that the dependencies between them were adequately addressed. Working group participants have shown admirable commitment to resolving challenging questions. These issues – of accountable corporate governance and oversight mechanisms that are impervious to capture – are complex and require a broad range of technical, legal, and policy expertise. It is abundantly clear that this process could not have proceeded without the input of this broad cross-section of the global multistakeholder community. And, after months of hard work, both of these proposals are out for public comment.

As with any community, there are differing points of view on various aspects of the work, but there is no doubt that the overall intent of those engaged in this process is to see a credible and effective solution that meets the criteria that have been established by NTIA and the expectations of the multitude of stakeholders who are affected by the IANA functions. These working groups represent the multistakeholder process in action: proceeding in an open, transparent, and inclusive manner, with participants committed to the continued stability and success of the open Internet.

I'd like now to address why the enhancements to ICANN's overall accountability framework, which focus on empowering the multistakeholder community to exert oversight over ICANN, and the linkages between the two working group proposals are central to the success of the IANA transition proposal.

There is no doubt that ICANN as an organization has suffered from accountability and transparency challenges. The working group on enhancing ICANN's accountability is focused on addressing these deficiencies and finding ways to empower the community (the ICANN Supporting Organizations and Advisory Committees) to give it, appropriately, increased oversight of ICANN processes and governance. These new powers are important mechanisms for keeping ICANN accountable to its membership. They are also critical to the success of the IANA transition proposal.

Throughout the debate over possible post-NTIA IANA functions oversight, the two main categories of proposal have been 'external' models (that would keep the IANA functions entirely separate from ICANN) and 'internal' models (that would continue to house the functions within ICANN while also giving ICANN oversight of the functions). Both of these categories of proposal have their strengths and weaknesses.

The current proposal for the IANA transition is a hybrid approach that places the operation of IANA functions within a subsidiary of ICANN (thereby avoiding needing to create an external entity). In this proposal, ICANN will serve as the contracting entity for the IANA functions. This proposed structure would organizationally separate the IANA functions operator (the subsidiary) from the oversight body (ICANN). This will make it easier to hold the post-transition IANA operator accountable for its performance of the IANA functions: A key mechanism for ensuring the continued neutral operation of the IANA functions is the ability for the contracting party to revoke the IANA functions contract.

It is abundantly clear, however, that for this proposed structure to work, ICANN (as the IANA functions oversight body) must itself be held accountable by its own internal governance structures. It is essential to ensure that ICANN is accountable to the broader community and that it provides neutral and transparent oversight to the IANA functions. This will only be possible with a community that is more empowered than it is today. Thus, the ultimate oversight of the IANA functions, under the current proposal, is fully dependent upon the new community powers that are a part of the proposal from the working group on accountability. It is absolutely essential that the proposed accountability enhancements are embraced -- and committed to -- by ICANN and its board, both at the time of the transition and beyond. The transparent and accountable operation of the IANA functions under the current proposal can only be assured by adoption of these overall accountability reforms.

These community powers will also militate against capture and mission creep. Even greater than the threat of capture by an outside entity or community within ICANN is the potential that ICANN itself will stray from its mandate. The new accountability enhancements will make more explicit the narrow mission and purpose of the organisation -- and will make those delineations harder to change. New measures, including the ability to question budgets and review strategic plans, will be key to keeping in check what ICANN does and how it fulfills its role in the Internet ecosystem. The community will be able to veto changes to bylaws, ensuring that neither ICANN's relationship to the IANA functions nor these important accountability reforms can be changed at the whim of the Board -- now or in the future. The community will be able to recall individual Board members, changing the current Board dynamics and making the Board members more directly accountable to the stakeholders they are supposed to represent. Currently, none of these measures exist, which is why it

is so important to ensure that these accountability enhancements are in place before the IANA functions transition is resolved.

A final key element of the transition is that no one should presume that ICANN will always be the IANA functions operator. CDT has long argued that ICANN should not be given the IANA functions in perpetuity. The ability to take the IANA functions away from ICANN should be an integral part of the IANA transition proposal. As I noted above, this separability or revocation of the contract to perform the IANA functions is an essential element in ensuring that the IANA functions operator remains efficient, neutral, and responsive to customer needs. The community must be able to seek another operator for the IANA function if necessary. There must be regular performance reviews of the operator, where it is evaluated against key performance criteria, and the community must be able to withdraw and rebid the IANA contract. Without such safeguards, moving the IANA functions into ICANN in perpetuity would represent a dangerous consolidation of policy-making and policy-implementing powers at the heart of the DNS.

The IANA transition is the culmination of a long-planned move to multistakeholder management of the DNS. It is an important expression of multistakeholderism in action. The transition also supports the US Government's commitment to multistakeholderism in international Internet policy-making. One of the greatest threats to the free and open Internet comes from governments and others who seek a predominate role for governments in Internet governance institutions. The NTIA's role in overseeing the IANA functions has been a major point of contention over the years. It will be increasingly hard to credibly refute the calls for a controlling role for governments in Internet governance if we do not complete a successful transition of the IANA functions.

Further, while we deeply appreciate the interests of Representative Shimkus and other supporters of the DOTCOM Act in ensuring that the IANA functions transition occurs in a thoughtful, transparent, and accountable way, we strongly urge members of this committee not to move forward with legislation that would allow Congress to override the transition proposals developed by the global multistakeholder community. Such an effort, though intended to ensure that the Internet remains an open platform for free expression and innovation, free from government control, would have the unintended consequence of lending misplaced legitimacy to accusations that the United States government "controls" the Internet.

CDT expects -- and, indeed, is working hard to ensure -- that the global multistakeholder community will develop a transition proposal that satisfies NTIA's principles and stakeholder expectations, safeguards against capture or undue influence by stakeholders (government or otherwise), and anticipates and forecloses vulnerabilities that could undermine the stability and security of the

Internet. The transition proposal must be accompanied by governance reforms that ensure the accountability of ICANN to the global community and that keep it closely tethered to its mission and mandate. We welcome Congress's attention to this important and complex issue and encourage members of this committee to work with the community to ensure a transparent, accountable, and successful transition.

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Mr. WALDEN. Thank you, Mr. Shears. We appreciate your coming over here to share those comments with us.

We now go to Brett Schaefer, who is the Senior Research Fellow in International Regulatory Affairs for The Heritage Foundation. Mr. Schaefer, delighted to have you before the Subcommittee. Please go ahead with your testimony.

STATEMENT OF BRETT SCHAEFER

Mr. SCHAEFER. Thank you, Mr. Chairman, other distinguished members of the Committee. Thank you very much for inviting me to testify here today. The history of the Internet is one of astounding innovation, growth, and success. A great contributing factor to the growth and success of the Internet is that formal governance and regulation has been light, and relatively non-intrusive. Since 1998, the U.S. Government has contracted with the Internet Corporation for Assigned Names and Numbers, ICANN, to manage most of the technical aspects of Internet governance, including the Internet Assigned Numbers Authority, or the IANA function. This highly successful arrangement is about to change.

As mentioned, in March 2014 the U.S. announced that it intended to end its historical relationship with ICANN. Although the timing of the announcement took many by surprise, the intent is consistent with longstanding U.S. policy to make management of the IANA fully private. This is a very important decision. When the U.S. Government oversight rule ends, ICANN will come under considerable pressure from a number of interested parties to adopt policies that they favor. It is critical that ICANN is sufficient insulted from these pressures to make independent decisions, while simultaneously being responsive and accountable to the broader multi-stakeholder community. This is a very tough line to walk. Failure could lead to inefficiencies, instability, partiality, and other problems that could result in substantial costs, and inhibit a vital medium for free speech and political discourse. There will be only one opportunity to do this, and it must be done right.

I am happy to say that, although much work remains to be done, I have been immensely pleased and impressed with the commitment and progress made to date. To coordinate multi-stakeholder recommendations, ICANN convened community led working groups on stewardship and accountability to draft proposals for the transition. The working groups focused on technical aspects of the IANA have in particular made significant progress. The two teams focused on numbers and protocols submitted proposals in January that appear to have consensus support in the multi-stakeholder community. The third group, focused on names, has recently submitted a draft proposal for public comment. This proposal is more complex, and creates a new government structure within ICANN for the IANA.

All three proposals would allow for separability, the ability to change to a different IANA functions operator if ICANN falls short in some way. This is a critical issue. The possibility that ICANN might lose the IANA contract with the U.S. Government, however unlikely, has provided an independent check on ICANN's monopoly position. A key aspect of the stewardship discussion is focused on how to mirror that check after the U.S. role ends. According to

some well-informed sources, ICANN is pushing back on separability. Congress needs to pay attention to this issue and clarify its position.

The accountability working group has also made great progress, and has submitted a draft proposal for public comment. In my opinion, the paramount concerns should be to ensure that, one, ICANN is sufficiently insulated against capture by governments or other narrow interests, two, ICANN's purpose is narrowly defined to prevent mission creep, three, an independent review process is in place to adjudicate and issue binding judgments over disputes between ICANN and the community, and four, ICANN is responsive and accountable to the multi-stakeholder community by establishing a means to recalling the Board, individual Board members, approving the budget, and approving a strategic plan. As currently drafted, the accountability proposal addresses all of these concerns. However, sound ideas and intent can be thwarted by poor implementation, and we are far from the end of the process.

The final issue I wanted to highlight is the tight timeframe. Under the terms of the current contract with ICANN, the U.S. Government will have to decide in just a few short months whether to allow the transition to proceed when the current contract expires on September 30, 2015, or whether to extend the current contract to allow the transition proposals to be more fully developed and/or implemented. As a practical matter, NTIA must have the details of the various proposed changes, and evidence of their implementation, well in advance of this date to make an informed decision on whether its conditions for the transition have been met satisfactorily.

Looking at the hurdles that must be cleared, there is very little chance that this deadline will be met. NTIA administrator Lawrence Strickling and ICANN CEO Fadi Chehade have both insisted, and repeatedly stated, that September 30 is not a goal or a—is not a—is a goal, not a deadline. In fact, there shouldn't be any deadline. Congress should hold them to the fact that this transition must be done correctly, not in any particular time, or in any particular deadline format. Once NTIA's contract with ICANN expires, so does its ability to ensure changes considered necessary by the multi-stakeholder community are approved and implemented. Only after an acceptable transition proposal is offered, and all the necessary forms to ICANN are adopted and in effect, should the U.S. end its current arrangement.

Thank you very much, and I look forward to your questions.

[The prepared statement of Mr. Schaefer follows:]

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CONGRESSIONAL TESTIMONY

Stakeholder Perspectives on the IANA Transition

Testimony before
Subcommittee on Communications and Technology

Energy and Commerce Committee
United States House of Representatives

May 13, 2015

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The Heritage Foundation

My name is Brett Schaefer. I am the Jay Kingham Senior Research Fellow in International Regulatory Affairs at The Heritage Foundation. The views I express in this testimony are my own, and should not be construed as representing any official position of The Heritage Foundation.

Chairman Upton, Ranking Member Pallone, and other distinguished Members of the committee, thank you very much for inviting me to testify on stakeholder perspectives on the Internet Assigned Numbers Authority (IANA) transition.

As most of the committee likely knows, the history of the Internet is one of astounding innovation, growth, and success. Over the past 25 years, the Internet has gone from a relatively unknown arena populated primarily by academics, government employees and researchers, and other technical experts into a nearly ubiquitous presence that contributes fundamentally and massively to communication, innovation, and commerce.

In 1990, only about 3 million people worldwide—0.05 percent of the world's population—had access to the Internet, of which 90 percent were in the U.S. and Western Europe.[1] Between 2000 and mid-2014, the total number of Internet users worldwide grew from 361 million to more than 3 billion—more than 42 percent of the world's population.[2] This growth has been global and, in recent years, particularly rapid in developing countries.[3]

During this period, the U.S. economy has become increasingly reliant on the Internet. A 2014 Hudson Institute study calculated that the information and communication technology sectors contributed 19 percent to America's economic gross output growth from 1997 to 2002 (more than 582 billion 2013 dollars) and 9.3 percent to gross output growth from 2002 to 2007 (more than 340 billion 2013 dollars).[4]

A great contributing factor to the growth and success of the Internet, from which nearly everyone has benefited directly or indirectly, is that formal governance and regulation has been light and relatively non-intrusive. Indeed, the very light governance of the Internet and the resulting success raises the question of whether governments need to be involved in any substantial way in Internet governance.

In the early years of the Internet, this governance role was fulfilled by the U.S. government in a largely ad hoc cooperation with academic experts. Since 1998, the U.S. government has contracted with the Internet Corporation for Assigned Names and

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[1]Worldmapper, "Internet Users 1990," Map No. 335, http://www.worldmapper.org/display.php?selected=335 (accessed May 12, 2015).
[2]Internet Society, "Internet World Stats—The Internet Big Picture: World Internet Users and 2014 Population Stats," June 30, 2014, http://www.internetsociety.org/internet/what-internet/facts-and-figures (accessed May 12, 2015).
[3]Ibid.
[4]Harold Furchtgott-Roth and Jeffrey Li, "The Contribution of the Information, Communications, and Technology Sector to the Growth of the U.S. Economy: 1997–2007," Hudson Institute, August 14, 2014, http://www.hudson.org/research/10595-hudson-institute-releases-study-on-the-worth-of-the-internet-to-the-u-s-economy (accessed May 12, 2015).

Numbers (ICANN) to manage most of the technical aspects of Internet governance, including the IANA function.

The IANA function is critical to the smooth operation of the Internet through the management and global coordination of the domain name system (DNS) and the Internet protocol numbering system. The DNS is, in essence, the Internet address book that translates the alphanumeric name of a website (heritage.org) into the unique numerical IP address (72.21.81.133) that computers use to identify specific websites. In order for the Internet to work, there has to be a central depository (the authoritative root zone file) ensuring that website names and numeric IP addresses remain unique so that websites always lead to the same place and computers can communicate with each other.

Since the establishment of ICANN, the U.S. federal government has expressed its intent to make management of the IANA fully private—that is, free from government oversight. However, this transition has been repeatedly deferred due to a perceived value in retaining U.S. influence and concerns over ICANN's ability to fulfill its responsibilities absent the oversight role played by the National Telecommunications and Information Administration (NTIA). Until recently, the U.S. has periodically renewed the IANA contract with little controversy.

This arrangement is about to change. In March 2014, the U.S. announced that it intended to end its oversight role over ICANN.[5] Under the terms of the current contract with ICANN, the U.S. government will have to decide in a few short months whether to allow the transition to proceed when the current contract expires on September 30, 2015, or whether to extend the current arrangement to allow transition proposals to be more fully developed and/or implemented.

The committee obviously knows this; it is after all the subject of the today's hearing. However, I wanted to underscore the seriousness of this decision.

When the U.S. government oversight role ends, ICANN will come under considerable pressure from a number of interested parties to adopt policies that they favor. It is critical that the U.S. ensure that ICANN is sufficiently insulated from these pressures to make independent decisions while simultaneously being responsive and accountable to the multi-stakeholder community. This is a tough line to walk. Failure could lead to inefficiencies, instability, partiality, or other problems that could result in substantial financial costs and inhibit a vital medium for speech and political discourse. However, there will only be one opportunity to do this and it must be done right.

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[5]Specifically, the NTIA stated that before the transition would been approved, a proposal would need to be developed that, absent U.S. oversight, would "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." The NTIA also clarified that it would "not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution." News release, "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 (accessed May 1, 2015).

Critical Next Steps for the Transition

Although the NTIA has the lead position on the ICANN transition, Congress has a legitimate interest and role to play. Congress represents over 300 million U.S. citizens of which the vast majority directly access or benefit from the Internet and related activities. Congress has a duty to safeguard their constituents' interests by overseeing this process and verifying that the IANA transition will not cause immediate or long-term disruption or harm. With this in mind, there are two overriding issues on which Congress should focus.

First, Congress should inform itself of the reforms and changes necessary to preserve the competency, reliability, and stability of the current system, establish new oversight to effectively replace the current U.S. role, and ensure ICANN remains accountable to the multi-stakeholder community and focused on its core mission.

Second, Congress must verify that those changes are included in the multi-stakeholder transition proposals, are being welcomed by ICANN, and have been approved and implemented prior to the transition.

For much of the past year, the Internet community has conducted detailed discussions inside and outside ICANN on how to enhance and ensure ICANN accountability, transparency, and reliability absent U.S. oversight. Heritage has participated in this process through its research, submissions through ICANN's public comment process, involvement in and attendance at ICANN meetings, and participation in ICANN's Accountability and Governance Cross Community Working Group (CCWG-Accountability) and the Noncommercial Users Constituency.

To coordinate multi-stakeholder recommendations, ICANN convened the CCWG-Accountability and the IANA Stewardship Transition Coordination Group (ICG), which is comprised of three sub-groups on Domain Names: the Cross Community Working Group on Stewardship (CWG-Stewardship), Numbering Resources (CRISP Team), and Protocol Parameters (IANAPLAN Working Group).[6]

The working group participants have done incredible work and logged thousands of hours to develop recommendations that address the areas of concern and have broad support in the multi-stakeholder community. They should be commended for their work.

Nonetheless, much remains to be done and many of the specific recommendations remain under discussion. The U.S. remains months away from having a final, fully fleshed out consensus proposal to consider. That said, let me give a few thoughts on where things stand currently.

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[6]Information about both groups and the process is available at ICANN, "IANA Stewardship Transition and Enhancing ICANN Accountability," https://www.icann.org/stewardship-accountability (accessed May 12, 2015).

Stewardship. The ICG is focused on the more technical questions surrounding the IANA transition and is charged with drafting and submitting a proposal on the steps needed to ensure that the transition will comply with the requirements outlined by the NTIA. This part of the transition process, particularly the two groups on numbering resources and protocol parameters, were generally viewed as less controversial than the accountability measures under consideration by the CCWG-Accountability.

As expected, the CRISP Team[7] and the IANAPLAN Working Group[8] drafted and submitted proposals by early January that largely reflected current contractual arrangements for handling the IANA functions for numbers and protocols or made small changes generally considered non-controversial. In both instances, however, there exists the possibility that the Regional Internet Registries and the Internet Engineering Task Force could, in the future, enter into a contract with some entity other that ICANN for these tasks.

This is an important accountability check. Although the U.S. has taken a very hands-off approach to ICANN, its contractual leverage arguably has helped ensure that ICANN pays due attention to issues and objections raised by the Internet community and adheres to processes as established in its bylaws and the Affirmation of Commitments between ICANN and the Commerce Department. Bluntly, the department always had the option of awarding the contract to an entity other than ICANN if it proved incompetent, unreliable, or otherwise unsatisfactory. The possibility that the Commerce Department could award the IANA contract to another organization, however unlikely, has provided an independent check on ICANN's monopoly position.

The proposals by the CRISP Team and the IANAPLAN Working Group help address this concern. Separability is also included as a key recommendation in the CWG-Stewardship proposal.[9]

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[7]In essence, the CRISP Team proposal would replace the NTIA role with a contractual arrangement with the Regional Internet Registries. Number Resource Organization, "Internet Numbers Community Proposal FAQ," https://www.nro.net/nro-and-internet-governance/iana-oversight/internet-numbers-community-proposal-faq (accessed May 12, 2015).

[8]As summarized by the Internet Engineering Task Force, "Because the system for administering the protocol parameters registries is so robust and has served the Internet community so well, the transition announced by NTIA last year has little practical impact on the protocol parameters registries. The IETF has already reached consensus that no new structures or organizations are required as a result of the transition. NTIA already has no practical role in the administration of the protocol parameters registries, thus no changes are necessary in day-to-day operations. In short, the existing system has served to support the stability, security, and openness of the Internet for decades. The transition of IANA oversight announced by NTIA will do nothing to change that in the future." Internet Engineering Task Force (IETF), "Transition of the Oversight of the Internet Assigned Numbers Authority (IANA): Fact Sheet: Internet Engineering Task Force (IETF) Protocol Parameters," http://www.ietf.org/iana-transition/pp-fact-sheet.pdf (accessed May 12, 2015).

[9]CWG-Stewardship, "Response to the IANA Stewardship Transition Coordination Group Request for Proposals on the IANA Stewardship Transition from the Cross Community Working Group on Naming Related Functions," https://www.icann.org/en/system/files/files/cwg-stewardship-draft-proposal-with-annexes-22apr15-en.pdf (accessed May 12, 2015).

Unfortunately, ICANN seems to be having cold feet. According to CRISP team member Bill Woodcock, ICANN is still negotiating over the January proposals that were considered non-controversial:

> The areas we're furthest apart on in negotiation are related: termination and separability of the three communities' IANA functions operators. ICANN has verbally represented that they will reject any proposed agreement in which ICANN is not deemed the sole source prime contractor for IANA functions in perpetuity. ICANN asserts that neither NTIA nor the US Congress will approve any transition plan which leaves open the possibility of a future non-US IANA Functions Operator.[10]

As noted by Syracuse University Professor and ICANN expert Milton Mueller,

> Since all three communities (names, numbers and protocols) have made separability (i.e., the ability to change to a different IANA functions operator) a requirement of the post-NTIA world, this is truly alarming. ICANN seems to be using these contract negotiations to undo the community process. Worse, these reports seem to indicate that ICANN's staff are viewing themselves, rather than the formal IANA transition process shepherded by the ICG, as the final authority on the transition. It also means that behind the scenes, ICANN's staff is claiming to speak on behalf of the NTIA, and even the U.S. Congress regarding what solutions are or are not acceptable. This attempt to veto ideas by appealing to a silent third party authority poisons the transition dialogue.[11]

A key aspect of the stewardship discussion is how to mirror the independent check on ICANN historically filled by NTIA by putting in place structural separation between the ICANN policy apparatus and the IANA functions so that, if necessary, there is a means for severing the IANA functions from ICANN and awarding them to another organization. One alleged basis for ICANN's resistance to the separability proposal is the "perception" that the NTIA and Congress oppose the idea. There is nothing that I can see in the public record that supports such a perception, but to the extent it might be useful Congress should clarify that, contrary to the impression given above, it is not opposed to the idea of separability. It should also urge the NTIA to likewise make it clear that this additional concern is not a condition precedent to the transition.

Accountability. The CCWG-Accountability is charged with developing "proposals that would enhance ICANN's accountability towards all stakeholders" after the U.S. contractual oversight role ends. The CCWG-Accountability has identified two work streams: Work Stream 1 contains those accountability mechanisms that must be in place or committed to prior to the transition and Work Stream 2 contains those accountability measures that are important but can wait until after the transition to be implemented.

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[10]As quoted in Milton Mueller, "ICANN Wants an IANA Functions Monopoly—Will It Wreck the Transition Process to Get It?" April 28, 2015, http://www.internetgovernance.org/2015/04/28/icann-wants-an-iana-functions-monopoly-and-its-willing-to-wreck-the-transition-process-to-get-it/ (accessed May 12, 2015).
[11]Ibid.

The CCWG-Accountability team has done an incredible job of filtering dozens, if not hundreds, of different accountability proposals into a digestible and implementable plan.

In my opinion, the paramount concerns of the U.S. and the multi-stakeholder community should be to ensure that the transition, when it occurs, is done in a manner that preserves the vitality and freedom so central to the success of the Internet while at the same time ensuring that sufficient safeguards are in place prior to the transition so that:

1. ICANN can avoid capture by governments or other vested interests to the detriment of the broader multi-stakeholder community;

2. ICANN's purpose is narrowly defined to prevent mission creep;

3. An independent review process is in place to adjudicate and issue binding judgements over disputes between ICANN and the community; and

4. ICANN is responsive and accountable to the multi-stakeholder community by establishing means for recall of the Board or individual Board members, approving the budget, and approving the strategic plan.

This is not to say that a number of other issues, such as increasing transparency and accessibility to ICANN by reforming its disclosure policies that are ridiculously tilted toward non-disclosure, are unimportant.[12] However, addressing these key issues would establish the minimum accountability criteria necessary for comfort in the transition.

As currently drafted, the CCWG-Accountability proposal addresses all of these concerns. However, sound ideas and intent can be thwarted by poor implementation. Prudence demands that the transition not occur before these steps are verified to be in place and observed.

Timing

The existing contract between the U.S. government and ICANN expires on September 30, 2015. Under the terms of the contract, "The Government may extend the term of this contract by written notice to the Contractor [ICANN] within 15 calendar days before the expiration of the contract; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 30 calendar days before the

[12]For instance, among other exemptions, information provided to or by a government is off-limits if ICANN believes that there was an expectation of confidentiality or if it could harm relations with the government; internal documents, memoranda, or other communications from ICANN directors, staff, consultants, contractors, or others that "would or be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications" can be excluded; any draft "correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication" are excluded; and any requests deemed by ICANN to be unreasonable, overly burdensome, unfeasible, or made by a person deemed "abusive or vexatious" or considered to be made with that intent can be denied. ICANN, "ICANN Documentary Information Disclosure Policy: Defined Conditions of Nondisclosure," http://www.icann.org/en/about/transparency/didp (accessed May 12, 2015).

contract expires."[13] Specifically, the NTIA must provide notice to ICANN by August 31, 2015, of its intent to extend the contract.

As a practical matter, NTIA must have the details of the various proposed changes and evidence of their implementation at least several weeks in advance of this date to make an informed decision on whether its conditions for the transition have been met satisfactorily. Looking at the hurdles that must be cleared prior to August, there is very little chance that this will happen.

Specifically, the draft proposals of the CWG-Stewardship and the CCWG-Accountability are currently available on the ICANN website and are open for public comment from the broader multi-stakeholder community. These comments will be taken into account by the working groups who are expected to submit finalized proposals to the ICANN Board of Directors. Originally, this was to take place prior to the ICANN 53 meeting in Buenos Aires in late June, but the latest timeline for the CCWG-Accountability projects delivery of the finished proposal in time for the ICANN 54 meeting in October in Dublin.[14]

More important, there are several additional steps in this process that may push the finalization and implementation of the transition even further down the road. For instance:

1. **The ICANN Board may request significant changes to the proposals** that would have to be negotiated in the working groups and, presumably, resubmitted for public comment.

2. **The NTIA must review the proposal in coordination with other Executive Branch departments** with equities and, hopefully, Congressional consolation.

3. **Possible amendments to ICANN's bylaws will like lengthen the finalization process.** It is very likely that the working group proposals will require amendments to ICANN's bylaws. Past practice indicates that that process would involve multiple steps and take at least a month even if everything were expedited and no objections were raised. If the community raises significant concerns during the comment process, it could force revisions and a second public comment period.

4. **Finally, the NTIA must verify that the steps outlined in the transition proposal have actually been implemented as described.**

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[13]The current contract permits the NTIA to exercise two renewal clauses, each for two-year periods, which could extend the current contract through September 30, 2019. U.S. Department of Commerce, Award to Internet Corporation for Assigned Names and Numbers (ICANN), Contract No. SA1301-12-CN-0035, Effective September 1, 2012, Section I.59, p. 58, http://www.ntia.doc.gov/files/ntia/publications/sf_26_pg_1-2-final_award_and_sacs.pdf (accessed May 12, 2015).

[14]ICANN, "CCWG-Accountability Initial Draft Proposal for Public Comment," May 4, 2015, p. 91, https://www.icann.org/en/system/files/files/ccwg-accountability-draft-proposal-with-annexes-04may15-en.pdf (accessed May 12, 2015).

All of these steps make it very likely, as many experts involved in the process have privately conceded for months, that the NTIA will have to extend the current contract. Indeed, the CCWG-Accountability timeline projects that implementation will take until July or August of 2016.

The current contract permits the NTIA to exercise two renewal clauses, each for two-year periods, which could extend the current contract through September 30, 2017, and September 30, 2019.

There has been some consideration given to negotiating an extension that is less than the September 2017 option. Considering the projected CCWG-Accountability timeline, this makes little sense. If an acceptable proposal is approved and implemented prior to 2017, the NTIA and ICANN always have the option of mutually ending the contract. Moreover, a shorter extension of a year or less could introduce unnecessary complications if the process encounters delays requiring a second shorter extension and could, perversely, create disincentives for addressing some Work Stream 2 accountability measures prior to the transition if there is a perceived lack of time.

The issue of timing should be of particular concern for Congress, which is scheduled to be in recess in August 2015. Thus, the earliest that the proposal is likely to be finalized and considered by the NTIA will also occur when Congress, which has expressed great interest in this issue, will not be able to exercise oversight by questioning the NTIA, ICANN, or industry experts at a formal hearing, thoroughly assessing the proposal, or adopting legislation expressing support or opposition.

Conclusion

Both NTIA administrator Lawrence Strickling and ICANN CEO Fade Chehade have insisted that September 30 is a goal, not a deadline. Administrator Strickling underscored this point in January 2015:

> I want to reiterate again that there is no hard and fast deadline for this transition. September 2015 has been a target date because that is when the base period of our contract with ICANN expires. But this should not be seen as a deadline. If the community needs more time, we have the ability to extend the IANA functions contract for up to four years. It is up to the community to determine a timeline that works best for stakeholders as they develop a proposal that meets NTIA's conditions, but also works.[15]

Once the NTIA's contract with ICANN expires so does its ability to ensure changes are made. This matter merits serious consideration by Congress, the NTIA, ICANN, and the multi-stakeholder community. The pressure to approve the transition should not be allowed to result in a hasty decision. It is becoming increasingly clear that the September

[15]Lawrence E. Strickling, remarks at the State of the Net Conference, January 27, 2015, http://www.ntia.doc.gov/speechtestimony/2015/remarks-assistant-secretary-strickling-state-net-conference-1272015 (accessed May 12, 2015).

date is not realistic and the U.S. should be prepared to exercise its option to extend the contract with ICANN. Moreover, it should not wait until the last minute when pressure will be highest to accept a partial or substandard proposal. Only after an acceptable transition proposal is offered and all the necessary reforms to ICANN are adopted and in effect should the U.S. agree to end the contract.

Chairman Upton, Ranking Member Pallone, and other distinguished Members of the committee, thank you very much for inviting me to testify today and I look forward to your questions.

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Mr. WALDEN. Thank you, Mr. Schaefer, and I just want to say how much I agree with what you just said, and that is what my role certainly has been, and I think of our subcommittee here, with these hearings, I just want to know what it is that is going to govern this process once NTIA says, see you later, and all. And so I think we have an obligation, as stewards of this, to this point, to make sure we know what the future looks like before we just say, you go ahead and do it. So that has been the purpose behind all of our efforts, is just to find out what are the rules?

And I want to commend those who have put so much time into this effort, because you have given us more and more confidence, with each step of the way, that you share our concerns here, and you are getting things locked into place where there is appropriate check and balance that otherwise goes away when that 60-some page contract is torn up.

So my first question to each of you is do you believe the transition could and/or should occur by September of this year? And, Mr. Schaefer, I think you have already said no.

Mr. SCHAEFER. That is correct. I don't think there is any way, realistically, that——

Mr. WALDEN. OK.

Mr. SCHAEFER. The transition can occur, and all these changes will be implemented.

Mr. WALDEN. All right. Mr. Shears, yes or no?

Mr. SHEARS. I don't think it is likely to happen by that time, unfortunately.

Mr. WALDEN. All right. Ms. Plonk?

Ms. PLONK. I think that decision, and the plan, lies with the multi-stakeholder community, and not with me as an individual.

Mr. WALDEN. Yes, but you get to tell us just the same.

Do you think this can happen by September, given all the work you have put into this, that we are ready?

Ms. PLONK. I think it depends on the outcome of the ICANN Buenos Aires meeting next month. I think we will have more information then.

Mr. WALDEN. All right, that is fair. Ms. Kehl?

Ms. KEHL. I think it is unlikely, unfortunately, as well to happen by September 30, and getting it right is very important. But I also think the community dwill be the one that knows best how much time it will take to get it done right.

Mr. WALDEN. Yes. Mr. DelBianco?

Mr. DELBIANCO. The answer is no way, and the Administration has been very realistic about it, has already sent letters to the naming and the accountability group chairs 2 weeks ago, saying, how much time do you think you need? And I think that is appropriate. And the community is going to come back and ask for more time. As indicated on that chart, it is a concurrent process, it stretches, and there is a role for Congress throughout. There's a role for——

Mr. WALDEN. Right.

Mr. DELBIANCO [continuing]. NTIA throughout the process. Though there isn't this notion that moving that deadline—moving that goal out is somehow going to empower enemies of freedom and commerce. They already are enemies of freedom and commerce,

and any unique role for the U.S. I don't think that we need to worry about providing them an excuse if we end up asking for, in my estimation—I have April of 2016 is about the earliest we could get enough implementation done, but there are others who believe it could take as long as into the summer of 2016.

Mr. WALDEN. So then wouldn't it make sense for NTIA to extend the contract for another year? Because, again, as I said in my testimony, they can cancel it if you get agreement, you can do that. But wouldn't it make sense to extend it?

Mr. DELBIANCO. I believe it does, Mr. Chairman.

Mr. WALDEN. Does anybody disagree with that? Ms. Kehl? Ms. Plonk? Is that a yes or a no head shake?

Ms. PLONK. I think I would just continue to say it is not—I—we haven't gotten a response from NTIA's letters to the community yet——

Mr. WALDEN. All right.

Ms. PLONK [continuing]. So it is not clear.

Mr. WALDEN. Mr. Shears?

Mr. SHEARS. I think it is important that we understand and see what comes back from the community, in terms of the consultations that are out at the moment——

Mr. WALDEN. Yes.

Mr. SHEARS [continuing]. On the two proposals.

Mr. WALDEN. All right.

Mr. SHEARS. That is a key factor.

Mr. WALDEN. Mr. Schaefer?

Mr. SCHAEFER. I think it is very important for the NTIA to maintain its current role, at least as long as this process is still in play. Once the process is agreed to, and most importantly all this—all the necessary changes are actually implemented and verified, then is the time to——

Mr. WALDEN. Right.

Mr. SCHAEFER [continuing]. End the current relationship.

Mr. WALDEN. OK. So, Ms. Plonk, while we acknowledge there are potential benefits to this transition, we also have very serious concerns about the very real risks. I think everybody has spoken to that. Beyond simply trusting the international community to do the right thing, what do you see is the best way for Congress to get answers to the questions, and are there ways to address the potential pitfalls?

Ms. PLONK. Thank you for the question. I think it is a really important one, and I absolutely agree with you that there are risks, and potential pitfalls. Two main things. I think first we want to commend this Subcommittee for actively participating in the process, for attending meetings, for showing up in Busan at the Plenipotentiary Conference, and for the amount of time the Committee has invested to understanding that that continued investment in the process will be a huge impact for the outcome, so I think that is one. The second is to continue to conduct oversight through having hearings, like this one, as we move through the process. And then the final point is to ensure that what NTIA accepts at the end is multi-stakeholder, is what——

Mr. WALDEN. Right.

Ms. PLONK [continuing]. Has come out of the multi-stakeholder process so that Congress is supporting its longstanding position on multi-stakeholder governance.

Mr. WALDEN. Mr. DelBianco?

Mr. DELBIANCO. Thank you, Mr. Chairman. You asked the question what is the best way for Congress——

Mr. WALDEN. Right.

Mr. DELBIANCO [continuing]. To get answers? I will give you two suggestions. The first is to get questions in now, as soon as possible. The GAO analysis generates questions and risks——

Mr. WALDEN. Right.

Mr. DELBIANCO [continuing]. Unanticipated risks and implications. And those risks, if we wait until the end of this process, Mr. Chairman, it will completely mess this process up. We need to hear about your concerns and risks this summer, over the next several months, and give us the opportunity to take care of your risks and concerns.

And the second change is to find a way to give NTIA enough rope to spend time and resources answering your questions——

Mr. WALDEN. Yes.

Mr. DELBIANCO [continuing]. For them to be the steward of getting you the answers that you need from the community, as well as for NTIA to assess whether the criteria are being met. It doesn't help us if NTIA waits until the very end to say thumbs up, thumbs down. There needs to be an engagement and an involvement.

Mr. WALDEN. See, that is what we have been after, and that there is after you all do your work, and the multi-stakeholder process does its work, give us a chance to at least look at it and understand it before handing the keys, the title, and the insurance payments off to the 18-year-old driver.

With that, I thank you again for your testimony and your counsel along the way. Now recognize my colleague from California, Ms. Eshoo.

Ms. ESHOO. Am I the 18-year-old that you are——

Mr. WALDEN. No, but Mr. DelBianco——

Ms. ESHOO. I thought you were flattering me. OK.

Mr. WALDEN. You are—I was thinking more like——

Ms. ESHOO. All right.

Mr. WALDEN [continuing]. You know, 17.

Ms. ESHOO. Well, at least it is not a sports analogy, so—thank you. You are all enlightening, you really are, very, very helpful. Now, we have got a couple of things on the table here. You have described all of the work, and it is extensive work. And, as the Chairman said, and I join him in thanking you for the time that you have put in on this. I mean, this is an enormous amount of work that you have done, and it is productive, and it is bearing fruit, but we are not quite ready. And none of you think that the work is going to be accomplished by, what, September of this year, and—all right.

Now, we have got a couple of things on the—I think three things here. We have the Dot Com—in it. More work has to be done, but you are very pleased with what is on the table so far, and that Congress should continue to have—to do its oversight in this. Now, if we get through this entire process, and, say, the Dot Com Act

is law, then you have to go back to the GAO and have them study what is completed, and, what, wait another year? Do you all support that? Does this make sense to you, or am I—do I have a—the wrong take on the legislation? I mean, it is my understanding that it will take—it will add another year to—to what, John? John? Let me just ask you—Mr. Shimkus? John? My pal——

Mr. SHIMKUS. Well, I——

Ms. ESHOO. Sit up straight.

Mr. SHIMKUS. I was listening. I was——

Ms. ESHOO. I will yield to you for a second. When does your year begin? After they finish their process?

Mr. SHIMKUS. Right, but, remember, GAO is already doing a report now too.

Ms. ESHOO. I know. So that is the——

Mr. SHIMKUS. So I think the timeline would be——

Ms. ESHOO. Right.

Mr. SHIMKUS. You know——

Ms. ESHOO. Yes.

Mr. SHIMKUS [continuing]. Almost—parallel.

Ms. ESHOO. But the—reclaiming my time, I mean, I think you just made my point. That is why I think it negates it, because if the GAO is doing something—anyway, tell me what you all think of this. Do you think that this is a good plan, this is the way to go forward? I mean, just quickly, yes or no. Let us start with Mr. DelBianco.

Mr. DELBIANCO. The right plan is——

Ms. ESHOO. You are not going to be hurting anyone's feelings.

Mr. DELBIANCO. Understood.

Ms. ESHOO. I just want——

Mr. DELBIANCO. The right plan——

Ms. ESHOO [continuing]. A professional opinion.

Mr. DELBIANCO. Got it. Thank you. The right plan is to take those risks and implications that you have asked for from GAO, and surface those into the process.

Ms. ESHOO. Yes.

Mr. DELBIANCO. If, in fact, those risks are not addressed, it should not take anywhere close to a year to say, we raised these risks and concerns for national security——

Ms. ESHOO. Yes.

Mr. DELBIANCO [continuing]. And for other agencies, and they haven't been addressed. That could happen very quickly. But it is so important to happen while we are convened. If you wait for us to finish——

Ms. ESHOO. Well, that is my——

Mr. DELBIANCO [continuing]. And generate that document——

Ms. ESHOO [continuing]. Very point——

Mr. DELBIANCO [continuing]. In won't work.

Ms. ESHOO [continuing]. To get to the end, and then start all over again I don't think is a good way to go. Do you have something, Ms. Kehl?

Ms. KEHL. I would agree with that.

Ms. ESHOO. Yes.

Ms. KEHL. I think that the important thing here is engagement now in the process——

Ms. ESHOO. Yes.

Ms. KEHL [continuing]. As it is ongoing. And that is one of the great things about the process, is it is a multi-stakeholder——

Ms. ESHOO. It is.

Ms. KEHL [continuing]. Transparent and open——

Ms. ESHOO. Yes.

Ms. KEHL [continuing]. Process.

Ms. ESHOO. Yes.

Ms. KEHL. So there is the opportunity now to look at and review what is happening. We know a lot of the risks. The stress test that exists——

Ms. ESHOO. Go quickly. My time is running out.

Ms. KEHL [continuing]. Is really important.

Ms. ESHOO. So you are agreeing?

Ms. KEHL. I would——

Ms. ESHOO. That is great.

Ms. KEHL. Yes.

Ms. ESHOO. Ms. Plonk?

Ms. PLONK. I also agree. I want to just also say that everything that is happening right now is completely transparent and open, so the final final that transits from the ICG to ICANN to——

Ms. ESHOO. Yes.

Ms. PLONK [continuing]. NTIA——

Ms. ESHOO. Yes.

Ms. PLONK [continuing]. Will not be a surprise to anyone who has been participating or——

Ms. ESHOO. Yes.

Ms. PLONK [continuing]. Anyone who hasn't. They can see everything that is happening.

Ms. ESHOO. I want to thank Intel for everything you do in our region, and in my district. You are wonderful. Mr. Shears?

Mr. SHEARS. Yes. I also agree, but I would like to emphasize that now is the time for us——

Ms. ESHOO. Yes.

Mr. SHEARS [continuing]. As Steve said, for those——

Ms. ESHOO. Yes.

Mr. SHEARS [continuing]. Results of that report to be revealed.

Ms. ESHOO. And Mr. Schaefer? Yes?

Mr. SCHAEFER. I don't think that there are two times. I think that Congress does have a very strong interest in this issue, and in the process. I think it should voice its concerns and its priorities during this process.

Ms. ESHOO. Yes.

Mr. SCHAEFER. But I also think that it should, at the end of this entire process, take a moment, evaluate what is the final product, and then make a decision as to what is going on, and whether it is meeting its own——

Ms. ESHOO. So start all over again? That is what you are saying?

Mr. SCHAEFER. I don't think it requires a year, but I think it does——

Ms. ESHOO. Well——

Mr. SCHAEFER [continuing]. Need to be assessed at the end of the——

Ms. ESHOO. I think if we do our job, we don't need that time. That is the point. If we are thorough, both on our side of the dais, and you on yours—let me just raise something. We have another issue here, and that is in the Commerce, Justice, Appropriations bills which was released today, "None of the funds made available by this Act may be used to relinquish the responsibility of the NTIA with respect to Internet domain name system functions, including responsibility with respect to the authoritative root, zone file, and the Internet assigned numbers authority function." So we have appropriators getting into this as well.

I think that this is the subcommittee that needs to give guidance to all of this. We have done a deep dive on it, and we will continue to, because it requires it. And I am all for this subcommittee to do that work. And I commit myself, and I know people on our side of the aisle—boy, are you a distraction today, Pallone, jeez whiz.

Anyway, listen, I forgot my train of thought, but, I think that the work has to keep going on. It needs to be intensive, broad, deep, and directed. We know what the mission is. We know what we need to accomplish, and Congress has to be part of that every step of the way. And I think if we do that, that the date that we finish is not the point. It will be that we did an excellent job on something that requires that kind of work. So thank you, Mr. Chairman.

Mr. WALDEN. Thank the gentlelady, and just for point of clarification, that is why we are having this hearing, and why our staffs have been meeting.

Ms. ESHOO. I understand.

Mr. WALDEN. I think the original Dot Com Act, with a year deadline and all, kind of preceded all of this, and that things have changed. And that is why they have been talking, and we have already got the GAO audit underway, well underway——

Ms. ESHOO. Yes.

Mr. WALDEN [continuing]. And so I don't know that it needs to be a year at all, and I thought we——

Ms. ESHOO. Right.

Mr. WALDEN [continuing]. Communicated that. So we look forward to working together with that. I now recognize Vice-Chair of the Committee, is that right, Mr.—no, wait, down to the former Chair of the Committee, Mr. Barton, for 5 minutes.

Mr. BARTON. Thank you, Mr. Chairman. One of our witnesses talked about giving the driver the keys, and you talked about who is paying for the insurance. My question is, who is going to police the road? Who is going to be there when something goes wrong? The best of drivers are going to run a stop sign, or exceed the speed limit, and there are various kinds of insurance. Sometimes they pay, sometimes they don't, but if you don't have an enforcement mechanism, you are going to have chaos. And I have yet to hear this vaunted multi-stakeholder process come up with an enforcement mechanism. I have tried to think of international multi-stakeholder institutions. I can't think of one that I think works better, or as well, as, and I hate to say this, but the Federal Government. I wouldn't say the United Nations is a paragon of efficiency. I wouldn't say the International Olympic Committee. I wouldn't even say the World Bank.

So somebody on this panel enlighten me, we have got a system that is not broke. It is the most open, transparent process out there. One of you has talked about the Internet doubling every 10 months. I have been all over the world on various congressional trips. The only place I have had trouble—my laptop because you said the Chinese government was going to bug it if I tried to turn it on.

So why try to change something that, to all intents and purposes, is one of the best multi-stakeholder, transparent, international processes out there that has the benefit of having an enforcement mechanism behind it, which is ultimately the Federal Government? And I will let anybody take a crack at that.

Mr. DELBIANCO. Mr. Barton, Steve DelBianco. I think we misconnected on the earlier part of the testimony, but I would describe the new powers that we are proposing, because 17 years ago, when ICANN was set up, in their bylaws they explicitly took away the ability for the community to actually police them. In other words, a corporation has to answer to its shareholders, who can spill their Boards, and pass resolutions. My members of my trade association hold me accountable, and I think your voters and citizens probably hold you guys pretty accountable too. None of that has existed for 17 years in ICANN.

Instead, the broad community has to run to run to, well, Congress, or NTIA to try to get a little leverage put on ICANN. We can sue ICANN, and many often do, and contract parties can take ICANN to court over what they are doing. I think that when you look at the testimony of what we have drafted so far, we are giving the community dramatic new powers that are more like those that a shareholder does, or that a voter has. And I think that is how we will police the road.

Mr. BARTON. Anybody else?

Mr. SCHAEFER. Sure. Thank you. I think the first part of your question, the best analogy I can——

Mr. BARTON. I am just using what was given me. I mean——

Mr. SCHAEFER. No, the——

Mr. BARTON. I am better at sports analogies, actually.

Mr. SCHAEFER. I will actually steal from a colleague who was on a panel earlier today, and he says the process isn't broken, and doesn't necessarily need to be fixed. That is true, it has worked very well, and it has been very successful, but the toothpaste is out of the tube, and this was said by Phil Corwin this morning.

And what that means is that we have entered into a process that can't be reversed, and that if we try to reverse it, as mentioned by a couple other people on this panel, the very likely outcome is that—is not that we are going to have the same situation in place going forward, but that the oversight of ICANN and the Internet is going to be taken over by the ITU, or some other international organization, which would be a far, far less accountable, less efficient, and more susceptible inimical pressures than the current one.

And so I think we are far better off having ICANN be accountable to a multi-stakeholder community, which is, in essence, everybody who uses the Internet governing ICANN directly. And if—until that happens, however, we need to maintain the current over-

sight structure of NTIA and the U.S. Federal Government to make sure that ICANN does accept, and abide by, and implement those measures that have been outlined by Mr. DelBianco——

Mr. BARTON. My time is about to—I am not opposed to this——

Mr. SCHAEFER. Yes.

Mr. BARTON [continuing]. Multi-stakeholder process, but you take things for granted. We have created a system that is the best in the world. It really works.

Mr. SCHAEFER. Yes.

Mr. BARTON. But you do need some enforcement mechanism somewhere with credibility that can step in, if they have to. And so far, with all respect, I don't see that, and that is my concern. But maybe it is out there, and I just don't know it.

Mr. SCHAEFER. I completely agree, Congressman, and you are right, it does not currently exist. That is what we are in the struggle to try and implement.

Mr. WALDEN. Mr. Plonk, did you want to respond?

Ms. PLONK. I just wanted to add one thing. In addition to the various accountability measures that have been proposed, that I think are very good, and my colleague Steve has outlined in fairly good detail, in terms of an empowered community, how we overturn the Board, how we overturn decisions, I think all that gets to your question of enforcement.

But in addition, something that has come out of this process that we haven't talked about yet, is the preponderance of evidence that supports U.S. rule of law and incorporation in the State of California. And the various legal analyses that have been done by the multi-stakeholder community puts forward just how favorable the U.S., as a jurisdiction, is for this process. And I think the——

Mr. BARTON [continuing]. Would be helpful—if you are in the U.S. legal system, that is a plus.

Mr. DELBIANCO. Your Honor, if I could react to that?

Mr. WALDEN. Yes, if you do it quickly, because we have got to move on to Mr. Pallone.

Mr. DELBIANCO. Yes. The operational commitments required in 8(b), that ICANN shall maintain a headquarters in California, that is a legal presence and a headquarters presence. That is in the affirmation of commitments, and, as I said earlier, ICANN can walk away from that. So we have made it our mission to move any commitments from the affirmation into the bylaws.

It turns out that one, 8(b), is already in the bylaws. Article 18, Section 1 already says ICANN shall be principled offices California, Los Angeles, California. So it is in the bylaws, and yet the Board could change the bylaws. So another power we described is if the Board tried to change the bylaws and leave California, leave any legal presence, we would have—75 percent of the community votes could block that change.

Now, that may not be strong enough for some of the concerns that I think the GAO will surface on issues like national security, so we may have to turn it into a fundamental bylaw, where 75 percent of the community would have to agree with it, as opposed to oppose it.

Mr. WALDEN. OK.

Mr. BARTON. Make that Houston, Texas and you have got me.

Mr. WALDEN. Wow. All right, we have got to move on to Mr. Pallone now, on the Democrat side.

Mr. PALLONE. Ms. Eshoo mentioned that this morning the House Appropriations Committee released the Commerce, Justice, and Science Appropriations bill for Fiscal Year 2016, and the draft bill is designed to prevent NTIA from using appropriated funds to complete the IANA transition. She actually read that.

So my question is, what is the impact of this language on the continued success of the multi-stakeholder model of Internet governance, and do you think this language advances our interests in accountability and transparency into the transition process? I would like to ask any of you to respond to that.

Mr. DELBIANCO. I could take a stab at it to suggest that NTIA operated under a rider over the past year, and, while they are not relinquishing anything, they are heavily engaged at ICANN, because that is what you charge them to do. NTIA is supposed to be at ICANN. They are at all the meetings and engaged. And on March the 19th we were in the middle of a hot debate with the governments over what to do about Stress Test 18. It was the first stress test that I articulated for you at last year's hearing, this idea that the government could change to majority voting and suddenly be able to impose much of its will on ICANN.

A handful of government objected to that, but our government stood tall, sent a very powerful letter to say that if we don't make this change that we are recommending, we won't meet the conditions of NTIA's transfer. So instead of waiting to the end and voting no, engaged early. All it took was a little bit of a phone call and a nudge, and our Commerce Department stepped right up. So they are engaging. I don't think it is spending any extra money, Mr. Pallone, because I think these are people that are on salary, right? But they are spending money to help us decide now to shape this transition, which is not the same thing as relinquishing control. So I guess it all depends on how the rider is written.

Mr. PALLONE. Well, did you want me to read it to you again? It says, "None of the funds made available by this Act may be used to relinquish the responsibility of the National Telecommunications and Information Administration with respect to Internet domain name system functions, including responsibility with respect to the authoritative root zone file and the Internet assigned numbers authority functions."

Mr. DELBIANCO. So it sounds as if Commerce could work as hard as they could to help get your questions answered and test the conditions, but they couldn't take the final act of letting go of the contract. Is that an appropriate way to interpret it?

Mr. PALLONE. I am asking you. I don't know.

Mr. DELBIANCO. I am not an expert on——

Mr. PALLONE. All right.

Mr. DELBIANCO. I am not an expert on this.

Mr. PALLONE. All right. Anybody else want to respond?

Mr. SHEARS. If I may, I think it will be a great shame if things got in the way of the multi-stakeholder process and come before the proposal. If a proposal is ready, and there are further delays through other mechanism, I think that will be a shame, and that would really undermine the multi-stakeholder model and approach.

Mr. PALLONE. Ms. Plonk?

Ms. PLONK. Thank you. Just to further my colleague's comments, I think we would view that as an externally imposed or mandated delay, which, as I said in my testimony, we also believe would undermine the multi-stakeholder process.

Mr. PALLONE. OK. Anyone else?

Ms. KEHL. I would just echo that, and say that I think it is a lose-lose proposition in a lot of ways, because, although the intent may be to make sure that this transition is handled well, it will make it harder in some ways, I think, for NTIA. We want them to be very engaged in this process, and we want to send a message that we support it. And I think the concern about the message that this sends is also very important, this idea that it is some sort of attempt at an external delay in the process. So I don't think it advances our interests.

Mr. PALLONE. Mr. Schaefer?

Mr. SCHAEFER. Actually, I think that is a—my interpretation is a sense of frustration on the part of Congress that its voice is not being heard, or perhaps being respected in the way that they want it to be. The NTIA has insisted that there is not a role for Congress here, that it has the authority to do this, and Congress has responded to that with this legislation.

And I think the proper way to do this would be for NTIA to say that they are not going to make any decision without consulting with Congress, and involve it directly in the process, and for Congress to voice its concerns directly and clearly to the NTIA, also to the ICANN, and to the multi-stakeholder process what it considers to be vital and key priorities to resolve its concerns.

Mr. PALLONE. Thanks. Let me just ask quickly, I know not all of you can respond, but I understand that ICANN will be meeting next month in Argentina, where many of the issues we are discussing today will be on the table. What progress are you hoping to see in Buenos Aires next month? If anybody wants to take a stab at that?

Mr. SHEARS. We will have the results of the consultations on the two proposals, so there will be—have a significant input from the community, from the multi-stakeholder community beyond ICANN, and that will shape the two proposals going forward. So that will be two significant areas of work for us in Buenos Aires.

Mr. PALLONE. Anybody else? Five seconds. No? All right. Thanks a lot. Thank you, Mr. Chairman.

Mr. WALDEN. You are welcome, of course. And I think this does speak to why we need to come to terms, as we are working together on this legislation, because of the frustration some members have. They will go to the—route if we don't do our job. I am aware of that. So that is why we are having this hearing, and why our staffs have been talking about—if we can find common ground, we might be able to move forward with legislation that the Administration could support, and we could show strong support out of this Committee.

With that, we will go to Mr. Latta, the Vice-Chair of the Committee.

Mr. LATTA. Thank you, Mr. Chairman, and thanks very much for our witnesses, again, for being here today. I tell you, this is a very,

very good hearing today, and I think it is bringing up a lot of very good information we have to have as we go forward as a committee, and as a House.

But one of the first questions I would like to ask Mr. DelBianco, if I could ask of you, and there are three parts to this question, and the question is this. One proposal from ICANN accountability working group is a creation of fundamental bylaws, as a rejection mechanism for the multistakeholder community. Can you elaborate on how you think this is going to help improve accountability? And then maybe just following right up into this is do you think that this will work long term? And is there enough of a culture of accountability within the membership of the community to make this effective? So, really, starting with that question about the fundamental bylaws.

Mr. DELBIANCO. Thank you, Mr. Latta. The bylaws that exist at ICANN today are all subject to change by the Board of Directors without any input at all from the community. They get to make the final decision to change bylaws. That has been unacceptable. That is not accountability at all.

So the two powers that are embedded in the proposal that we have been discussing, the first power is that the community, with a 75 percent vote, can block a Board proposed bylaws change. And a lot of this is to make sure that we lock in the powers that we have, although we believe that there are certain bylaws that are more important than others, that are fundamental and critical. So for those, just flip it on its head. For those, if the Board wanted to change the bylaw, it is a fundamental bylaw, the community would have to agree by a 75 percent vote of these members. And we have a laid out structure on who gets to vote, and how. And if the community doesn't get 75 percent agreement, the bylaw does not change. So one of the debates is should this California principal office be a fundamental bylaw, or not? It would be so helpful to get comments from members, and from this Committee, from the Congress, on that particular question, because it is before us over the next several weeks.

You also asked if the community has a sufficient culture of accountability. The community is people like us, and we all are used to holding institutions accountable in our daily lives. It is when we go to ICANN that we sort of give all that up. So I hope that we can rely upon that cultural accountability that we have, and start to fire those engines when we start to work at ICANN, but it will take a few years, probably, for us to learn how to exercise the muscle of all these new powers we have designed.

Mr. LATTA. Mr. Schaefer, let me ask you. Because this is interesting, and, as we have seen through time, and across the world, sometimes things don't actually work sometimes the way we hope they would, especially when we are talking about the multi-stakeholders, and the oversight. And the question I am going to ask is this. Could there be some intimidation by certain members of other members that would be a problem out there that you would end up on an intimidation, when we are talking about trying to change bylaws, or just the functioning of the Board itself?

Mr. SCHAEFER. I am sorry, who are you addressing the question to?

Mr. LATTA. If you could answer that?

Mr. SCHAEFER. Sure. Anything is possible, of course. Other members can bring pressure on other Board members. But inside the reforms, as outlined by Mr. DelBianco, and in the accountability group, individual members of the Board would be susceptible to recall by their constituencies in there, and also——

Mr. LATTA. But suppose that some of these are more authoritarian type governments, and that is one of the things that we have talked about in this Committee——

Mr. SCHAEFER. Sure.

Mr. LATTA [continuing]. That they wouldn't be recalled by their constituency because there is no constituency.

Mr. SCHAEFER. Well, the constituencies on the ICANN Board aren't representative of governments. They are representative of parts of the community, and various stakeholder groups, and advisory committees, so I am not exactly sure——

Mr. LATTA. The question that I have got, though, is can there be intimidation of those stakeholders out there? And there is going to be—it might not just be because of what we are talking about on the Internet, because of other things that are going on in the world, and a lot of things that this Committee touches that we have seen that can happen. But my fear is that you could have some folks out there that would be intimidated not by "a government", but by the stakeholders that are representing a government.

Mr. SCHAEFER. That would require a significant amount of coordination and pressure among a great deal of people and a great deal of constituencies that I think would be very difficult to either conceal, and do so in a secretive fashion. The nature of the multistakeholder community is that it is very diverse, it encompasses a broad array of individuals, and organizations, and businesses, and so forth. And I think it would be very hard to do that, unless you are talking about criminal activity, and then that would be something that would be handled by law enforcement, not through the accountability measures established under ICANN.

Mr. LATTA. Thank you. Mr. Chairman, I see my time has expired, and I yield back.

Mr. WALDEN. Thank the gentleman. Chair——

Mr. DOYLE [continuing]. Testimony you mentioned that for the proposed governance structure of IANA to work that ICANN must ensure it is accountable to the broader community of stakeholders. Have you seen ICANN take steps to empower the broader community in such a way as to enable this greater accountability, or what concerns still remain?

Mr. SHEARS. One of the things that is certainly true is that this community, this community within ICANN, has been crying out for greater accountability and transparency for some time, and this came to a head last summer, and that was one of the reasons for accountability working group going forward. So the work that that group is doing at the moment is the work that we hope we will see implemented at the same time as the transition takes place.

So, to date, I think it is fair to say, as others have said on the panel, that the accountability and transparency at ICANN has not been as good as it could have been, and at some times inadequate,

and that this is our opportunity to make sure that those changes are put into place. And it is essential that they are.

Mr. DOYLE. Yes, and you mentioned one source of accountability is for the community to be able to award the IANA contract to another entity down the road. Do you see this as an effective check towards improving ICANN's governance and accountability?

Mr. SHEARS. It is an absolutely essential check, yes.

Mr. DOYLE. Yes. Ms. Kehl, in your testimony you said that, had NTIA not voluntarily undertaken this transition, that other stakeholders would have moved forward. Tell us how U.S. leadership in this transition driven—how U.S. leadership has driven stakeholders to the table, and what will be the consequences if we have delays?

Ms. KEHL. Of course, thank you for the question. So I think from the very beginning, actually from 1998, the U.S. has been a tremendous leader in bringing these stakeholders to the table, and empowering the system to work from the beginning. I think we saw, in October of 2013, which was what I mentioned in my testimony, the heads of the regional Internet registries, and ICANN, and the Internet Engineering Task Force put out a statement calling for the globalization of ICANN, and the transfer for the IANA function, saying it is time.

And so I think the response the U.S. Government to say, yes, it is time, and we can initiate this transition was both, you know, it was appropriate historically, it made sense politically, and, as a result, we are in a strong position right now still to set the terms here. So we are a leader. We are not saying that this is going to be dragged from us kicking and screaming in any way. We are not saying that we are trying to delay it. We are saying it is time, we support this system, and we trust that we can figure out a way, working with the community, to actually make it happen. I think it is an incredibly powerful message for the U.S., and I think on the other side of that, if we don't do that, there is this concern that this political target, this sort of, like, falsely clouds our good intentions, and the Internet governance space will only grow larger, right?

So this idea that this is something that comes up it is—for the past more than a decade it comes up an Internet governance meetings, it came up in Korea, at the International Telecommunication Union Conference, this idea that this was a problem, and that this somehow privileged the U.S. role, and so it is the responsible thing to do to say we are going to end that, and we are going to do this in a manner that works for both us, and for the global Internet community.

Mr. DOYLE. Would either of you like to add anything to that, Ms. Plonk or Mr. Shears? OK. Mr. Chairman, I will just close by saying that I want to keep it in Los Angeles, California, but not Houston, Texas. Thank you.

Mr. SHIMKUS [presiding]. Gentleman yields back his time, and Chair recognizes myself for 5 minutes. And it is great to have you, and I think we are making progress from my colleagues on the other side.

I don't think we would be in this position had the original bill not been dropped in the last Congress. And, in respect to the ap-

propriation battle, I would argue that we wouldn't even have that fight had we done a better job of working together last Congress to try to raise these issues, because, if you remember this whole debate, and Mr. Strickland was one of them, and many of you were there, Congress has no role. That is what your statements were, Congress has no role. Now today you are saying what? There is an important role for us to play, and we need to be involved because our citizens are going to ask questions. The world is a much different place now than it was in 2012. So where decisions were made in 2012, the world is—we are at a different place. I think there is less trust in the international world and community right now just because of world events.

So we just represent people, OK, in our districts, we all have about 750,000, of what we are doing with NTIA. So as much as we have to respect the work that they are doing, they have to respect the work that we are doing. And so I want to appreciate—I do appreciate my colleagues. I think we are going to move in a process that—I am hopeful that we will have comfort that there is legislative—I would yield to my colleague, yes.

Ms. ESHOO. For a few seconds. I appreciate what you said, and we have—Congressman Shimkus and I have worked on a lot of issues together very successfully over the years, so I appreciate what you said. I think where perhaps we weren't totally on the same side was having confidence in a multi-stakeholder community, that that model could work. I don't ever remember myself questioning whether Congress shouldn't lean in, or anyone from our side, but that is the past. We are moving on.

But I still think it is worth saying for the record, and we are going to work with you because we realize how important this is. And, I mean, for the amount of time that these people have invested is really glorious, and you should really be very proud of yourselves because I think you are the ones that have really moved the ball down the field, and said that to the Congress, and now the Congress is feeling far more confident. So thank you for yielding, Mr. Chairman.

Mr. SHIMKUS. I am happy to do so, and let me raise a couple issues. I did submit this column for the record in the opening statements, and it just raises one of the issues. And, as we go through this process, what are the concerns out there? And I have so many questions, I have been scribbling notes down through the whole hearing. But I guess the bottom line is, the NTIA have what their listed objectives are, the question will then be, what is missing, and your advice and counsel could be helpful, what should be added to give us certainty?

For example, in the article it says, consider the importance of .mil, which is sponsored by the United States Department of Defense, that houses some of the secure systems and e-mail addresses most vital to U.S. national security. Using them would place a considerable strain on the nation's defense. As yet, the Pentagon has no ongoing contractual right to it. The Department control over .mil is a legacy arising out of America's invention of the World Wide Web. And they also mention .gov and .edu as a concern. Does anyone reject the premise of that statement? Mr. DelBianco?

Mr. DELBIANCO. Thank you, Mr. Shimkus. No, it is of vital importance. Think about what would happen. Think about the risks if our .mil and .gov were under attack, or redirected during an emergency. Maybe a coordinated attack that went after cyber structure and infrastructure. And it is particularly different for us.

For 100 countries around the world, their .gov lives at the second level, .gov.ca for Canada, .gov.uk. Since it lives at that level, it is on a server on their soil completely under their control and law—is the root server, and it ought to maintain a U.S. presence for that reason. Now, we can get a contract with ICANN so that the U.S. DOD and GSA have permanent custody of those names, but that contract wouldn't be worth the paper it is printed on if ICANN left the U.S. as a legal presence, and if the root left our shores.

Mr. SHIMKUS. Yes, and I will end on this, my time has expired. I will just say, I am curious to the contractual obligations, and NTIA's role, and where would people go? I mean, I think we weave a story that people will flee. I am not sure there is any other organized structure which they would go to. So, with that, I would like to recognize for 5 minutes Mr. Luja AE1n for questions.

Mr. LUJA AE1N. Mr. Chairman, thank you so very much, and thank you for this important hearing today. And, Mr. Chairman, I just want to say this at the start, as we make this transition, we must make every effort to ensure that the foundational values of the Internet, freedom of expression, and protection from government interference, are preserved. I think that is a value that we all share.

And, Ms. Plonk, as I am sure that you are aware, for years Intel has been an important partner in New Mexico, and we certainly appreciate your presence, and we are always open to opportunities to talk about expansion. And so I just wanted to lay that out with my good friend Mr. Walden, who is also here. I know that we are always talking about opportunities at Intel in our various states and our various districts as well, but we really appreciate you being here.

And as important partner who shares a very important perspective with what Intel does, not only in this space, but being the only presence in the United States in what you do, and we have to acknowledge that. We wanted to make sure that we are doing our part to protect that industry, and to provide opportunities for expansion. But can you explain further why you support this transition, and how it impacts your business?

Ms. PLONK. Thank you for the question, and for the kind remarks about Intel. We are building a new universe of connected devices, the Internet of things, wearables, what have you. All of these devices are not very valuable to people unless they can connect, and so our business interest is in seeing the Internet grow. I mentioned in my testimony the rates at which we have experienced growth for the last 30 years. It is going to need to continue to grow exponentially to meet the demands for all of the connectivity, for all of the devices that we are building silicon to support.

So we are concerned that—well, we support the transition because we think that is the best path to growth, at the end of the day. We are concerned about anything that would deviate from the path toward growth of the Internet, such as fragmentation, should

countries decide to split off from a global Internet in a way that we couldn't do business as easily across borders, or the benefit of the platform for expression, and for interoperability wouldn't exist, at least in the way we know it today. All of those are huge drivers for not just Intel, but the IT and Internet community that, as I mentioned in my testimony, grew up in the United States, and to a large degree is headquartered here.

So that is our fundamental business interest, so that is why we support the transition, and we are positive in the outlook of what we think is to come. All of my colleagues here have been deeply involved in the process. Mr. DelBianco has detailed out the accountability reforms. Mr. Shears has as well. So we are optimistic about the outlook for the future, and it is very critical to us.

Mr. LUJA AE1N. And, Ms. Plonk, your testimony discusses the challenges the U.S. faces in building international support for the multi-stakeholder model as well. You note that some countries advocate for centralized control of the Internet, or a greater role for international organizations, like the UN. What would be the impact on companies like Intel if these voices were to prevail, and we abandoned the successful multi-stakeholder approach?

Ms. PLONK. If we were to completely abandon the multi-stakeholder processes that we know today, I don't know that anybody at this table would be able to participate going forward. A one country, one vote system, such as at the UN, doesn't allow for direct participation from the private sector or civil society. We would be having to work through governments and national governments. We wouldn't necessarily have the direct relationship that we have with ICANN to represent ourselves. So that is, I think, the short answer to the impact.

Mr. LUJA AE1N. And I guess the follow up to that, just straight to the point, is, when taking into account the stakeholder international opinion, does United States advocacy for a multi-stakeholder model free of government control strengthen or weaken Internet access and freedom for users in states like New Mexico?

Ms. PLONK. I think the multi-stakeholder system allows the U.S. Government to engage in representing the country, representing the people, just the way that you do here in Congress. And the multi-stakeholder system also allows users to represent themselves directly, whether that is through participation in civil society organizations, or in trade associations through their businesses, however, they have access directly, as well as through the U.S. Government representing them.

Mr. LUJA AE1N. Thank you, and I thank you and all the witnesses for making yourself and your expertise available to us today. Thank you, Mr. Chairman.

Mr. SHIMKUS. Gentleman yields back his time. Chair now recognizes the gentleman from New Jersey, Mr. Lance, for 5 minutes.

Mr. LANCE. Thank you, Mr. Chairman, and good afternoon to you all, and it is a pleasure to be with you. Mr. DelBianco, you have emphasized the need to stress test various proposed ICANN reforms. I certainly agree with that, and you have not suggested such tests for the technical operations of the domain name system. Can we assume that this is because they have not been tested in a real world setting for quite some time?

Mr. DELBIANCO. Thank you, Mr. Lance. We have 26 stress tests. Four of them do address core naming functions, change failure, redelegation failure, compromise of DNS set credentials, as well as dotless domains, and innovations of that nature. But in each case, the proposed planning that we have talked about, the powers, give the community and the direct naming customers the power to do escalation procedures on failures, as well as the ability for us to challenge decisions that were made, or inaction of ICANN.

So the proposed community powers enable what we need there, but beyond that, we had no call to do stress testing of the underlying technical operation at the core of the Internet, because tech services at that level, those companies, they have actually been doing it for decades with—and they are tested every single day, I think, with stress tests of real world operation.

Mr. LANCE. Thank you. Ms. Plonk, you are nodding your head. I would certainly be interested in your comments.

Ms. PLONK. Accountability over ICANN itself.

Mr. LANCE. Thank you. To the panel in general, whoever would like to respond, in your experience, what is the international perception of the U.S.'s role in the operations and oversight of the Internet? Is there a solution that is acceptable to the international community without risking the future of the Internet? Mr. Shears?

Mr. SHEARS. Thank you. This is a wonderful question, because when we——

Mr. LANCE. I didn't write it, the staff wrote it, so——

Mr. SHEARS. When we talk about the multi-stakeholder model, that does involve governments, so governments from different countries around the world are represented in these discussions that we are having, so they are fully apprised of what is happening on accountability, and they are fully apprised of what is happening on the IANA transition. So, yes, there is a considerable amount of support. There are, of course, the naysayers, and this is to be expected, but there is a considerable amount of support for the transition around the globe.

Mr. LANCE. Thank you. Others on the panel who might wish to comment? Yes?

Ms. KEHL. Thank you. I would add, I think, that historically there has been a lot—think that the key is that, in recent years, the sort of erosion of the trust in whether we could continue to be that neutral steward, or whether we needed to be, has been quite effective. And so I think that is why we are at the point now where there isn't a way to put the toothpaste back in the tube. We can't go back on the promises that we have made. And so the solution that we come up with has to be one that recognizes that while, without sort of diminishing the important role that the U.S. Government has played, that it is time to move on.

Mr. LANCE. Thank you.

Ms. KEHL. Thank you.

Mr. DELBIANCO. And, Mr. Lance, I might add that the international perception comes down to how we interact, and I say we as Americans——

Mr. LANCE. Yes.

Mr. DELBIANCO [continuing]. Because on every working group, at every ICANN meeting, there are, more often than not, more Americans than any other group.

Mr. LANCE. Yes.

Mr. DELBIANCO. Sometimes Americans might be more than the rest put together because——

Mr. LANCE. Yes.

Mr. DELBIANCO [continuing]. Countries don't have the same kind of presence of companies like Intel. So there is a dominant presence of Americans, and we conduct our business at ICANN primarily in English.

Mr. LANCE. Yes.

Mr. DELBIANCO. The second is there is a precedent here. The laws of the State of California have served us very well. And while others from around the world chafe when we talk about maintaining the fundamental bylaw for California presence, it is not as if anybody has stepped up with a better idea, and a better place to take it. So there is a grudging acknowledgement that we built it, and have an awfully good system in place, but it kind of bothers them that we are probably more dominant than we otherwise should be.

Mr. LANCE. Well, thank you very much, and California is a great state. I yield back 17 seconds.

Mr. SHIMKUS. Gentleman yields back his time. Chair recognize the gentleman from Illinois, Mr. Kinzinger, for 5 minutes.

Mr. KINZINGER. Well, thank you, Mr. Chairman. I appreciate all of you being here and spending some time with us today, and I know you will be ready to go when that time comes too. But there has been some debate in the multi-stakeholder community over whether ICANN should be permanently granted stewardship of the IANA functions as a condition of the transfer. It seems some believe that in order to keep ICANN accountable to the community, there should be some mechanism to replace them. Mr. Shears, what are your arguments being made in regards to this issue?

Mr. SHEARS. Yes, certainly CDT does not support ICANN having the IANA operations in perpetuity. We believe that being able to select another operator is a core accountability mechanism that keeps the IANA functions neutral, transparent, and accountable themselves, and that is probably one of the most important aspects, in terms of the package as a whole, the overall proposal.

Mr. KINZINGER. Ms. Plonk, in your written testimony you also address this issue. Would you mind elaborating on it a little bit?

Ms. PLONK. I support the comments by Mr. Shears that the ability to choose another operator through termination clauses, as is standard in contracts, certainly in the U.S. and in California, is normal, and should be a criteria for moving forward.

Mr. KINZINGER. Does anybody else on the panel want to address it at all, or—yes, go ahead.

Mr. DELBIANCO. Thank you, Mr. Kinzinger. I agree that we need to be able to reassign those IANA functions of names, protocols, and numbers. But when it comes to what an ICANN does, the policymaking part, it is a huge policymaking machine. It has signed thousands of contracts, and it has to enforce the contracts. I don't think dumping that makes much sense. But what does work is if

ICANN is not doing that job well, we will dump the Board. We will get a new Board, rather than a new entity, to do the policymaking.

Mr. KINZINGER. OK. Anybody else want to address that at all? Yes.

Ms. PLONK. Just a follow-up, I appreciate Mr. DelBianco's clarification that there is this separation between the policymaking function that ICANN has and the execution of the IANA functions, which are largely administrative.

Mr. KINZINGER. OK.

Mr. SCHAEFER. If I may——

Mr. KINZINGER. Yes, please.

Mr. SCHAEFER. One thing. In my testimony I make reference to an article, and several statements, by Mr. Woodcock, who is part of the CRISP group, and also commentary by Milton Mueller, who is instrumental in the stewardship process as well, and they give some evidence, or at least stories of ICANN resisting the separability process, and I think that is something that is, as mentioned on the panel, very important to the accountability and the long term interests of this process.

And in that discussion, they indicated that some individuals at ICANN had said that Congress was opposed to separability as part of this process. If that is the case, and we don't know whether it is or not. This is, again, a story, Congress should, I think, step forward and clarify whether it is or whether it is not opposed to this as part of the process. And I think, based on what I have seen and what I have heard in discussions that Congress is indeed not opposed to this, and in many cases is supportive of this process, and should state so.

Mr. KINZINGER. And one proposal from ICANN accountability working group is to significantly change the appeals process for ICANN review. Can any of you elaborate on whether or how you think this will help improve accountability, and is there a better or more effective way of achieving the goal of accountability?

Mr. DELBIANCO. Mr. Kinzinger, it is just one of the new powers we are granting, but I will just focus on it, since you asked. But the independent review process has been pretty inaccessible for many aggrieved parties. It is phenomenally expensive. It is as much as a million dollars to hire counsel, to pay the panelists that are pulled together for the independent review panel. There is a limited scope of matters that can be taken up, and it is very difficult for a broader community of aggrieved people to have standing as a group.

So we are relying upon some very smart lawyers not working for ICANN, but working for the community, to dramatically improve the independent review process. We call that the crown jewel of our powers. We are going to make it more accessible, and if it is the community that filed the independent review, ICANN will pay for the panelists, not the community. We wouldn't be able to scrape that together.

They have to use the standard of review that is baked into these newly improved bylaws, so the standard of review will be known, which includes a tight limitation on ICANN's scope creep. And then finally, when the decision comes back from the independent review panel, we are seeking to ensure that it is a binding decision on

ICANN that will force them to do over a decision that the community has rejected.

Mr. KINZINGER. Thank you. And, Mr. Chairman, I only have 10 seconds left, so I yield back.

Mr. SHIMKUS. Gentleman yields back his time. Chair now recognizes the gentleman from Florida, Mr. Bilirakis, for 5 minutes to——

Mr. BILIRAKIS. Thank you, Mr. Chairman. I appreciate the panel's testimony today as well. One of my greatest concerns with this transition is the susceptibility of the ICANN to manipulation by foreign governments. Mr. DelBianco, how will stakeholders protect the process from foreign governments if they continue a push for power or unjust control once the United States withdraws its stewardship role?

Mr. DELBIANCO. Thank you, Mr. Bilirakis. This was one of the stress tests we discussed in front of your Committee last April. And it is a genuine concern that governments together would exert more influence over ICANN without actually having reached a consensus. Today the Government Advisory Committee, or GAC, G–A-C, operates under its own self-imposed rule of consensus before it offers formal advice to ICANN. And when they offer formal advice at ICANN, ICANN is strongly presumed to be following the advice. And when it doesn't follow the government advice, ICANN has to enter a period of trying to find a mutually acceptable solution with the Government Advisory Committee. No other advisor or stakeholder group has that kind of due deference with ICANN. I think it is a recognition of the power of governments.

So many governments have said they would prefer to change to majority voting. It is a little messy to get consensus, and they would like a majority, and I have to express the concern about that. Sometimes there are only 60 or 70 countries at a GAC meeting. If you can scrape together 34 votes for an oppressive new policy that gets in the way of free expression, that would be bad. So we made a change to the bylaws as part of our proposal that we only have to give that due deference to the government advice if it is actually supported by consensus.

Mr. BILIRAKIS. Thank you, Mr. DelBianco. Got it right that time. Next question, a number of U.S. companies, including yours, Ms. Plonk, have expressed support for this transition——

Ms. PLONK [continuing]. Process in much the same way that they do today, through the Government Advisory Council to ICANN, as well as the various communities within the United States, business, civil society, and academia will have as much, if not more, access to provide accountability for the—both the execution of the IANA functions, but also the overall policymaking role that ICANN has. So I view it as a very positive——

Mr. BILIRAKIS. What about congressional——

Ms. PLONK [continuing]. Thing for the U.S.

Mr. BILIRAKIS [continuing]. Oversight?

Ms. PLONK. So you will continue to have oversight over NTIA, and their work on this issue. If they continue to participate in the multi-stakeholder process, I don't see dramatic changes in that regard.

Mr. BILIRAKIS. Anyone else want to comment on that?

Mr. SHIMKUS. Will the gentleman yield, Mr. Bilirakis?

Mr. BILIRAKIS. Yes.

Mr. SHIMKUS. But we will lose the authority, or the oversight that we have today. I mean, it is not fair to say, it is the same thing. There is a definite—Mr. DelBianco? There is a definite shift.

Mr. DELBIANCO. You are absolutely correct. A hearing like this would perhaps still happen post-transition, but the audience for your hearing is not going to be ICANN. The audience would be our NTIA, and we are one country's vote among the hundreds of votes that are on the GAC. There is no special role anymore for the inventor——

Mr. SHIMKUS. Right, and that is all the point I was trying to make. I will yield back to Mr. Bilirakis.

Mr. BILIRAKIS. OK. Thank you.

Ms. PLONK. There is no voting on the GAC, though, just to make the point.

Mr. BILIRAKIS. Mister——

Mr. SCHAEFER. One other thing I would just emphasize, there is nothing stopping individual members of Congress, or Congress as a body, from submitting comments to various proposals, or any other changes through the comment process at ICANN. In fact, it could do so right now. And that is actually something I would think that Congress would be interested in engaging in during this process, while this is all going on. And that would continue to be an avenue in the future.

Mr. BILIRAKIS. Right. Thank you very much. Mr. Shears, in the past some have argued that, through relinquishing or contractual relationship with ICANN, accountability might suffer in the transition. In your testimony you mentioned the current hybrid proposal separating functions and oversight. You conclude by saying this can work only if ICANN is held accountable to its own internal governance structures, and stressed the multi-stakeholder community needs to be more empowered than it is today for it all to work. Can you elaborate on this, and if you expect this approach to ensure accountability will be successful?

Mr. SHEARS. Yes, thank you. So the current model that is part of the IANA transition does foresee that ICANN is the contractor, and a subsidiary of ICANN is the operator of the IANA functions. So in order for that to work, as I said in my testimony, it is absolutely essential that the oversight of the IANA operator is absolutely neutral, and transparent, and accountable. For that to be the case, it means that the community needs these additional powers that we are talking about. Because at the moment, those powers don't exist.

So at the end of the day, to hold ICANN true, and to ensure that that oversight exists over the IANA operator, we need these accountability measures that we have been talking about in this hearing.

Mr. SHIMKUS. Gentleman's time has expired. Chair now recognize the gentleman from Ohio, Mr. Johnson, for 5 minutes.

Mr. JOHNSON. Well, thank you, Mr. Chairman. Mr. DelBianco, back to you. One proposal from the ICANN accountability working group is the incorporation of the agreements made between ICANN and NTIA, and the affirmation of commitments into the governing

documents of ICANN. Can you elaborate for us on whether or how you think this will help improve accountability?

Mr. DELBIANCO. Thank you, Mr. Johnson. The affirmation of commitments was really an outstanding piece of work by the USA in 2009, and it came up with a set of principles that ICANN had to commit to, as well as reviews it had to commit to allow the community to perform. But these commitments were between ICANN and the U.S. Government. It is a bilateral agreement. It is exactly the kind of thing that the IANA contract was, that would be the next target for elimination by governments around the world who don't want us to have a unique role.

And that is why the very first stress test that I presented to this Committee last April was ICANN, if they were to cancel the affirmation of commitments, we would lose all of that. So this working group spent a good deal of time, it occupies about 15 pages in our proposal, of bringing over all of the relevant commitments from ICANN, and we improved them as we brought them over. And then we took a look at the reviews that are done, and gave the community more power to set who is on the review teams, to sunset old reviews, create new ones, and to more appropriately hold the Board accountable to the recommendations. So I hope that your reading of our proposal will concur that we have done, I think, an adequate job of bringing all of the key commitments from the affirmation into the bylaws.

Mr. JOHNSON. OK. All right. Another question for you, then. Another proposal from the ICANN accountability working group is greater power to the constituent communities within ICANN, particularly in regards to the group's budget, operating plans, and bylaws. In addition, the community would be able to approve changes to the fundamental bylaws, and remove members of the ICANN Board. Can you share your thoughts on whether or how you think this will improve accountability?

Mr. DELBIANCO. Those five powers are simply essential, and they stop short of that fifth one of spilling the Board. That scene is the nuclear option, not the option that would operationally be very useful. But each of those interim steps are, amazingly, lacking today. The community has no ability to block a budget, a strat plan, no ability to block a Board approved bylaws change.

And so the idea of building these powers in came very clearly to the community through a series of public comments that were conducted last summer, right after NTIA made this announcement. So it was very easy to gather a consensus of what powers the community needed, and they are all there, with the intent of being sure that we keep ICANN's management and Board, which is really accountable to the fiduciary concerns of the corporation, to keep them from going off the rails. So I think we are going to be able to answer your question with a yes.

Mr. JOHNSON. OK. Well, good. Final question for you, are there better or more effective ways of achieving accountability that I haven't talked to about here? You have got about 2 minutes to tell me some others, if you would like to.

Mr. DELBIANCO. Thank you, Mr. Johnson. So far, and I will happily yield to other panelists, but so far the proposals are complementary. They are not competing proposals. There is a com-

plimentary set of proposals on the naming, and protocols, and numbers, and there is the accountability proposal. That is that big second blue bar. And the reason it starts a lot later than the first blue bar is that ICANN management Board didn't want to admit that there needed to be a conversation about accountability. So a lot of this was over the objections of ICANN, but now we are all on Board, and we are all participating.

As for other measures—if I were to start over and invent the next ICANN, and it is like when you ask an Irishman for directions, and he said, well, I wouldn't start from here, it is not possible, I think, to accommodate all of the disruption it would take to tear up and rearrange all of the contracts that are written with all the registries and registrars, all of the arrangements, the policymaking, the compliance bureau. So we really don't think we need to start over with a new model, with a new ICANN. We want to give new powers to the community to hold ICANN accountable to its mission.

Mr. JOHNSON. OK. Well, great. Mr. Chairman, I yield back a whole 46 seconds.

Mr. OLSON [presiding]. Thank you. The Chair recognizes the gentleman from Missouri, Mr. Long, for 5 minutes.

Mr. LONG. Thank you, Mr. Chairman. And K-e-h-l, how do I pronounce that?

Ms. KEHL. Like the vegetable, Kehl.

Mr. LONG. Kehl, OK. That is what I thought it was. OK. I thought I heard that earlier, but I don't always hear things correctly. But, Ms. Kehl, what if the transition doesn't go through? What is the downside?

Ms. KEHL. I think the downside, if the transition doesn't go through, is the risk that there is immense pressure on this to happen in some other way without the U.S. Government's ability to set the terms, right? So this idea that the wheels were in motion from other organizations to try to find—from other parts of the community, sorry, not other organizations, to try to make this happen. So to say, will we reach consensus, and try to force the U.S. Government's hand?

There is the risk that there have been governments that have tried to bring this into the International Telecommunications Union, which is a body of the United Nations. When I was a member of the U.S. delegation in South Korea in October, and when we were there, that was something that came up I think because of the existence of ICANN, and the ongoing process. That was not a serious proposal, but those proposals will be strengthened if the transition doesn't go through.

And I think the other risk—while I think this is not a nearly as likely one, is that you end up with the system fragmenting. You end up with multiple competing sources of authority because other people start to say, we want to take this away, and that almost happened in the '90s, when—before the U.S. Government decided to do this.

So that risk that it fragments, and then this system that works very efficiently and very well, that most people don't even know exists, suddenly doesn't work, right? And so that is a huge concern as well. I think that is a very unlikely scenario, but it is a possi-

bility, if we sort of continue down—if we don't resolve this, and we go down this alternative path.

Mr. LONG. Say that again, now, on that last part? It is unlikely that what happened?

Ms. KEHL. It is unlikely that the system would fragment, that you would end up with multiple competing sources of authority. But, if you did, the consequences would be incredibly significant.

Mr. LONG. As they say, there is many a slip between the cup and the lip, so during this handoff, there is some chances of some pretty bad things happening also?

Ms. KEHL. I think there are risks. There are risks that—again, that something fragmented, or that the DNS could be used, the domain name system, as leverage to impose other policies, or to expand ICANN's role. And that is why I said the heart of this is the accountability process, and this idea that we have checks and balances to deal with ICANN's authority, and also this concept of enumerating the powers, and so making it very clear that ICANN's mandate is narrow, it is technical. Their job is to make sure that the system runs, and that it works, that it doesn't fragment, and that most Internet users don't know it exists.

Mr. LONG. Anyone want to dispute what she said? I saw a lot of heads nodding in agreement. Anybody dispute what—yes, sir, Mr. Shears.

Mr. SHEARS. Yes, thank you. I think one of the other things—the reasons why this transition is so important is because we are living the multi-stakeholder model right now in these working groups. We are living the multi-stakeholder model right now. These working groups are multi-stakeholder, and they are working very well. For the transition not to occur would undermine that commitment that the U.S. Government has to multi-stakeholder model, and international Internet policy issues, and I think that would be a damaging blow to the legitimacy of the model as a whole. So that is another consequence of this transition not going ahead.

Mr. LONG. Mr. Schaefer?

Mr. SCHAEFER. I agree with the assessment there. There has been a concerted effort by a number of countries to try and shift authority away from the United States and ICANN into the international model, the multi-lateral model, ITU or other forms, over years. The U.S. has successfully pushed those back. The expectation now is so high that it is very unlikely that we can get away with not proceeding down the path toward the transition to our private sector overseeing, or withdraw from the U.S. oversight of ICANN.

But one thing I will say is that we need to be very careful not to go down and agree to a transition proposal that is substandard just because we fear something else worse might come along. I think the United States needs to be very clear about what is and what is not acceptable, and hold to that line, because a substandard proposal could be just as bad as the other——

Mr. LONG. Well, shouldn't .mil, .gov, shouldn't those be exclusive, perpetual, and at no cost? Are we going to be able to do that?

Mr. SCHAEFER. Mr. DelBianco talked about that a little bit earlier. I believe that the United States should make, condition on the transition, its exclusive ownership of those two TDLs.

Mr. LONG. You believe what now?

Mr. SCHAEFER. That the United States should make, as a condition of the transfer, its ownership of those two——

Mr. LONG. Yes, I heard what Mr. DelBianco said earlier, but I just wanted to kind of figure out how to tie it into what you were saying. So, with that, I don't have any time to yield back, but if I did, I would.

Mr. OLSON. Gentleman's time has expired. The Chair recognizes the gentleman from New York, Mr. Collins, for 5 minutes.

Mr. COLLINS. Thank you, Mr. Chairman. It has been interesting, as we have kind of deep dived this issue, to jump in. This would be your chance to take an extra 4 minutes as we are summing to see if, on the record, you would like to bring something up that we in Congress should be concerned about, worried about, or should take action on. So why don't we maybe start with Mr. DelBianco, and see if you have got something to add here as we conclude?

Mr. DELBIANCO. One of the concerns is keeping ICANN to its limited technical mission. So we have proposed a change to their fundamental bylaws to say that "ICANN shall not undertake any other mission not specifically authorized in these bylaws." So it is a much tighter rein to put on it. And the importance of that making it through cannot be understated. We need to be sure that ICANN will accept and implement that change, and not mince words——

Mr. COLLINS. But who takes the leadership role to make sure that happens?

Mr. DELBIANCO. That is a great question, because that role is going to end up falling to the community first, to NTIA, who will basically say whether they support the community transition plan that is up here. And that is why we said to this Committee, do your best to support and encourage that NTIA consistent——

Mr. COLLINS. So, to some extent, NTIA has a veto today that is the ultimate arbiter of this? They have got a veto, and they——

Mr. DELBIANCO. For the last time.

Mr. COLLINS. For the last time? So they need to make sure they exercise that, and the community needs to make sure we in Congress know if there is something that is about to——

Mr. DELBIANCO. Secretary Strickley says all the time that it would be a failure of the entire process if we ended up having a veto. Just like I said to Representative Shimkus, it would be a failure if GAO studied it, and came back and said, this will never work. We have to be engaged now. And NTIA is, and, thankfully, Congress is as well. By engaging early, there is no risk that we get to the end of the road and say, this fails.

Mr. COLLINS. Right, but it is our failsafe, if you will. Would anyone else like to comment here, as we are closing out?

Mr. SCHAEFER. I would like to——

Mr. COLLINS. Yes, go ahead.

Mr. SCHAEFER [continuing]. Things. One, I just can't emphasize enough that it is important that these changes be implemented before the transition. The leverage leaves once that transition occurs, and NTIA no longer is in the position that it currently is in. And, second, on the accountability track, there are two what they are calling work streams. There is work stream one, which there are—

the changes that they deem are so important they need to be in place before the transition occurs. That—there is also work stream two, which are deemed to be important, but not necessarily important enough to be in place before the transition occurs.

Work stream two still has a lot of important things in there, and there needs to be a great deal of assurances from ICANN, and from the multi-stakeholder community, through this process that those work stream two items will not be forgotten once this transition——

Mr. COLLINS. So what is the timing? If you were to say, you know, there is not a date certain, a time certain, is there? I mean, so the clock is kind of ticking, but when do you see this reaching some endpoint?

Mr. DELBIANCO. You know, first crack, as the chart I put up there showed, early next spring would be the earliest, and it might go as long as late next summer into next autumn.

Mr. COLLINS. But we are talking about within a year?

Mr. DELBIANCO. Yes, sir. And I should answer, with respect to work stream one and two, the community believes that, this is in response to what Brett said, we aim to give the community sufficient powers in work stream one so that the Board management cannot block the implementation of our work stream two items. So if we have the powers we have described to you——

Mr. COLLINS. Yes.

Mr. DELBIANCO [continuing]. And we get to work stream two, not even 2017, and the Board is not going to concede, that is when we start invoking powers like spilling the Board, challenging their decisions.

Mr. COLLINS. And who sets the Board? Are there going to be 20 people on the Board, and who picks them? I know how shareholders work in private corporations. This is a little bit more confusing than that.

Mr. DELBIANCO. The Board is a—well, it is kind of an interesting and complex structure. There is a Board member that is appointed by a technical community. There are two Board members that are appointed by the generic name supporting organization. We have the country code organizations, security stability advisory committee, the root server committee. The governments have a nonvoting Board member. There is the nominating committee——

Mr. COLLINS. So are we talking about 30, 40 people, 100 people?

Mr. DELBIANCO. 20ish.

Mr. COLLINS. 20ish people, and they could be replaced, I am assuming, by the nominating group? Does the NTIA get to put two people on, or nothing? Interesting. Well, I guess I have 3 seconds left or so, so I will yield that back, and thank the panelists for your dedication to this issue, which is pretty deep in the weeds, but a very important thing. So, yield back.

Mr. OLSON. The gentleman yields back. The Chairman has 5 hours of questioning. Good, you are paying attention. 5 minutes.

I want to sum up. Pretty clear that back home people are more concerned about what will happen if some foreign government that is hostile to our nation takes over the role played by ICANN right now. I am a former Naval aviator, so we plan the worst case scenario, what bad could really happen. So, if bad things happen after

this transition occurs, what is our recourse? What can we do to stop this from happening in the future?

If ICANN goes into effect, all of a sudden some bad actors take over, can we stop it? Can we recover? Because that is what they are concerned about back home. We turn it over, and it goes over forever. I mean, do we have some sort of breaker, some sort of mechanism to say——

Mr. DELBIANCO. Right.

We have several stress tests about that, and it can be most easily summed up by saying that if the community, the people that actually use the top level domain table, the root table, believe that it has gone off the rails, that governments are suppressing free expression, or commerce, it will take the IANA contract away from ICANN and give it to someone else. And that can be done in an instant. The root table is small enough to fit on an index card, and it can be hosted by others, and replicated around the world.

So the ability of separability, Audrey talked about this earlier, everyone agreed we needed that. That is our ultimate trump card against the scenario you described.

Mr. OLSON. And, Ms. Plonk, you are nodding your head. Do you agree with that? Want to add anything, ma'am?

Ms. PLONK. I do. I would only add that the other two communities, numbers and protocols, also have plans for how they will internally, you know, transition, if that needs to happen.

Mr. OLSON. Ms. Kehl?

Ms. KEHL. I would also add that I think that this idea, it is always important to remember that we are a part of the community, and by that I mean the panelists here, and also the U.S. Government. So we are stakeholders in this system as it goes forward, and I think the shared goals of planning against that worst case scenario and the goals of protecting the free and open Internet, are ones that are broadly shared by members of the community in the United States and around the world.

And there is this really active group of civil society, of companies, of academia, and of governments that are dedicated to these issues, and they are, I think very vigilant in making sure that we avoid those kinds of scenarios. And so we are still a part of that community, and that is really powerful.

Mr. OLSON. Mr. Shears, your comments, sir?

Mr. SHEARS. Thank you. I would say that the measures that we are trying to put in place on the accountability side are designed to militate against capture and mission creep, and that is part of that process, as you say, of—what happens when things go wrong? We are working in a system now where, hopefully, we will put in place measures where that will be very slim chance of that happening.

Mr. OLSON. Mr. Schaefer, your comments, sir?

Mr. SCHAEFER. I would just like to echo a statement made by Mr. Shears in his opening statement, about how all these issues and these measures are intertwined, they are inter-reliant on each other, and I would highly recommend against moving forward on one without moving forward on all of them together.

Mr. OLSON. So you all seem—if I just want to put words in your mouth, you all seem to think that this is OK, it is safe, we don't

have to worry about it. There is all sorts of checks. You don't know what will happen, but if bad things happen, we can stop it, control it. Yes, Mr. DelBianco, Ms. Kehl, Ms. Plonk? OK.

Well, guys, I have one last comment. I want to follow up on the comments by former Chairman Barton and Mr. Doyle from Pennsylvania about moving the headquarters of ICANN to another country. Do those options include a state that was a former country? Is that considered another country, like the Republic of Texas? Does that work for there? Because, again, you have got me if that is what is going to happen. Is that—consideration? Laughter, OK.

Members have 5 days to submit questions for the record. Without objection, this hearing is adjourned.

[Whereupon, at 4:25 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

PREPARED STATEMENT OF HON. FRED UPTON

The Internet is one of the most vibrant and dynamic drivers of the economy—both here and across the globe—and this committee has made it a priority to ensure that it will continue to thrive unfettered well into the future. Today the subcommittee takes another look at the future of Internet governance and the proposed transition of IANA oversight from the U.S. government to the multi-stakeholder model.

Last Congress, we advanced the DOTCOM Act as a measure intended to press pause before NTIA relinquishes the United States' role in overseeing the Internet's root zone functions. The U.S. has held this important responsibility for many years, and before we take an irreversible leap, we must carefully look at and understand all of the risks and consequences. Last year, we requested that the nonpartisan GAO examine the proposed transition and they will be releasing a report later this year with their findings. Thorough and honest reviews like GAO's are critical in helping all parties to make the most informed decision possible.

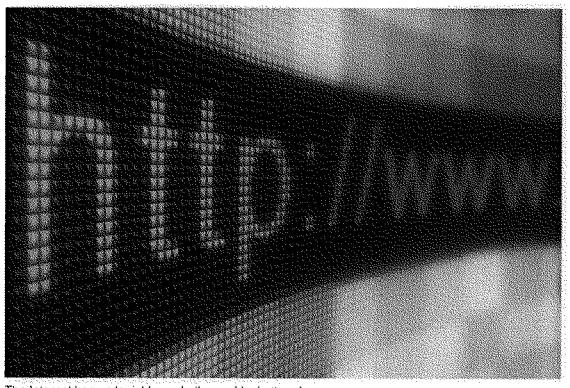
Today's hearing will show there has been a great deal of work within ICANN, NTIA, and the multistakeholder community to come up with a workable proposal that will preserve Internet openness and freedom. I appreciate the effort that has gone into developing a solution, and look forward to hearing more about the proposal in the months to come. However, I want to strongly reiterate the need for Congress to play a role in this transition, and to serve as a watchdog as we move forward.

We are not seeking to prevent this transition, or to delay it for the sake of delay. We are exercising our oversight role over NTIA and ensuring that any successor solution will fit the criteria NTIA has established for a successful transition. We've said it time and again, and it bears repeating: the future of the Internet as we know it is at stake if we don't get this right.

U.S.News & WORLD REPORT

What's in a (Domain) Name?

Members of Congress need to ask tough questions about Obama's plan to cede control over the Internet domain system.



The Internet has undeniably made the world a better place.

By Peter Roff | May 13, 2015 | 9:00 a.m. EDT | + More

The Internet is one of the world's most powerful engines of economic growth, the expression of ideas and personal freedom. That it has become all these things is thanks to the singular fact that the Internet was invented by the United States government and is, therefore, thoroughly inculcated with the same values that made America what it is.

The Obama administration, in its rush to liberate the governance of the Web from any vestige of U.S. control, wants to turn the last remaining piece it supervises, the IANA (Internet Assigned Numbers Authority), over to ICANN (an acronym standing for Internet Corporation for Assigned Names and Numbers, a California-based nonprofit) without really thinking the process through.

Congress has heretofore blocked the administration from spending any tax money to facilitate the transition of the Internet and the IANA function away from the small agency within the U.S. Department of Commerce where it resides. On Wednesday the matter will be taken up by two House committees whose members will hopefully ask the tough questions about what the endgame will look like, questions the administration has so far ignored.

At issue is the future control of ICANN. Shall it be run by its board of directors or by a membership-based, multi-stakeholder model of governance that prevents any one government or group of governments or an international body affiliated with the United Nations from taking control? Thus far the corporation's leadership has resisted adopting anything like what is necessary to guarantee the Internet remains open and essentially free.

[**GALLERY:** Barack Obama Cartoons]

Some of those involved in the issue like to pretend it is no more complicated than a walk in the park on a sunny Sunday afternoon. In fact, it is a very complicated matter, with tremendous potential downsides if the transition is completed without the necessary safeguards. "The vague conditions of the transition set forth by the National Telecommunications and Information Administration allow room for the process to be potentially subverted by unfriendly governments or intergovernmental organizations with ulterior motives – or neutered by ICANN itself," a white paper issued by Frontiers of Freedom (where I am a senior fellow) said of the proposed transition. "As the process moves forward, the United States must require that ICANN be able to ensure its ability to maintain the security, stability, resiliency, and openness of the Internet Domain Name System (DNS), while meeting the needs and expectations of global customers and partners of the Internet Assigned Numbers Authority and supporting a multi-stakeholder model of governance."

As one example of why this is necessary, there is currently nothing prohibiting ICANN – post transition – from eliminating or transferring the top level domain names .mil, .gov. and .edu, all of which are vital to the way the Internet functions in the United States. All three of these domains are "sponsored," meaning they are assigned to a single entity representing a relatively narrow community, and are three of the five original domains issued when the Internet was "born" in 1985.

Consider the importance of .mil, which is sponsored by the United States Department of Defense. It houses some of the secure systems and email addresses most vital to U.S. national security. Losing them would place a considerable strain on the nation's defenses, yet the Pentagon has no ongoing contractual right to it; the department's control over .mil is a legacy arising out of America's invention of the World Wide Web.

[**SEE:** Political Cartoons on the Economy]

Presently, the U.S. government retains the right and the ability to approve all changes to the Domain Name System – meaning that ICANN would risk making changes to sites ending in .mil at its own peril. It would indeed be foolish to try since it would probably mean the end of ICANN's existence, as the U.S. government would no doubt create a new group (as it created ICANN) with a better governance structure in its place. However, once the government steps out of its final oversight role, once the transition is complete, there is nothing currently in place to stop ICANN from unilaterally terminating that particular domain (or .edu or .gov). Even worse, imagine the .mil domain managed by a company owned by or located in Russia, China or a power unfriendly to the United States somewhere in the Middle East.

It could happen, and is therefore an issue Congress should explore in its hearings. An agreement allowing the United States free, exclusive and perpetual use of these domain names must be part of any transition plan, as must the agreement of ICANN's leadership to adopt the multi-stakeholder, membership-based organizational design many have suggested.

That the Internet has made the world a better place is an idea beyond question. As a worldwide communications network it has linked disparate peoples and cultures, enlivening political discourse and changing the nature of global commerce. And, of particular significance, it has become a vehicle for those seeking freedom of oppression to give voice to their struggle and to tell the world their tale. It must be allowed to remain so. For that to happen will require the transition be given more time than the Obama administration seems willing to devote to it. Congress has the responsibility to insure the process is slowed and that, before it can be allowed to proceed, appropriate multi-stakeholder governance structures are in place.

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Peter Roff is a contributing editor at U.S. News & World Report. Formerly a senior political writer for United Press International, he's now affiliated with several public policy organizations, including Let Freedom Ring and Frontiers of Freedom. His writing has appeared in National Review, Fox News' opinion section, The Daily Caller, Politico and elsewhere. Follow him on Twitter @PeterRoff.

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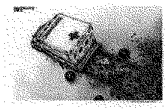

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