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INTERNET GOVERNANCE AFTER ICANN 53

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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INTERNET GOVERNANCE AFTER ICANN 53

WEDNESDAY, JULY 8, 2015

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

The subcommittee met, pursuant to notice, at 10:11 a.m., in room 2123, Rayburn House Office Building, Hon. Greg Walden (chairman of the subcommittee) presiding.

Present: Representatives Walden, Latta, Barton, Shimkus, Blackburn, Lance, Guthrie, Olson, Kinzinger, Bilirakis, Johnson, Long, Ellmers, Collins, Cramer, Eshoo, Welch, Yarmuth, Clarke, Loebsack, Lujan, and Pallone (ex officio).

Staff Present: Ray Baum, Senior Policy Advisor for Communications and Technology; Andy Duberstein, Deputy Press Secretary; Kelsey Guyselman, Counsel, Telecom; David Redl, Chief Counsel, Telecom; Charlotte Savercool, Legislative Clerk; Jeff Carroll, Minority Staff Director; David Goldman, Minority Chief Counsel, Communications and Technology; Tiffany Guarascio, Minority Deputy Staff Director and Chief Health Advisor; Lori Maarbjerg, Minority FCC Detailee; Margaret McCarthy, Minority Senior Professional Staff Member; Tim Robinson, Minority Chief Counsel; and Ryan Skukowski, Minority Policy Analyst.

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

Mr. WALDEN. OK. We will call to order the subcommittee on Communications and Technology and want to extend a generous welcome to our two witnesses today. We are delighted to have you both back here and look forward to your testimony and answers to the questions that we all have.

Last year, NTIA announced that it would work to transition the stewardship of the Internet Assigned Numbers Authority to the multistakeholder community, frankly, to a chorus of concern. There were concerns about whether or not this would open the door to the United Nations, some agency there, taking over where the U.S. Government leaves off; what of the checks and balances that NTIA places on ICANN; what is the multistakeholder community anyway. This was new territory for some of us. Large and fundamental questions loomed, and this subcommittee sought to exercise its role as NTIA's oversight authority and try and get some answers.

A year later, I am proud of the work this subcommittee has done to ensure that the IANA transition preserves the Internet we know and makes concerns that if the United States government steps

away from IANA that the system we leave in its place will not permit another government or intergovernmental group to fill that void.

From the beginning, this subcommittee sought to strike the right balance between supporting the multistakeholder model of Internet governance while still protecting the invaluable tool of communications and commerce the Internet has become. And many of the questions we have raised are being incorporated into the work of the multistakeholder groups committed to working through this transition.

Now, in the past, I have often made reference to both the contract between the United States and ICANN as well as the Affirmation of Commitments. I believe that both of these documents create valuable protections and rules that serve the governance of the Internet well.

Among those crucial terms are the requirements that ICANN remain a nonprofit corporation headquartered in the United States; that ICANN maintain open and transparent processes, an ongoing review of ICANN's operations by the multistakeholder community.

That is why I am pleased to see that the multistakeholder community has proposed to ensconce the terms of the Affirmation of Commitments in the ICANN bylaws themselves. These policies are critical to ensuring that ICANN remain a stable steward of IANA and must be a part of the successful transition.

We also heard from the multistakeholder community over the last year, and, with respect to at least one of this transition, the world spoke with one voice: ICANN must be more accountable if it is to be trusted with the stewardship of IANA.

Over the last year, a group of dedicated volunteers have been working to come up with a structure for ICANN that ensures that it is the Internet community, not any one group of players, that will guide the future of the Internet. I couldn't be happier to see that the issues raised by the subcommittee have been integral to the work of this group.

The community must be able to hold the ICANN board accountable, and that means the ability to recall those board members that are no longer representing their community. It also means that once this new system is in place it would be resistant to capture. Fundamental bylaws that require a supermajority to change, actionable mechanisms that empower the community, independent review of board decisions, and the stress tests to ensure the system will work as planned are essential elements of an accountable ICANN. We have been talking about these issues for the past year and will continue to do our jobs to ensure that if NTIA is to agree to a transition proposal that these changes are fully implemented up front.

Now, last month, the House passed bipartisan legislation that originated in this subcommittee called the DOTCOM Act. The DOTCOM Act was developed through months of hearings, discussions, and bipartisan negotiations. And, throughout this process, we made a concerted effort to recognize the impact of our actions on the international process. But we also felt it would be irresponsible to ignore the very real risks associated with the relinquishment of the U.S. role in Internet governance, no matter how small.

The measured approach of the DOTCOM Act properly balances the NTIA's role as the U.S. Government participant in the multi-stakeholder community with the U.S. Congress' role as NTIA's oversight authority. Our hope is that the United States Senate will pass this legislation soon and provide the Congress with another tool to ensure a transition that will meet our Nation's and the world's needs.

Finally, we have all said all along that this transition is far too important to be rushed by an artificial deadline. I was pleased to see, Assistant Secretary Strickling, your testimony where you state that the transition timeline is flexible and will extend beyond the September 2015 expiration of the ICANN contract. Now, extending the contract will ensure the multistakeholder community and the U.S. Government through NTIA and the Congress are driven by a full and robust vetting of the transition proposal rather than by a calendar.

Moreover, extending the contract is consistent with the timeline for the work that is taking place on ICANN accountability reforms. Just last week, the CCWG has indicated that the Workstream 1 reforms required for the IANA transition may not be implemented until July of 2016.

There are still many unknowns in this process, and much remains to be decided before a transition can take place. For example, how will the transition deal with the dot-mil and dot-gov top-level domains? And what role will the Government Advisory Committee have in the new ICANN process? My hope is that this committee's oversight will continue to strengthen the process, raise important questions, and improve the outcome.

So I thank our witnesses for testifying today and sharing their insight into the transition process and answering some of the many questions that remain as we move forward.

I see I have used up the balance of my time, with apologies to my vice chair, whom I usually try and leave time for. I now recognize the gentlelady from California, Ms. Eshoo, for an opening statement.

[The prepared statement of Mr. Walden follows:]

PREPARED STATEMENT OF HON. GREG WALDEN

Last year, NTIA announced that it would work to transition the stewardship of the Internet Assigned Numbers Authority to the multi-stakeholder community to a chorus of concern. Will this open the door to a U.N. agency taking over where the U.S. government leaves off? What of the checks and balances that NTIA places on ICANN? What is the multi-stakeholder community, anyway? Large and fundamental questions loomed and this subcommittee sought to exercise its role as NTIA's oversight authority and get answers.

A year later I am proud of the work of this subcommittee to ensure that the IANA transition preserves the Internet we know and makes certain that if the U.S. government steps away from IANA that the system we leave in its place won't permit another government or intergovernmental group to fill the void.

From the beginning, this subcommittee sought to strike the right balance between supporting the multistakeholder model of Internet governance, while still protecting the invaluable tool of communications and commerce the Internet has become. And many of the questions we have raised are being incorporated into the work of the multi-stakeholder groups committed to working through this transition.

In the past, I've often made reference to both the contract between the U.S. and ICANN as well as the Affirmation of Commitments. I believe that both of these documents create valuable protections and rules that serve the governance of the Inter-

net well. Among those crucial terms are the requirements that ICANN remain a non-profit corporation headquartered in the United States; that ICANN maintain open and transparent processes; and, ongoing review of ICANN's operations by the multi-stakeholder community. That's why I am pleased to see that that multi-stakeholder community has proposed to ensconce the terms of the Affirmation of Commitments in the ICANN bylaws, themselves. These policies are critical to ensuring that ICANN remain a stable steward of IANA and must be a part of a successful transition.

We also heard from the multi-stakeholder community over the last year. And with respect to at least one part of this transition the world spoke with one voice: ICANN must be more accountable if it is to be trusted with the stewardship of IANA. Over the last year, a group of dedicated volunteers have been working to come up with a structure for ICANN that ensures that it is the Internet community, not any one group of players, that will guide the future of the Internet.

I couldn't be happier to see that the issues raised by the subcommittee have been an integral part of the work of this group. The community must be able to hold the ICANN board accountable, and that means the ability to recall those board members that are no longer representing their community. It also means that once this new system is in place, that it be resistant to capture. Fundamental bylaws that require a supermajority to change, actionable mechanisms that empower the community, independent review of board decisions, and the stress tests to ensure that the system will work as planned are essential elements of an accountable ICANN. We have been talking about these issues for the past year and we will continue to do our jobs to ensure that if NTIA is to agree to a transition proposal, that these changes are fully implemented up-front.

Last month the House acted on a bipartisan basis to pass this subcommittee's DOTCOM Act. The DOTCOM Act was developed through months of hearings, discussions, and bipartisan negotiations. Throughout this process, we made a concerted effort to recognize the impact of our actions on the international process, but we also felt it would be irresponsible to ignore the very real risks associated with a relinquishment of the United States' role in Internet governance, no matter how small. The measured approach of the DOTCOM Act properly balances NTIA's role as the U.S. government participant in the multi-stakeholder community with the U.S. Congress' role as NTIA's oversight authority. Our hope is that the Senate will quickly pass this legislation and provide Congress with another tool to ensure a transition will meet our nation's—and the world's—needs.

Finally, we've said all along that this transition is far too important to be rushed by an artificial deadline. I was pleased to see Assistant Secretary Strickling's testimony states that the transition timeline is flexible, and will extend beyond the September 2015 expiration of the ICANN contract. Extending the contract will ensure that the multi-stakeholder community and the U.S. Government through NTIA and Congress are driven by a full and robust vetting of the transition proposal, rather than the calendar. Moreover, extending the contract is consistent with the timeline for the work that is taking place on ICANN accountability reforms. Just last week the Cross-Community Working Group-Accountability has indicated that the "Work Stream 1" reforms required for the IANA transition may not be implemented until July 2016.

There are still many unknowns in this process, and much remains to be decided before a transition can take place. For example, how will the transition deal with the .mil and .gov top-level domains and what role will the Government Advisory Committee have in the new ICANN? My hope is that this committee's oversight will continue to strengthen the process, raise important questions, and improve the outcome. I thank both of our witnesses for testifying today and sharing their insight into the transition process, and answering some of the many questions that remain as we move forward.

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

Ms. ESHOO. Thank you, Mr. Chairman.

Two weeks ago, ICANN wrapped up its 53rd meeting in Buenos Aires, Argentina, and, as expected, the Internet Assigned Numbers Authority transition dominated the discussion.

For a report on this meeting and an update on the steps being taken to ensure transparency, accountability, and adherence to the principles NTIA laid out last year, today we welcome back to the subcommittee ICANN CEO Fadi Chehade and NTIA Administrator Larry Strickling.

So welcome, and we look forward to hearing from you.

In the lead-up to ICANN 53, the House passed by an overwhelming margin H.R. 805, the DOTCOM Act. The bill reinforces the view of Congress that the IANA transition must support and enhance the multistakeholder model of Internet governance; maintain the security, stability, and resiliency of the Internet Domain Name System; and not replace the role of the NTIA with a government-led or intergovernmental organization solution.

Accountability is an essential component of the transition. I am encouraged by reports that the Cross-Community Working Group on Enhancing ICANN Accountability is focusing on accountability measures that are critical to the success of the IANA transition.

In the long term, I continue to believe that a governance structure within ICANN that separates policymaking from the implementation of policy decisions, as well as from the adjudication of disputes, is needed to enhance accountability on all ICANN-related matters and ensure consensus-driven decisions.

In the months since the transition was first announced, 263 meetings have taken place around the world. For people that attend a lot of meetings, that is a lot of meetings. This equates to over 13,000 working hours focused on the IANA transition.

We are at a critical juncture, with less than 4 months until ICANN's next meeting in Dublin. I commend the work of the multistakeholder community, as well as Fadi Chehade, who has announced his plans to step down from ICANN in March of next year.

I look forward to the testimony of our two witnesses, whom we have heard from on many an occasion. A lot of work has been put into this by both of you. We appreciate it. And I thank you for your commitment to a successful transition of the IANA functions to the multistakeholder community.

I have 2 minutes and 11 seconds left. I would be happy to yield to any one of my colleagues if they would like to use the time.

Passing?

I yield back. Thank you, Mr. Chairman.

Mr. WALDEN. The gentlelady yields back.

The chair now recognizes the gentlewoman from Tennessee, Mrs. Blackburn.

Mrs. BLACKBURN. Thank you, Mr. Chairman.

I appreciate that our witnesses are giving us the time today and are putting attention on our concerns with this transition and with the multistakeholder model of Internet governance, which—in order for that to work, we have to have transparency, credibility, accountability, and we are concerned about where we stand on those measures with ICANN.

That is why there is growing consensus that the IANA transition isn't quite ready for prime time. One thing in particular that concerns me is that ICANN, the registries and the registrars, are not even abiding by sections 3.7, 3.18, and 3(a) in their own Public In-

terest Commitments and the Registrar Accreditation Agreement. So I will want to visit that with the two of you.

These contractual provisions created through the multistakeholder process require ICANN, the registries and the registrars, to prohibit domain name holders from engaging in illegal activity. ICANN says it should not be the content police, and I agree with that, but that is not the issue here. Before signing off on the transition, we must make sure that ICANN is enforcing provisions in its own contracts and not simply burying its head in the sand to skirt responsibility.

And with that, Mr. Chairman, I will yield to the vice chairman of the subcommittee the balance of my time.

Mr. LATTA. I thank the gentlelady for yielding.

And, also, I would like to thank our witnesses for being with us today on this very important subject.

And as I could reiterate, as the chairman stated, that last month this committee did report out to the House floor and the House then passed Mr. Shimkus' DOTCOM Act to ensure proper oversight of the National Telecommunications and Information Administration and prepare for the transition of the U.S. Government's role in the Internet's functions to a global multistakeholder community.

Now that it has been passed, we must move forward on to the next steps of the transition process. I am interested in CCWG's consolidated transition proposal, and I encourage the group to incorporate public recommendations that may help to ensure NTIA's criteria are met.

I also look forward to reviewing the final accountability plan, as protecting ICANN from undue influence from any government or group of stakeholders is of utmost importance. As these plans progress, we must maintain the high priority of safeguarding our national security interests and allowing citizens to continue to navigate an open and free Internet.

And, with that, Mr. Chairman, I yield back the remainder of my time.

Mr. WALDEN. I was going to recognize the full ranking member, Mr. Pallone, but I see he has left. Anyone on the Democratic side seeking time?

If not, then I think we are done on our side, as well. So all time is used up, and we can get right to our very talented and capable witnesses.

First up, the Assistant Secretary for Communications and Information and Administrator of the National Telecommunications and Information Administration, Mr. Larry Strickling.

That is a lot to fit on a card, I have to think. We are delighted to have you back before the committee, Mr. Strickling. Thanks for being here. We look forward to your testimony.

STATEMENTS OF LAWRENCE E. STRICKLING, ASSISTANT SECRETARY FOR COMMUNICATIONS AND INFORMATION, ADMINISTRATOR OF THE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION; AND FADI CHEHADE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ICANN

STATEMENT OF LAWRENCE E. STRICKLING

Mr. STRICKLING. Well, thank you, Chairman Walden and Ranking Member Eshoo. I indeed welcome the opportunity to come back before you today with ICANN CEO Fadi Chehade to update you on the IANA stewardship transition.

In March of 2014, NTIA announced its intent to complete the privatization of the Internet Domain Name System as promised in 1998. This long-planned step is critical to ensuring that the Internet remains an engine for economic growth, innovation, and free speech.

Completing the transition will show the world that we fully embrace the multistakeholder approach to Internet governance, policymaking, and standards development. And history has demonstrated that this model is the best mechanism for maintaining an open, resilient, and secure Internet.

Both Republican and Democratic administrations have consistently supported this model. Members of Congress on both sides of the aisle have come together on more than one occasion to express support for the multistakeholder approach. And, most recently, this committee led the way, with its bipartisan efforts on Representative Shimkus' DOTCOM Act.

And so, in addition to Chairman Walden and Ranking Member Eshoo, I want to thank Chairman Upton, Representative Shimkus, Pallone, committee members, and all your staffs for your work to ensure that the transition of our role with respect to the Internet Domain Name System progresses in a transparent, responsible, and timely manner.

So where do things stand today with the transition? Based on my firsthand observations last month at ICANN's meeting in Buenos Aires, I am confident that the community is proceeding with great energy and enthusiasm to finalize the plan for the transition.

The global Internet community has been working nearly nonstop to complete consensus proposals related to the IANA functions and has engaged in a vigorous debate on the best ways to strengthen ICANN's accountability. The three stakeholder groups addressing each of the IANA functions have now completed their work.

The IANA Stewardship Transition Coordination Group is now working to combine these proposals into a consolidated proposal on which they will seek public commitment. The ICG's role is crucial because it must build a public record on how the consolidated plan meets NTIA's criteria.

In May, the Accountability Working Group sought comment on its proposals to strengthen ICANN's accountability. During the ICANN meeting, the broader ICANN community provided feedback to the working group that will serve as a basis for more discussions next week in Paris. Afterwards, the working group plans to release an updated accountability plan for public comment.

At the recent ICANN meeting, I took the opportunity to remind the community to focus on the NTIA criteria and deliver a plan that clearly and convincingly meets those conditions. I urged stakeholders to develop a strong record in support of the plan, answer questions anyone might have about the plan and not leave them for future discussion and decision. On our part, I want to assure you that we will carefully review and assess the community's proposal to ensure that it preserves and protects the Internet and meets the specific criteria I have previously outlined.

I want to touch briefly on the timetable for completing the transition and its implications for the current IANA functions contract.

The contract expires on September 30, but it is clear we need to extend the contract to give the multistakeholder community the time it needs to finalize its proposal. We need to build in time for NTIA as well as Congress to review and evaluate the plan. And we also need to factor in time to implement the plan, assuming it is approved.

Several weeks ago, I asked the leadership of the stakeholder working groups to provide a status report, including an estimate of how long it will take to finalize the plan and implement it once it is approved. We just received that input, and I will soon be meeting with ICANN to discuss an extension that considers the community's input. But it is clear we will need to extend this contract at least through next July, and we will inform this subcommittee well in advance of the September 30 expiration date of the length of the extension that we work out with ICANN.

In closing, I want to assure you that throughout this process and beyond we will remain strong and vigorous advocates for Internet freedom, growth, and innovation. We will continue to play a major role on ICANN's Government Advisory Committee, where governments develop consensus advice to ICANN on public policy matters. We will work with other stakeholders to ensure that ICANN enforces its own rules. And, moreover, we will continue our efforts to enhance the accountability and transparency of ICANN, as we have the last 5 years, through our participation in ICANN's accountability and transparency review teams.

I am confident that when the transition is completed we will have a stronger ICANN and a more secure Internet that will continue to grow and thrive throughout the world.

Thank you, and I look forward to answering your questions.

[The prepared statement of Mr. Strickling follows:]

Testimony of

The Honorable Lawrence E. Strickling
Assistant Secretary for Communications and Information
National Telecommunications and Information Administration
United States Department of Commerce

Before the

Subcommittee on Communications and Technology
Committee on Energy and Commerce
United States House of Representatives

Hearing entitled

"Internet Governance Progress After ICANN 53"

July 8, 2015

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

I. Background

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

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

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

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

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

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

[2] *See* H.Con.Res. 127 and S.Con.Res. 50 (2012), stating "the consistent and unequivocal policy of the United States to promote a global Internet free from government control and preserve and advance the successful multistakeholder model that governs the Internet today." *See also*, S. Res. 71 (2015), stating "the United States remains committed to the multistakeholder model of Internet governance" and that "the [IANA] transition process demonstrates that the United States supports and is committed to the multistakeholder model of Internet governance."

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

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

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

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

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

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

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

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

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

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

III. Internet Assigned Numbers Authority (IANA) Functions

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

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

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

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

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

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

IV. Final Steps in the Privatization of the DNS

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

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[8] White Paper

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

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

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

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

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

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

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

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

[15] *See* IANA Stewardship Transition Coordination Group, *available at:* https://www.ianacg.org/.

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

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

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

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

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

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

V. Timing and Next Steps

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

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

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

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

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

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

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

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

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

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

Thank you. I look forward to answering your questions.

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Mr. WALDEN. Thank you, Mr. Strickling. We will look forward to that part, as well.

We will go now to Mr. Fadi Chehade, president and CEO of ICANN.

We are delighted to have you back before our subcommittee, and we look forward to your testimony.

STATEMENT OF FADI CHEHADE

Mr. CHEHADE. Thank you, Mr. Chairman. Thank you for inviting us back. Good to meet you again, Ranking Member Eshoo, all members of this committee.

I want to start by thanking you, because if we look at where we were a year ago in this room and where we are today, we are in a different place. Your work, your confidence in us, but also the commitment you made through your staffs to get engaged with us and our community is paying off. This is government that is working. We thank you for that.

Your interest is very important. Your leadership has been even more important in showing us the way, in making sure that we do this right. So when we were rushed and you were asking for oversight, I think you did the right thing by asking us to do the right things and to slow down and to get this done right.

So we thank you for that; the world thanks you for that. Because if it weren't for this commitment, we would not be where we are today. The multistakeholder model is working.

This brings me to some of the statistics Ms. Eshoo mentioned and others mentioned. The amount of work that has gone into this process is remarkable. It shows that the multistakeholder model works. It is actually, itself, just the transition process, is a triumph of this model, because people came together and put amazing hours—you mentioned nearly 14,000 volunteer hours in the last year—to get this where it is today.

So we continue steadfast to get this done. And I agree with you, we are not done. We still have work to do. The accountability area still needs to be looked at deeply. I am committed to that. Our board is committed to that. Our community is committed to that. I assure you we will not move forward till the many things that you mentioned also, Mr. Chairman, in your talk are in place so we assure everyone that we are not leaving ICANN with any loopholes of accountability. It has to be done.

I also want to recognize to all of you that the community, when we say the word "community"—you asked me before, Mr. Shimkus, what is the community. The community is not just the ICANN community. It is also our sister organizations who have been immensely involved in this process. So I mention here and I recognize the IETF, the Internet Society, the Regional Internet Registries. All of them are independent organizations that work with us and together with us to get this done. We are linked by mutual commitments and by common principles—principles of an open, secure Internet for everyone. And to those, we really salute today the efforts they put, and we look forward to them finishing their work.

Finally, I would just like to say I believe this process will leave the Internet more secure, not less secure. This process will leave ICANN, as Mr. Strickling said, stronger, more accountable. And I

think that is what we want out of any process, not to take us backwards but to take us forwards.

I want to say something about what we have done here that is distinctly wearing my American citizen hat. The multistakeholder model was shepherded and promoted to the world by us. And, thanks to the great work we are doing here and to the optics of how well we have together managed this transition, that model is now a very attractive model to many people in the world who a year ago were asking the same questions. We should be very proud of the moment we are in here, to have nation after nation and stakeholder after stakeholder now come around and say the multistakeholder model is the right model. And that we celebrate together today.

Thank you.

[The prepared statement of Mr. Chehade follows:]

TESTIMONY OF FADI CHEHADÉ
PRESIDENT AND CHIEF EXECUTIVE OFFICER

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS (ICANN)
A CALIFORNIA PUBLIC BENEFIT NONPROFIT CORPORATION

BEFORE THE U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY

HEARING:
INTERNET GOVERNANCE PROGRESS AFTER ICANN53

WEDNESDAY, JULY 8, 2015

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

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

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

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

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

Background

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

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

ICANN53 Milestone: All Operating Communities Complete Proposals

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

The community participation in the transition-related work has come from a broad range of stakeholders, including the technical community, large and small

businesses, the technical community, not-for-profit organizations, civil society, intellectual property experts, governments, academia, and Internet users from around the globe. American corporations are among the participants, with companies such as AT&T, Cisco, Google, Intel, Microsoft, Neustar, Verisign and Verizon, as well as industry trade groups include the U.S. Chamber of Commerce, the Motion Picture Association of America and the U.S. Council for International Business attending meetings and providing inputs into the processes.

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

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

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

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

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

- Support and enhance the multistakeholder model;
- Maintain the security, stability, and resiliency of the Internet DNS;
- Meet the needs and expectation of the global customers and partners of the IANA services; and,
- Maintain the openness of the Internet.

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

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

ICANN53 Milestone: Continued Focused Effort on Enhancing ICANN Accountability

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

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

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

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

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

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

and is working towards achieving consensus on recommendations. During ICANN53, there were three face-to-face working sessions of the cross-community working group, as well as opportunities to discuss the draft report with stakeholders across the ICANN community. Assistant Secretary Strickling also had an opportunity to provide inputs to the group during ICANN53, providing guidance on what the NTIA expects to see within the final report, including addressing how the recommendations meet the NTIA criteria.

The group is aware of the need to "stress test" their proposed solutions against key potential risks, and the draft report contained extensive detail on that stress testing work. Building on the stress test work, both the ICANN Board and Assistant Secretary Strickling identified the need for an impact analysis of the final recommendations to be included as part of the final report – much like the regulatory impact analysis work performed in administrative and regulatory environments. Work is already underway to address these and other inputs received through the public comment process.

The cross-community working group on accountability has an intensive face-to-face working session scheduled on July 17-18, and is working to have a new document available for public comment by the end of this month. After public comment, the group expects to submit a final proposal to the chartering organizations for approval in Dublin at ICANN54. Upon approval, the accountability recommendations will be transmitted to the ICANN Board.

The Coordinated Multistakeholder Community – The Next Steps

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

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

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

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

ICANN Is Ready for This Responsibility

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

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

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

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

Contractual Compliance Advancements

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

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

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

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

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

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

ICANN Governance Practices Provide Strong Baseline for Future

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

- Staggered board member terms, which guards against all – or even a majority – of votes of the Board being up for election in any single year.
- The selection of the Board is dispersed across the ICANN community, with no single entity controlling selection of a majority of votes on the Board. Even the Nominating Committee, which is the single largest selector, selects at most three seats in any single year. The Nominating Committee itself is reconstituted each year.
- Within the community, there are no policy recommendations without an open process and opportunities for public comment. Policy recommendations are developed through open working groups, with public comment requirements, to ensure that a broad range of participants have an opportunity to review and respond.
- The multistakeholder community is very diverse, and processes are open to new/unaffiliated participants.
- ICANN works hard to mitigate other risks of capture in system, including working with the community to prioritize and meter work to mitigate any volunteer fatigue.
- Early engagement of the government stakeholders in policy work is encouraged alongside all other stakeholders.
- We require strict adherence to providing statements of interest for all participating in the multistakeholder model.

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

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

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

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

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

Mr. WALDEN. Mr. Chehade, thank you. And, again, thanks for your many years of service in heading up ICANN and for your continued efforts. We wish you well in your eventual retirement, but we may see you before that.

I will start off on the questioning.

Mr. Strickling, currently, ICANN's Affirmation of Commitments requires ICANN to remain domiciled in the United States, a distinction that is legally very significant. Will this continue after the transition? And what reassurances do we have that this will be the case in the future?

Mr. STRICKLING. Yes, sir.

So, yes, it is a requirement in the Affirmation of Commitments, and, as of right now, there is no plan for the Affirmation of Commitments to go away. Now, it may well be proposed by the Accountability Working Group to incorporate the provisions of the affirmation into the bylaws, and that is not anything we would object to as long as it is clear that those conditions will continue on. So they will remain in force, either through the continuation of the affirmation or by their being incorporated in the bylaws.

It is today in the bylaws that ICANN will remain in California, and, of course, their articles of incorporation, as currently established, require that it be a California corporation.

So there has been no serious proposal made in the course of these discussions to move the location of ICANN outside of the United States. Frankly, if it were being proposed, I don't think that such a proposal would satisfy our criteria, specifically the one that requires that security and stability be maintained. So we expect that this will continue on into the future.

Mr. WALDEN. Thank you.

Mr. Chehade, what has been the response of other nations to the inclusion of this provision in the fundamental bylaws?

Mr. CHEHADE. I must say I am surprised and pleased that there is general consensus, and we are not hearing strong voices that propose something different.

As I said before here in this room, we stand by the commitment that ICANN, as in the Affirmation of Commitments, shall stay in the United States.

Mr. WALDEN. And if that provision is in the fundamental bylaws, what kind of a vote would be required to change the fundamental bylaws down the road?

Mr. CHEHADE. This is not set yet. The community is discussing this now. But I believe the discussion centers around a two-thirds majority vote.

Mr. WALDEN. All right.

Mr. Strickling, you said in your testimony it is clear the ICANN contract will be extend beyond 2015, and I think you indicated maybe through next July. Is that kind of the range that you believe will be the case?

Mr. STRICKLING. Yes. We had asked the community, as I said in my opening remarks, to give us their best guess, because before the contract can expire, we both have to have a proposal, we have to review it and approve it, you have to be satisfied with it, assuming DOTCOM is enacted, and it has to be implemented. And so we

asked the community for their best guess as to when that would take place.

The responses we have gotten back from the two working groups is July at the earliest, possibly going till September. We want to apply our own analysis to it; we want to discuss it with ICANN. But it is clear we need to go out at least till next July.

Mr. WALDEN. And I am assuming, even if DOTCOM doesn't become law, you will still give us an opportunity for review here in the Congress.

Mr. STRICKLING. Yes.

Mr. WALDEN. Thank you.

And can you explain, Mr. Strickling, the timeline NTIA will follow once that proposal is received?

Mr. STRICKLING. So, under the current timeline, the hope and expectation is that a final proposal might be delivered to us in early November. We are expecting that our evaluation, which we will conduct in as public and transparent a manner as we can, will take some 60 to 90 days, depending on the calendar.

We are still working through what the elements of that review will be. We will take guidance from the GAO. We understand that the report that they are completing may have some guidance on that. We will look into that before we settle on any final plan. But what I can tell you is it will be open and transparent.

Inside the administration, we are already meeting on an interagency basis to make sure we have all of the concerns of other agencies with equities in this, understand what their issues will be, making sure that those will be factored into the process.

The record we get from the community will be very important because, through that, we will have their best assessment as to how their plan meets our criteria. Out of that, we will have an opportunity to evaluate the stress tests that they have performed. We are also looking to make sure that they are not leaving open issues that could undermine the plan if they are not settled now. We want to understand that they have looked at alternatives and have made a good choice based on the alternatives available to them. We are, frankly, looking to see that they applied the level of rigor and analysis that anyone would expect from an undertaking of this magnitude.

Mr. WALDEN. Thank you.

So, to sum up, just so I understand, the contract will be extended likely through July of next year. It is highly likely that ICANN will remain incorporated within California. It is probably in that same category that that requirement will be in the fundamental bylaws, which would be very difficult to change forth post. And, Mr. Strickling, you have committed that Congress, irrespective of the passage of DOTCOM, will have adequate time to review this proposal just to continue the discussion.

Is that a yes? Did I——

Mr. STRICKLING. That is a yes.

Mr. WALDEN [continuing]. Get all that right?

Mr. STRICKLING. Yes.

Mr. WALDEN. All right. Perfect.

Then, with that, my time has expired. I will turn to my friend from California, Ms. Eshoo, for questions.

Ms. ESHOO. Thank you, Mr. Chairman.

Now, mention was made of a two-thirds vote required to change what is in the bylaws. What is the universe of votes? How many voters are there?

Mr. CHEHADE. ICANN has 16 board members, 1–6.

Ms. ESHOO. Sixteen. So it would be two-thirds of that. And that is not going to change, a two-thirds requirement?

Mr. CHEHADE. So, as I mentioned, the discussion of how to safeguard the fundamental bylaws is happening as we speak. It is part of the accountability group's decision. So no final decision has been made on this, but I shared what we are hearing from them at the moment.

The idea here, Ms. Eshoo, is to make sure that these fundamental bylaws are safeguarded. And the test to change them has to be extremely——

Ms. ESHOO. I understand that. I was just curious as to what the universe of voters are.

Mr. CHEHADE. Sixteen board members.

Ms. ESHOO. OK.

And can you commit that ICANN will remain in California?

Mr. CHEHADE. Yes. I think what I committed before, as I said in this committee, that the Affirmations of Commitment, a very important document for us, includes this commitment, our bylaws include that commitment, and that we stand by this.

Ms. ESHOO. Yes. Well, I think that it is even more than the physical presence in California, which I would happily vouch for—it is a great place to be—but that the stakeholder community's work is really predicated on California law. So I want to nail that down.

Over to Larry Strickling. From your perspective, what is the top issue that still needs to be addressed before NTIA can sign off on a transition proposal?

Mr. STRICKLING. We need to see the proposal, number one. And we will assess it based on the comprehensiveness of the complete proposal that we get.

So I would say first and foremost in my mind is to keep the community focused on our criteria and making sure that they deliver a plan to us that has been fully vetted and has reached a strong support of the community that it satisfies our criteria. So that is first and foremost our concern.

Ms. ESHOO. Well, of course it would be. But do you have any sensibilities about potential sticking points, or you just don't want to go there now? Not to be discussed today?

Mr. STRICKLING. I have tried not to put my finger on the scale of any particular outcome. I think that is inappropriate when we are relying on the multistakeholder model.

What I have reminded them of is, focus on the criteria, be thorough, consider alternatives, don't leave questions unanswered—the types of things you would expect out of any planning process.

Ms. ESHOO. Since NTIA's announcement last March, have you seen greater international support for the multistakeholder model?

Mr. STRICKLING. Yes. There is no question about that. I mean, in the last 2 years, we have seen growing support for the model worldwide.

I think the evidence for that starts with the NETmundial conference in Brazil in April of 2014, just a month after we made our announcement. That carries through to the ITU Plenipotentiary Conference in Korea, where, again, any attempt to bring the Internet Domain Name System within the jurisdiction of the ITU was rebuffed.

As we talk to people, particularly in the developing world, we see much more support for the model than we saw even 3 years ago.

Ms. ESHOO. Well, I think that that is very important.

I don't think I have any other questions, but I want to thank you for the work that you both have done to help bring us to this point. And if it takes a year from now to get to where we need to be, I am comfortable with that. I would rather have a solid agreement that reflects the confidence of the Congress in this and that that would be the case, rather than us sticking with some kind of time frame that diminishes what the outcome is. That just doesn't make sense. So I thank you for the work that you have put in.

And I thank the chairman for being really insistent on this, as well. I can see the light, and it is important for the future of the Internet.

Thank you very much.

Mr. WALDEN. I thank the gentlelady. And she yields back the balance of her time.

I recognize the gentlelady from Tennessee, Mrs. Blackburn, for 5 minutes.

Mrs. BLACKBURN. Thank you, Mr. Chairman.

And, as I said in my opening, I want to talk with you all about the enforcements and 3.7, 3.18, 3(a).

I am very concerned about Allen Grogan's blog post. I know you all have seen it. It was the June 12 blog post, and it is titled "ICANN is not the Internet Content Police."

As I said, I don't think you need to be the content police, but you have things that, contractually, you are to be abiding by. And you have to be looking at these prohibitions on domain names for illegal activity such as fraud and IP theft, things of that nature. That is essential to credibility and to accountability.

So, Mr. Strickling, I will come to you first. What assurances can you provide that there will be adequate enforcement of these contractual provisions?

Mr. STRICKLING. Well, first, let me state that we are concerned about ICANN enforcing its contracts, and, in correspondence and in our work in the Governmental Advisory Committee, the United States Government has stood up and said ICANN needs to be doing more in this area.

It is not directly an issue related to the IANA transition——

Mrs. BLACKBURN. OK. Let me just jump in right there, then, and ask you: Has NTIA had conversations with ICANN about their responsibilities? And what has been their response?

Mr. STRICKLING. We have had conversations and correspondence with them over the last several years about the need to improve in this area. And, in all cases, ICANN has indicated a responsiveness to improve.

It is a complicated area because when you are dealing with registries and registrars around the world, all subject to different local

laws, the question of what is illegal in one jurisdiction may be different in another. And this is an area in which there needs to be a tremendous amount of work, not just at ICANN but I think throughout the Internet community, to find a good resolution of it.

Mrs. BLACKBURN. OK. Do you agree with Mr. Grogan's statement in his June 12 blog post or not? Yes or no?

Mr. STRICKLING. Which statement is that?

Mrs. BLACKBURN. The opening statement, which I have now read twice, that ICANN is not the Internet content police.

Mr. STRICKLING. Well, understand, Mr. Grogan doesn't report to me or work for me. But I do agree with the idea that we do not want ICANN becoming a regulator of speech in the world. Yes.

Mrs. BLACKBURN. I agree with that.

OK, Mr. Chehade, over to you now on this one. Do you think that copyright infringement is speech?

Mr. CHEHADE. I am not an expert in this area, but I will tell you that the issue you are bringing up is very important. I hold many patents, and I have many trademarks. I did business for many years, and I fully appreciate this issue. But it is a complicated issue. It is far more complicated than thinking that the registrars and the registries and ICANN alone can solve it. There——

Mrs. BLACKBURN. OK. Let me ask you this, then. What about deceptive trade practices? Is that speech?

Mr. CHEHADE. Again, neither ICANN nor I are experts on these issues. We have contracts, and we enforce the contracts. And, just to be clear, in 2009, when these started becoming issues, we had six people in compliance. We have 24 today.

Mrs. BLACKBURN. OK. Well, let me ask you this. Let's say that—and these are issues of conduct. And I want to know what you are doing. If you have acknowledged NTIA, and they have had conversations, you have given responses——

Mr. CHEHADE. Yes.

Mrs. BLACKBURN [continuing]. Tell me what you are specifically doing to drill down on this and to be sure that there is transparency and there is compliance in this area.

Mr. CHEHADE. Absolutely. So, a couple of things.

First, we are committed and we are enforcing the processes that the multistakeholder community has asked us in the contracts to do. We are doing that. And we are doing that with a large team of compliance folks. We have now over 40,000 complaints that are being processed in less than 10 days, all of them. So there is a tremendous amount of work going there.

The second thing we are doing, which is very important to the rights holders, is we are bringing them together, we are facilitating a dialogue between them and the registries and registrars so they could together produce some mechanisms that allow us to move forward in a multistakeholder, collaborative way.

Mrs. BLACKBURN. All right.

My time has expired. Thank you, Mr. Chair.

Mr. WALDEN. I now recognize the gentleman from New Jersey, Mr. Pallone, for questions.

Mr. PALLONE. Thank you, Mr. Chairman.

Needless to say that the DOTCOM Act was the result of strong bipartisan work from this committee. And, of course, the House

overwhelmingly passed the bill while both of you were in Buenos Aires a few weeks ago.

So I just wanted to start with Mr. Chehade. How was the news received in Buenos Aires about the DOTCOM Act and its passing the House? If you could comment?

Mr. CHEHADE. So, as I have said before and ICANN's position has been that we do not comment on domestic policies, because if we do that here, we will have to do it around the world. So it is not our place to do that.

But if you would allow me, just speaking personally——

Mr. PALLONE. Absolutely.

Mr. CHEHADE [continuing]. As a citizen, as an American, I am a great believer in the deliberative processes that have led us to that. I do believe that the chairman, Chairman Walden, has brought together many of us here, many of you, around a very thoughtful and helpful legislation. I think the multiple voices that have come together here to help us is impressive.

So, as an individual, I must tell you I am impressed by the process, and I am respectful of it. And I thank the chairman and all of you for the hard work you have put in to bring this together.

Mr. PALLONE. All right. Well, thank you very much.

Mr. Chehade, we have seen success of the multistakeholder approach, and we want that success to continue, obviously. And that is why I think it is so important to empower the Internet community to hold ICANN accountable in the absence of a U.S. Government backstop.

And I have heard concerns about whether contractual obligations created through the multistakeholder process are being adequately enforced. And I agree with your statement—I know Mrs. Blackburn got into this somewhat—that ICANN is not the Internet content police. But I believe protections designed by the multistakeholder community to prevent exploiting children, selling drugs illegally, or intellectual property theft online should be enforced.

So could you just explain a little more to the committee how ICANN is working to address those concerns?

Mr. CHEHADE. Thank you, Mr. Pallone.

Let me be clear. When we say terms like "we are not the content police," it is important to know that ICANN is not a regulator. We administer contracts. This is the model we work with. If it is in the contract, we are making sure it is followed.

And our contracts, as Mrs. Blackburn said, do call for our registries and registrars to work within the law. So if the law is broken in the hundreds of jurisdictions we are engaged in here and that is made clear, our registries and registrars, per our contracts with them, must comply. And they do.

Now, when we receive complaints—and I just mentioned that we have processed thousands, tens of thousands of complaints—we act upon them. We reach out to our registries and registrars. We let them know we have a complaint, and we make sure they follow what is in the contract.

And we are doing this actively. We have, as I mentioned, gone from 6 people to 24 people in that department just in the last few years. And we will continue investing to make sure our job begins

and stops with what is in the contract and making sure people comply with that.

Mr. PALLONE. All right.

Let me ask Mr. Strickling, you have been very clear and consistent about the criteria NTIA will use to evaluate the transition, and in Buenos Aires you urged the community to stay focused on those criteria.

But my question is, were NTIA's criteria reflected in the discussions you participated in at the ICANN 53?

Mr. STRICKLING. The criteria are in front of the groups that are working on this throughout the discussion. If you look at the public comment processes that have been run, they have sought public comment on this.

What we were reminding the community was that, as we go through this next round of public comment, first on the ICG combined plan, as well as with the accountability provisions, when they go out for public comment, we want to make sure there is a very clear focus in that public comment round in making sure that the community is providing its input and its opinion as to how these measures will satisfy our criteria so that we have the record we will need to have to be able to certify to this committee and to Congress overall that the plan presented to us meets our criteria.

Mr. PALLONE. OK. Because I have heard that the U.S. Government's current role in the IANA functions was described as largely symbolic. I am not asking you necessarily to comment on that, but——

Mr. STRICKLING. Well, we have made clear from the start that the actual work we do with respect to the IANA functions is a clerical task, yes.

The accountability discussion, though, emerged out of a larger sense that the presence of a contract between ICANN and the United States Government provided a certain backstop for ultimate accountability of ICANN.

The community clearly believes that. And that is reflected in the strength of the discussions that they have been holding on what they want to do to make ICANN accountable when the United States Government is no longer there with the IANA contract to provide whatever perceived backstop folks thought exists.

Mr. PALLONE. All right. Thank you.

Thank you, Mr. Chairman.

Mr. WALDEN. I now recognize the gentleman from Ohio, Mr. Latta, for 5 minutes, the vice chair of the committee.

Mr. LATTA. Thank you, Mr. Chairman.

And, again, to our witnesses, thanks very much for being here and testifying.

Mr. Chehade, if I could ask you the first question. In your testimony, you state, "The best way to safeguard the Internet we all want—a free, open, secure, stable, and resilient Internet—is to ensure ICANN is strong, independent, and thriving." And I appreciate and agree with that viewpoint. The work being done by the CCWG-Accountability, or the Cross-Community Working Group-Accountability, seems to be designed to ensure such an outcome.

We have all heard a lot about the work being done to get ICANN ready for the IANA transition, but that is not all the CCWG is con-

sidering. What are some of the issues that the CCWG has begun to take up for Workstream 2, the ongoing changes to ICANN accountability beyond the transition?

Mr. CHEHADE. I believe right now most of the focus of the community has been on Workstream 1 because there is a bit of a sorting process going on. All the ideas have been put on the table. What is listed in Workstream 2 at the moment has been what I would call tweaks to our accountability rather than some large concepts that are coming.

Mr. LATTA. So are Workstream 1 and Workstream 2 going in kind of a parallel course right now?

Mr. CHEHADE. I think most of the work is now focused on Workstream 1. As ideas come in the discussion, folks may immediately put them into a holding pattern in Workstream 2. But I do think very soon, as Workstream 1 starts coming to a close, a lot of the energy will shift to seeing what didn't make it in Workstream 1 that will shift to Workstream 2 and what new ideas may come out of Workstream——

Mr. LATTA. Is there a timeframe on Workstream 1?

Mr. CHEHADE. Yes. I think——

Mr. LATTA. And what is that, please?

Mr. CHEHADE. I think most of the community members are telling us that sometime in the fall, in the October-November timeframe, they will also finish their work on Workstream 1 so that it merges with the ICG proposal.

Mr. LATTA. Thank you.

Mr. Strickling, to follow up, there have been suggestions by the community that some of the more difficult changes to ICANN's bylaws be committed to in the transition but implemented in Workstream 2. Does this meet with NTIA's requirements?

Mr. STRICKLING. I am not sure I have heard that. What we have said is whatever is part of Workstream 1 needs to be implemented before the contract expires.

Now, under the DOTCOM Act, we understand we can certify to Congress once the bylaws have been adopted. But that doesn't end the contract. They have to actually implement that before the contract ends. And that is what we are looking at in this July or post-July timeframe in terms of how long it might take for the community to actually go ahead and implement the bylaws changes once they have been adopted.

Once they are adopted, they are enforceable. But the issue will be, to the extent that any new structures are being created, such as are being proposed in, say, the naming proposal, they will need some time to do that. But we have made it clear that those have to be done before the contract expires.

Mr. LATTA. OK. Thank you.

Mr. Chehade, there has been ongoing concern that the expansion of the generic top-level domain, the gTLD, program would exacerbate the existing potential for abuse of the Domain Name System. And this was brought into sharp focus over the last few months as a rather offensive domain name was delegated, leaving registered brands and trademarks with the unenviable option of paying $2,500 to reserve that offensive domain name or face potential predatory registration.

Is there more than ICANN can be doing to prevent the exploitation or extortion of registered brands and trademarks as more strings are delegated? And how is ICANN learning from the first round of the new gTLDs?

Mr. CHEHADE. I think the community has spoken, over the years, multiple times that they do not want to see ICANN become a competition authority or a price-setting body. And so the contracts have been set up by the community, through community input, including business, government, and all stakeholders, and we are enforcing those contracts. Those contracts today do not include pricing provisions that allow us to cap prices.

Now, if we receive complaints, as we did with that particular top-level domain you referred to, Mr. Latta, we act on these complaints. We follow them. And, in this case, for example, we asked authorities in the country where that particular operator is to see if they have any guidance for us. We did not receive guidance that allows us to do anything at the moment different than what we have been doing.

Having said that, we are watching very carefully those top-level domain operators, especially the ones we receive complaints about, making sure that they are working within the provisions of the contract.

Finally, if the community wishes to change what they asked us to enforce, the multistakeholder model allows them immediately to get together and to start moving a policy, bottom up, that will change what we are able to enforce. That is all we have as a tool, as a mechanism, to do our work. We cannot regulate; we can simply administer and enforce these contracts. And that we are doing.

Mr. LATTA. Well, thank you very much.

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

Mr. WALDEN. The gentleman yields back.

The chair recognizes the gentleman from Illinois, one of the authors of the DOTCOM Act, a leader on this issue, Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman.

And thank you for being here. And, yes, we are in a better place than we were a year ago, and it is thanks to your help and, obviously, Chairman Walden and the chief counsel and, obviously, the ranking member.

Not only were we frustrated last year, but I have a son who is an Internet type of kid, so I am going to get a copy of the transcript where you all said nice things about me and make sure I show that to him so——

Mr. WALDEN. You could post it on Snapchat or something.

Mr. SHIMKUS. That is right. So hopefully he will like me a little bit better, that I am really trying to be helpful. I wasn't so helpful last year, in his eyes.

I have a copy of the DOTCOM Act, and really, all we did was took NTIA principles, put them in the legislative language. That is kind of the agreement that you said you are going to comply with.

We also took what ICANN was doing and the working group, the Cross-Community Working Group, and the Stewardship Transition Coordination Group and say they have work to do, we should see what is going on, certification, and get done.

But extending the contracts is still a pretty big deal, don't you think, Mr. Strickling?

Mr. STRICKLING. I am not sure what you mean by a "big deal." I think what it demonstrates, though, is that we want this process to proceed in an orderly fashion——

Mr. SHIMKUS. Right. And we almost have to do that by—the contract has to get extended to do that——

Mr. STRICKLING. Right.

Mr. SHIMKUS [continuing]. In a formalized process.

Mr. STRICKLING. Yes.

Mr. SHIMKUS. And then, also, on the review process, which was set up in the DOTCOM Act, there is no mandate, unless we pass the DOTCOM Act, of you all bringing that back towards us, right?

The law says—is the whole trust-but-verify portion of what we have been trying to talk about for the last year, is that that is the forcing mechanism. I am not saying you wouldn't do it. But the DOTCOM Act still is, I think, pretty important to try to get to completion and have, if it is unchanged as it goes through the Senate—and however the administration then asks for counsel from the Department of Commerce to NTIA of whether the President should sign it, what would your recommendation be?

Mr. STRICKLING. So, as long as we are clear we are speaking for NTIA—because the administration hasn't actually come to a position on this—it is NTIA's view we would recommend to the President to sign it.

Mr. SHIMKUS. Yes. And that is what I was asking, I mean, what would you recommend that he do. And I appreciate that. Because I think it is important. I think the Senate is on board. We will let the leadership of the—Mr. Upton and folks make sure that they move those things the way they hopefully will get moved.

I want to ask a question, Mr. Chehade, about the Government Advisory Committee and the way in which governments are supposed to participate in the ICANN process. Currently, there is no voting rights in that group. What do you think the role will be as we move forward?

Mr. CHEHADE. If you would allow me, Mr. Chairman, I will start by addressing Mr. Shimkus' son, because it seems like we caused him some difficulty there.

Mr. SHIMKUS. I cause a lot of difficulty. It was just one of many.

Mr. CHEHADE. So I am addressing him, wherever he is, to thank him for your leadership.

And I know we had a difficult beginning together, but if it weren't for your passion and your commitment to this, we wouldn't be here today. So thank you for that.

Mr. SHIMKUS. Thank you. I am going to wrap that up and put it under the Christmas tree.

Mr. CHEHADE. Now, I do want to answer you on the GAC question. This is an important question.

I do believe we have achieved in the role of the Government Advisory Committee at ICANN today a very powerful and unique balance, where we have governments in an advisory role. I do believe that maintaining that balance is important, that any effort or any unintended consequence that will lead to governments suddenly

being voting bodies at ICANN changes the great formula that got us here today.

So let's keep things calm and consistent, as they have been. And I hope that this process will not cause, unintentionally, a change in the relative role of governments within ICANN.

Mr. SHIMKUS. Great. Thank you very much.

Mr. Chairman, I will yield back.

Mr. WALDEN. The gentleman yields back. There will be DVDs of Mr. Chehade's comments to your son available in the lobby afterwards.

We will go now to Mr. Lance for 5 minutes.

Mr. LANCE. Thank you very much, Mr. Chairman.

And I apologize for going back and forth between two subcommittee hearings, and I certainly respect both witnesses.

Mr. Chehade, I understand comments were filed yesterday with an ICANN working group regarding proposals for addressing privacy/proxy services.

It make sense to me that there are legitimate reasons for the use of privacy/proxy services. However, there also must be a process for addressing cases where parties are hiding behind privacy and proxy services to engage, and perhaps engage repeatedly, in illegal activity harmful to the public.

Can you please explain to me the current status of the privacy/proxy accreditation process?

Mr. CHEHADE. Thank you.

I want to be clear that there is no change yet. This is simply a typical policy development process in the ICANN community, and, as part of that process, some stakeholders suggested some changes to how our privacy policies exist today.

Those changes are still in discussion; they are in the public comment phase. The fact that the community is paying attention and sending letters to all of you and to all of us, as well, is actually a perfect sign that the multistakeholder model works.

In terms of the status of this particular provision, Mr. Lance, I think that what is clear right now is that there is not consensus in the community on this change. And unless there is consensus, it doesn't come for a recommendation to the community for approval, to the council called the GNSO.

So that is where we stand today. I encourage all of us to ask our stakeholders and our communities to participate in the public comment period so we can guide this process in the best way possible.

Mr. LANCE. Thank you.

Mr. Strickling, would you like to comment, sir?

Mr. STRICKLING. So the United States Government hasn't taken a position on this issue yet. It is a difficult one because we need to balance the privacy interests of people who want to express themselves on the Internet against the interest people have in knowing who they do business with.

Mr. LANCE. Yes.

Mr. STRICKLING. So the actual proposal that was out for public comment was whether or not people who are running Web sites to engage in business transactions—in other words, to take money from you—should be excluded from being able to stand behind privacy or proxy-type services as a way to shield their identity from

people they are doing business with. That is what is out for comment.

So even the proposal that is out there is not as broad as some people have feared, which is that it is to remove the ability of anybody who wants to perhaps express themselves in a way that others might not agree with, to harassment or that sort of thing. So I think we need to stay focused on the actual issue that is out for comment.

But, as Mr. Chehade said, we are still a long ways away from any final judgment being developed in this. And, again, to the extent any judgment is rendered, it will be a multistakeholder consensus working through all of these issues. And there are strong arguments on both sides in terms of how to work this through. And it is a marvel to watch the community work their way through these very difficult issues.

Mr. LANCE. Thank you.

As a follow-up, some concerns had been raised by various advocacy groups that under the new proposal those who have used privacy proxy settings could be the target of harassment online. And, of course, we are all concerned about First Amendment rights on the Internet as it pertains to political activity. As you both know, Alabama v. NAACP found that anonymity is important in maintaining coercion-free speech as it relates to controversial political activity.

Gentlemen, what is ICANN's responsibility to protect the First Amendment rights of those who own domain names? And could you explain to the committee what safeguards you propose to put in place to make sure that this type of harassment does not occur?

Mr. Chehade.

Mr. CHEHADE. Thank you.

The provisions to protect anonymity are in place, let's be very clear. So we do have proxy services that do this today. I think the community that is reaching out to many of us is concerned if change occurs. I think, as Mr. Strickling described very carefully the change being proposed, which, again, still does not have consensus, is actually very narrow change that is very limited to certain conditions.

Again, for those who are concerned, we encourage involvement, we encourage exactly what they are doing, and I do believe the consensus of the community will be upheld and will maintain, hopefully, the proper rights for people to continue their free speech as well as their anonymity.

Mr. LANCE. Thank you. My time has expired.

Thank you, Mr. Chairman.

Mr. WALDEN. I thank the gentleman.

And we will now go to Mr. Long, Missouri, for questions.

Mr. LONG. Thank you, Mr. Chairman.

And, Mr. Strickling, if the transfer goes through, it seems to me we should at least ensure that we keep .mil and .gov for our government's exclusive, perpetual, and cost-free use. What do we need to do before or after the transfer to make that happen?

Mr. STRICKLING. So thank you, Congressman, for that question.

There is nothing in the transition of our stewardship which actually implicates .mil or .gov, and also .us, which we administer at

the Department of Commerce. But we understand this is an issue of concern and so we will do whatever is appropriate, in consultation with the Department of Defense and GSA and the other agencies that have equities in this, to make sure that these names are protected going forward. We understand the importance of it.

Today, they are not under any particular contract. These are legacy names that go back to the very beginning of the Internet. I think .mil was delegated back in 1984. That shows you how old it is. So there is no contract today, but there is a whole structure of these informal regulations within the Internet model that govern how——

Mr. LONG. So you think informal regulations would hold up through this process?

Mr. STRICKLING. There is no reason why they should change, but we are not going to rest there. We are going to take a look at them and make sure that if there is a way we can strengthen the U.S. Government's rights to those names, we will do so.

Mr. LONG. OK. And do you have any idea how we could do that?

Mr. STRICKLING. We will be evaluating that. Right now, there is a reluctance, I think, to enter into a contract for these names since they have been working well over the years as legacy names, as there are many other legacy domain names, particularly in the country code. So this is not an issue unique to these particular names.

And the process is very clear that they can't be redelegated or reassigned to somebody else today without the approval of the current holder of the name, the Department of Defense or Department of Commerce. So the question is, is there some additional structure we could put in place to tighten that up even further? And that is the evaluation we will conduct before the transition is completed.

Mr. LONG. OK.

Mr. Chehade, I am going to repeat myself and repeat the question for your benefit just to make sure that I get it out there right and you will have a chance to respond. You were doing a lot of head nodding during his response.

Mr. CHEHADE. Yes.

Mr. LONG. So if the transfer goes through, it seems to me, we should at least ensure that we keep .mil and .gov for our government's exclusive, perpetual, and cost-free use. What do we need to do before or after the transfer to make that happen?

Mr. CHEHADE. So, first, I agree wholeheartedly that we should make sure that these remain with their owners. There is no question about it. Let me clarify: Today, no one can touch .mil or .gov without us getting direct and clear instructions from the U.S. Government. No one else.

Mr. LONG. And that will be true after the transfer goes through? That is my question.

Mr. CHEHADE. And it will be exactly the same after the transfer. Having said that, if, as Assistant Secretary Strickling said, we need to enter into any other form of agreement or arrangement to assure the U.S. Government of their ownership, we are happy to do it.

Mr. LONG. OK. Thank you.

And staying with you, Mr. Chehade, could you give us a real world example of how the changes the bylaws will make the Internet Corporation for assigned names and numbers—ICANN we have been speaking about today—more responsive to the multistakeholder community?

Mr. CHEHADE. I will give you one or two, sir. I think a very important one would be to make sure that our appeal mechanisms are strengthened and accessible to those who need to use them when anyone in the community feels that our work is not adhering to the policy set in the community.

A second one that would be helpful would be to make sure we strengthen how we hold our board members, including myself, accountable to the community's policies that have been handed to us to be implemented. And there are ways to do that, and I hope these things are done and implemented into the bylaws, even before we hand Mr. Strickling our proposal. So we are going to be on the ready to strengthen these things as soon as we can.

Mr. LONG. OK. One discussion around the increasing of the ICANN's accountability has included the idea of recall provisions, the ability to remove members of the board. What is your opinion of that proposal?

Mr. CHEHADE. I think it is a good idea.

Mr. LONG. You have one second.

Mr. CHEHADE. It is a good idea.

Mr. LONG. OK. You did it in a second. I appreciate that.

If I had any time, I would yield back, but I don't, so I won't.

Mr. WALDEN. OK.

We are going to go now to the gentleman from Texas, Mr. Olson, for questions.

Mr. OLSON. I thank the chair and my colleagues. That is a tough act to follow.

Welcome to our witnesses, our panelists.

My first questions are for you, Mr. Chehade. One proposal from the ICANN accountability working group is the "fundamental bylaws" that include required three-fourths approval by the ICANN board for any changes, as well as a way to reject changes by the multistakeholder community? That sounds a lot like our Constitution, to amend it or override a veto. But remember, the 25th Amendment took 203 years to become a full amendment.

So can you elaborate on how this process works, and do you think it will approve accountability? How will this thing work, making sure we have an accountable ICANN?

Mr. CHEHADE. I believe that creating a subset of the bylaws that here are being called fundamental by our community is going to strengthen our accountability ultimately, because today the community feels that our board of directors, 16 people, can get together and amend the bylaws. Yes, they have provisions for notice and all of that is in place. But sequestering or creating a certain set of bylaws is fundamental, and putting a much higher test for touching these I think makes us a stronger organization with very clear institutional core commitments, and I support that. I believe it will make us stronger.

The question, of course, in the next few months would be to decide what goes into that fence. And it is important that we think

through this clearly so that we make sure that it doesn't end up either crippling the organization or making us ineffective. But I am very supportive of the concept, and, frankly, I am very pleased the community is putting it forth.

Mr. OLSON. And that leads to my next question. Do you believe that there is a culture of accountability within the membership of the community to make this effective? Do they take this seriously? I mean, they would have to. Do you think they do that right now, sir?

Mr. CHEHADE. Oh, yes, sir.

Mr. OLSON. Great.

Mr. CHEHADE. Let me tell you, they take accountability very seriously in our community. I think for some of your staffers who visited our meetings, they can assure you this is not a community that lets anything go by, and we thank them for that.

Mr. OLSON. Mr. Strickling, what role will NTIA play in Internet governance after transition is complete?

Mr. STRICKLING. We will continue to play an important role. At ICANN specifically, we will continue as a key member of the Governmental Advisory Committee through which governments render public policy advice to the board. We will continue to participate with other stakeholders on matters of importance at ICANN. The issue of enforcement came up earlier. That is an area that we will continue to pay attention to, as well as the other policy issues as they arise.

So we are not going anywhere in any of this. As I said, the one thing that changes is that we will no longer be verifying changes to the root zone file. That is the clerical task we perform now and that is what will go away when the contract terminates.

Mr. OLSON. So America will have a strong process in the decisionmaking process going forward to ICANN. That is correct?

Mr. STRICKLING. Yes.

Mr. OLSON. OK. Good to hear.

Another question for you, Mr. Chehade. With the current process of assigning gTLDs and generic Top-Level Domain, do you expect this process to change with this transition? If yes, how so?

Mr. CHEHADE. The only thing that this transition will do to affect that process is very minor, and that is, after the process is finished and a new top-level domain needs to be delegated, which is the word for putting it into the root of the domain name system, today that process involves NTIA.

So it is the very end of a long process that takes years. There is a final function to simply add it. And it is that NTIA transition bit of the process that will change. Everything else before that, that qualifies people, brings them on board, ensures they serve the community, ensures they adhere to their contracts, unchanged.

Mr. OLSON. Unchanged.

Final question for you, sir. There has been talk about outstanding applications of TLDs, that domain, outstanding applications. Is there a plan on how to proceed? I have heard some problems with outstanding applications for TLDs, top-level domain names. Looks like I have got you confused.

Mr. STRICKLING. I am not sure exactly what you are referring to. But I will say this about the controversies about the addition of

top-level domains, which is that it is a big program. They have added over 600 new top-level domains so far.

Mr. OLSON. But applications like .med and .cpa. Does that clarify things? Yes, I am sorry. That is my fault.

Mr. CHEHADE. I apologize, Mr. Olson. Now I understand what you meant.

Mr. OLSON. No, no. That is my fault, sir. Don't apologize.

Mr. CHEHADE. So, yes, very important. For example, the .cpa addition, which is very important, and I think will serve the community of certified public accountants, we are now going through a process to decide if one of those applications, because there were multiple applicants, is what we call a community application. And community applications at ICANN receive different criteria in the way we work with them.

When that process ends, and I hope it ends soon, if AICPA is selected as a community applicant, then they will have certain rights to move forward with, with their contract. If not, they will still be able to continue, but they will need to then compete with other applicants.

Mr. OLSON. Sorry for the curve ball.

I yield back.

Mr. WALDEN. Gentleman yields back.

I recognize the gentleman from Florida now, Mr. Bilirakis.

Mr. BILIRAKIS. Thank you, Mr. Chairman. I appreciate it.

Like many of my colleagues, one of my greatest concerns with the transition is the susceptibility of ICANN to manipulate or be captured by foreign governments. You both assert in your written testimony that this is a concern you are working to safeguard.

Mr. Strickling, what specific concerns remain after your latest meeting about encroachment from the intergovernmental body like the U.N., and how would you evaluate the proposals being considered by ICANN? And then I have a couple more questions too.

Mr. STRICKLING. So this is a very important issue, and it is one of our key criteria, to ensure that as we step out of our stewardship role that we are not replaced by another government or group of governments.

I have to tell you, there is nothing in the planning that we have seen so far that indicates this is a likely or even possible outcome. The current board structure does not allow governments to sit on the board. The government advisory committee's role is limited to providing advice to the board. There haven't been any proposals to change that. Indeed, the proposals that are being discussed right now would actually make it clearer exactly under what conditions the governments can provide advice that the board would have to follow.

So I think all signs are that the end of this process will yield a result that will satisfy that criteria, but I don't have the final plan yet, I don't have the final proposal, and we will need to see that before we can render a comprehensive conclusion on that score.

Mr. BILIRAKIS. Mr. Chehade, what are your thoughts? I am sorry if I mispronounce. I just came in. I was in another meeting. I apologize.

Mr. CHEHADE. No, no. I think we probably both suffer from that, so it is OK.

Let me be clear: Governments today have an advisory role at ICANN. No government can sit on our board of directors. They do not have a voting mechanism. We hope this will be maintained as we move forward.

I must tell you also that the process that the U.S. Government started here to make the transition move forward has become itself an attraction to many others, including governments who did not believe or understand how the multistakeholder model works.

So I think we are seeing governments participate in the process in their advisory capacity and continue to do so in more numbers than we did before. And we thank them for that, and we believe they should continue in their advisory role. So we are seeing, as Mr. Strickling said very clearly, we are seeing no signs at the moment of any government asking for new or different powers, and I hope we maintain that balance moving forward.

Mr. BILIRAKIS. Thank you.

Another question for you, sir. Two months ago we heard from Matthew Shears from the Center for Democracy and Technology, who mentioned a hybrid proposal of separating functions and oversight to ensure accountability. He concluded by saying this can work if ICANN is held accountable to its own internal governance structures and stressed the multistakeholder community needs to be more empowered than it is today for it all to work.

Again, can you address his argument and speak on if the multistakeholder community is more empowered after the latest proposals and meetings? And I know you have touched on the recall procedures, I have heard, and is it true? Anything else?

Mr. CHEHADE. What is left is, for me, right now the only decisions I can make is to pick the coffee in my office. So if they take that away, they pretty much have every decision that happens at ICANN. And that is how it should be. That is how ICANN is designed.

Can we strengthen that? Yes, and we should. How do we do that? By making sure that policy is always started in the community and actually goes through a community process before it gets to us, and that if the board, with its power, at any time does not follow community policy, or the board changes community policy, that the community has a recourse to be able to get the board to actually perform what they are supposed to do, which is the community policy.

So I support strengthening that and doing everything possible we do, but I must assure you that today our community is firmly rooted in the decisionmaking of policies that affect the domain name system of the Internet. So are the communities that give us the other policies, such as the IETF for critical parameters and the Regional Internet Registries for numbers. They are the communities that are empowered to make the policies for their important identifiers. We simply are here to facilitate, coordinate, not decide or change community policies.

Mr. BILIRAKIS. Thank you.

Thank you. I yield back, Mr. Chairman. Appreciate it.

Mr. WALDEN. The gentleman yields back the balance of his time.

The chair now recognizes the gentleman from Ohio, Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman.

Mr. WALDEN. I am sorry. Mr. Johnson, I am sorry. Mr. Guthrie had returned.

Mr. GUTHRIE. I will be here. I will let him go ahead.

Mr. WALDEN. All right. If you two work it out, I will go back to Mr. Johnson. Sorry about that.

Mr. JOHNSON. OK. Well, thank you, Mr. Chairman. And I thank my colleague for yielding.

Mr. Strickling, last year members of the committee sent a letter to GAO requesting a nonpartisan review of the transition and subsequent report, which is expected sometime later this summer. Do you intend to take this report into account when evaluating the proposal?

Mr. STRICKLING. Assuming we get it in a timeframe that is relevant, yes.

Mr. JOHNSON. If we get it this summer, is that going to be within the timeframe?

Mr. STRICKLING. Then I do believe we will be able to take their learnings and advice and incorporate them in our review, yes.

Mr. JOHNSON. OK.

Mr. Chehade, one proposal from the ICANN Accountability Working Group is to make changes to the ICANN mission statement to enumerate and restrict the authority of ICANN. Can you elaborate on how you think this will help improve accountability?

Mr. CHEHADE. I first will just preface by saying there are many, many proposals. We are in the early stage of people proposing a lot of changes to our bylaws and to our operations. So I don't want to specifically speak about any one particular proposal, lest the community think, frankly, we are rendering opinion on their work. We want them to give us at the end of the day—and they are working very hard, next week they have a big meeting again on that—they are going to give us a list of things, including changes to our mission and our bylaws. We are going to wait to see all of this to support their efforts to strengthen our accountability.

However, if I could say to everyone watching this closely, it is equally important to make sure that we don't unintentionally introduce things that destabilize what we have been working on for over 16 years. So while we should always strengthen accountability, we should strengthen our mission, we should stay very focused in our mission, we should not in any way increase our remit. We have a very specific remit and a very, very careful balance with our partners, the IETF and the Regional Internet Registries. We must maintain that, keep our roles where they are.

So looking forward to see what the community will come back with and committed, sir, committed to improve our accountability, but not at the expense of stability.

Mr. JOHNSON. Well, in light of that then, are there more effective ways of achieving the goal of better accountability in your mind?

Mr. CHEHADE. No. I do think the community is right now debating the right ideas. There are just many of them on the table, and I think the process is not yet at the point where we are out of the tunnel. We are still in the sausage-making phase of watching how the community's ideas are being put on the table.

So I think in the next 4 or 5 weeks we are going to get more clarity, and we leave it to the community, we are not influencing the

process. I am not even participating at the meetings. Our board members, when they do, they do it as individuals who are contributing, not as a board. So we are letting the community lead, and that is how it should be.

Mr. JOHNSON. OK. All right.

Mr. Strickling, you have stated that NTIA will not permit a government-led organization or an intergovernmental organization from overseeing the IANA functions. How would the proposed changes prevent the IANA functions from being transferred to an intergovernmental organization in the future?

Mr. STRICKLING. The proposals that are being considered by the community themselves make it very clear that these functions will remain at ICANN. There has been no proposal to move them anywhere else. And when you look at the makeup of the board, when you look at what is being proposed in terms of new bylaw changes, it will assuredly prevent a government from stepping in and taking over any of the roles at ICANN based on where the community is at and the provisions of the bylaws that will come out of this process.

So I think on that we are pretty confident that will be the outcome of the plan that is submitted to us. But, again, I have to put the caveat in that we haven't seen a formal proposal, and I really want to reserve final judgment until we have a plan to officially comment on.

Mr. JOHNSON. OK. Well, thank you.

Mr. Chairman, I yield back the 24 seconds I have.

Mr. WALDEN. Thank you. The gentleman yields back.

We will now recognize the gentleman from Kentucky, Mr. Guthrie.

Mr. GUTHRIE. Hey, thank you very much.

And my questions are for Mr. Chehade.

But before I get started, Secretary Strickling, thanks for all the work. We worked on spectrum together, different things together, and I have always enjoyed working with you.

And I actually have a sheet of acronyms if anybody needs any, because I was in the military and I thought they had acronyms. So I am going to read through them, and if you need me to clarify anything, I will let you know.

Mr. Chehade, the CCWG–Accountability and the ICG have both recently sent letters to the NTIA indicating that it will take until next summer to make the changes necessary to transition to IANA. Can you elaborate on the time line that you are envisioning for the transition process?

Mr. CHEHADE. Thank you.

I think that there will be three phases ahead of us. The phase we are in now is the community's phase to finish the proposals. The ICG and the CCWG need to finish their proposals and hand them to the U.S. Government. As Mr. Strickling said earlier, what we are hearing from the community is that this will take place in early November.

The next phase after that is the phase Mr. Strickling described carefully as to what the U.S. Government will do with those proposals once received. And if the DOTCOM Act becomes law, then it is within that period that all of us, including the Department of

Commerce and Congress, should have all the time we need to look at these proposals carefully and assess them.

Our estimate from listening to the community is that that phase will last 4 to 5 months total, in total lapsed time. So that leaves us with one last phase, as Mr. Strickling described, and that is implementing whatever has not yet been implemented in order for the contract to lapse. That last phase right now we are estimating will end sometime between July and September of 2016. And, again, all these dates are up to the community. They are flexible.

Mr. GUTHRIE. Well, thank you.

And another question. ICANN's board chose to suspend Amazon's application for the .amazon gTLD, generic Top-Level Domain, .amazon, after governments objected. What is the current status of Amazon's application? And what can be done to ensure Amazon's legitimate use of that space?

Mr. CHEHADE. The company Amazon is a great partner of ICANN, and they are going to be holding tens of new top-level domains, and we are working very closely with them on a much broader agenda of things. So we are very close to them, and we work very closely on the issue of .amazon.

Specifically there, the board has for now put that application aside. What we have been doing lately is facilitating a dialogue between the company and those who have objected to that TLD, and that is the role ICANN should play. We should not be directing. We should not be involved in these discussions. We should use our good offices to facilitate dialogue between different parties, and that dialogue is going as we speak.

Mr. GUTHRIE. Thanks. And it is important to us, all this happens in the Internet world or whatever, but there are good, hard-working Kentuckians in Campbellsville, Kentucky, shipping the stuff out that goes through Amazon. So we want to make sure that that company is successful, continues to be as successful as it is.

And the final, the Accountability Working Group has proposed several mechanisms intended to improve the accountability of ICANN to the multistakeholder community. Can you elaborate on some of the key proposals and how they will operate.

Mr. CHEHADE. Yes. I do believe the proposals relating to strengthening the appeals mechanisms at ICANN are important. The proposals pertaining to ensuring that either individual board members or the board can be recalled under certain conditions that would give the community the strength and the belief that board members are accountable to the community's policies, these are important proposals.

And we believe that the combination of these and the fundamental bylaws, which we discussed at length today, the idea that some of our bylaws can be enshrined in a certain part of our governing documents and with higher tests to touch them, to change them, I think these things are very fundamental. And we thank, frankly, our community for the work they are doing to understand proposals like these and how we can put them in place.

Mr. GUTHRIE. Thank you very much. I appreciate your answer.

I appreciate working with you, Secretary Strickling.

I yield back.

Mr. WALDEN. Gentleman yields back the balance of his time.

And our last participant today, who has been here throughout, but not least, the gentlelady from North Carolina, Mrs. Ellmers.

Mrs. ELLMERS. Thank you, Mr. Chairman.

And thank you, gentlemen, for being here. And I apologize for being here, leaving, coming back, dueling subcommittee hearings today.

And so, if I ask a question that you have already responded to, please indulge me so that we can get to the bottom of this issue.

Mr. Strickling, I am going to start with you. In your testimony, you state that you believe ICANN has made "significant progress in fulfilling the commitments established by the affirmation." Can you tell us more about the accountability and transparency reviews—I know that has already been addressed—that were conducted by the review teams as part of the process?

Mr. STRICKLING. Yes. So accountability and transparency has long been on the agenda at ICANN. It even predates the affirmation of commitments that we signed in 2009 with ICANN. As part of the affirmation, on a 3-year cycle, ICANN has organized stakeholder groups to perform a review of the accountability and transparency organization.

I have personally participated in the first two of those teams in 2010 and again in 2013. A lot of this is now being dwarfed by a much broader multistakeholder process that we have been talking about today, the Working Group on Accountability, related to the IANA transition. But the work of the first two accountability teams went through issues like board selection, issues of how does the board respond to advice from the Governmental Advisory Committee. We looked at the appeals mechanisms that were in place at that point in time that are now being reevaluated yet again as part of this review related to the transition.

Out of the first review, I think there were 29 recommendations. ICANN, the board, agreed to implement all of them. Out of the second review—I can't remember the exact number of recommendations—again, the board agreed to implement all of them and is in various stages of completing that work.

So this has been a long-term process at ICANN. And while we know that improvement can always be made, and we are seeing that coming out of the Accountability Working Group that is at work today, I would tell you that this organization still is about as accountable a group as any I have ever worked with. It is setting the standard for that. And we look forward to the improvements that will emerge out of the current process, because I think that will leave ICANN an even stronger organization and one that is even much more directly accountable to its stakeholder community than it is today.

Mrs. ELLMERS. Thank you.

And, Mr. Chehade, I want to give you a chance to respond to that as well. I do want to ask, as the debate continues for CCWG. The continuing debate that is going on is the independent review board, the IRB. Essentially, this is the structure that acts as the judicial branch of ICANN. Would you sum it up that way?

Mr. CHEHADE. Yes, that is true. And that process has been tested a couple of times. We need to make sure that that process answers the community's need for independent review, and we need to

strengthen that process. I believe there is room to continue strengthening that process.

And I would, frankly, second everything Assistant Secretary said about our commitment to accountability. I recently met with one of the, frankly, top academics in the U.S. on corporate governance, and he quizzed us quite hard. And at the end of this he said, "You are more accountable than 95 percent of American corporations."

And my answer, frankly, was, "That is not good enough. We need to work harder." Because we have a public mission in the public interest and therefore we have to answer to a higher mission even than most corporations. So we will continue strengthening that.

But I want to also leave you with the impression Mr. Strickling did that ICANN is actually a very, very accountable firm. I have worked for IBM, for AT&T, for many companies, and I can tell you ICANN is in a great position, and we are seeking to further improve it.

Mrs. ELLMERS. Just summing up what you said in my 40 seconds left, basically, the goals that remain or the issues that are still playing out are issues in regard to strengthening ICANN——

Mr. CHEHADE. Yes, absolutely.

Mrs. ELLMERS [continuing]. In its present form and moving forward.

Mr. CHEHADE. Absolutely. And we welcome them.

Mrs. ELLMERS. Great. Thank you both so much for being here today with us.

Mr. WALDEN. I want to thank both of our witnesses for your exemplary testimony and answering our questions and the good work that you are doing to address the concerns that I think you have heard expressed here.

I want to thank our members for their active participation in the hearing.

And with that, we stand adjourned.

[Whereupon, at 11:44 a.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

PREPARED STATEMENT OF HON. STEVE SCALISE

Since the National Telecommunications and Information Administration (NTIA) announced its intention to transition the U.S. government's role in the Internet's numbering functions to the multistakeholder Internet community, I have remained concerned whether this transition was in the best interest of the Internet and whether the global community was capable of taking on this responsibility.

No one can argue with the success of the Internet since its inception, and this is due to the United States' commitment to innovation and Internet freedom. My concern has been that changing the Internet's governance structure could jeopardize these two ideals, especially if enemies of Internet freedom and bad actors in the international community have more control over its management.

Much work has been done by NTIA, the Internet Corporation for Assigned Names and Numbers (ICANN), and the global Internet community to develop a plan for transitioning the Internet Assigned Numbers Authority (IANA) function. It appears that ICANN and the global community are making progress in developing a plan.

However, progress does not guarantee a successful outcome. And given the importance of the Internet, anything short of a successful outcome is unacceptable. I remained concerned about the transition and NTIA's commitment to the criteria it outlined to assess any potential transition proposal.

As has been repeatedly stated, ICANN must improve its transparency and accountability. This will give all stakeholders greater confidence in ICANN's ability to manage these important functions, as well as its ability to remain free of undue influence by a foreign government or any portion of the multistakeholder system.

NTIA has repeatedly expressed its commitment to the criteria it outlined in March 2014, and my hope is that this commitment remains strong until the transition is complete. I am pleased that Administrator Strickland has stated that NTIA will renew the current contract.

My hope is that any future decision to renew the contract or complete the transition is based on the existing NTIA criteria and the U.S.' strong commitment to Internet freedom, not on inevitability or political expediency. I caution Administrator Strickland against completing the transition just because a new administration will take over in January 2017, and I hope this is not a factor.

Completing the privatization of the Internet domain name system must be done carefully and must be done only if Internet freedom remains strong.

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