

DOMAIN OPENNESS THROUGH CONTINUED OVERSIGHT
MATTERS ACT OF 2015

JUNE 23, 2015.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

[To accompany H.R. 805]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 805) to prohibit the National Telecommunications and Information Administration from relinquishing responsibility over the Internet domain name system until the Comptroller General of the United States submits to Congress a report on the role of the NTIA with respect to such system, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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The amendments are as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Domain Openness Through Continued Oversight Matters Act of 2015” or the “DOTCOM Act of 2015”.

SEC. 2. REQUIREMENTS FOR IANA STEWARDSHIP TRANSITION.

(a) **IN GENERAL.**—Until the date that is 30 legislative days after the submission to Congress of the report described in subsection (b), the Assistant Secretary may not permit the NTIA’s role in the performance of the Internet Assigned Numbers Authority functions to terminate, lapse, be cancelled, or otherwise cease to be in effect.

(b) **REPORT DESCRIBED.**—The report described in this subsection is a report that contains—

(1) the proposal relating to the transition of the NTIA’s stewardship of the Internet Assigned Numbers Authority functions that was developed in a process convened by ICANN at the request of the NTIA; and

(2) a certification by the Assistant Secretary that—

(A) such proposal—

(i) supports and enhances the multistakeholder model of Internet governance;

(ii) maintains the security, stability, and resiliency of the Internet domain name system;

(iii) meets the needs and expectations of the global customers and partners of the Internet Assigned Numbers Authority services;

(iv) maintains the openness of the Internet; and

(v) does not replace the role of the NTIA with a government-led or intergovernmental organization solution; and

(B) the required changes to ICANN’s bylaws contained in the final report of ICANN’s Cross Community Working Group on Enhancing ICANN Accountability and the changes to ICANN’s bylaws required by ICANN’s IANA Stewardship Transition Coordination Group have been adopted.

(c) **DEFINITIONS.**—In this section:

(1) **ASSISTANT SECRETARY.**—The term “Assistant Secretary” means the Assistant Secretary of Commerce for Communications and Information.

(2) **ICANN.**—The term “ICANN” means the Internet Corporation for Assigned Names and Numbers.

(3) **LEGISLATIVE DAY.**—The term “legislative day” does not include Saturdays, Sundays, legal public holidays, or days either House of Congress is adjourned for more than 3 days during a session of Congress.

(4) **NTIA.**—The term “NTIA” means the National Telecommunications and Information Administration.

Amend the title so as to read:

A bill to provide for certain requirements relating to the Internet Assigned Numbers Authority stewardship transition.

PURPOSE AND SUMMARY

H.R. 805, the “Domain Openness Through Continued Oversight Matters (DOTCOM) Act of 2015,” ensures that Congress continues its oversight role of the administration’s work to transition its Domain Name System (DNS) authority from the United States to the global Internet multistakeholder community. The legislation requires the National Telecommunications and Information Administration (NTIA) to submit the transition proposal in a report to Congress, detailing how the proposal comports with NTIA’s stated criteria for the transition. It also requires NTIA to certify that the changes to the bylaws of the Internet Corporation for Assigned Names and Numbers (ICANN) required by the multistakeholder community as a condition of the transition have been adopted and are legally actionable under applicable law. Once the report has been submitted to Congress, the legislation allows for a review pe-

riod of thirty legislative days before NTIA may transition its role in the DNS.

BACKGROUND AND NEED FOR LEGISLATION

What we now know as the Internet began as an experimental network designed and managed by the U.S. Defense Advanced Research Projects Agency (DARPA). Since the time the Internet was opened for commercial participation in 1992, the U.S. government has worked to reduce its involvement in governing the Internet when appropriate. As part of that process, ICANN, a non-profit U.S. corporation, began managing the Internet Assigned Numbers Authority (IANA) under contract with NTIA. The terms of the contract gave NTIA a role overseeing and approving changes proposed by IANA to the DNS root zone files, which are maintained by a third-party. While the role has been described by some as administrative, the backstop of the government has been an important and effective measure for keeping both the process and potential bad actors in check.

On March 14, 2014, NTIA announced its intention to transition its oversight of the Internet DNS root zone functions, currently performed by IANA, to the global multistakeholder community. The existing contract between the U.S. government and ICANN expires in September 2015, although the contract provides for additional renewal periods.

In order to facilitate the transition, NTIA asked the global multistakeholder community to generate a proposal for a successor solution to the role of the government in the IANA functions. According to NTIA, any proposal should garner wide community support. In seeking proposals, NTIA also set forth the following criteria for any acceptable option:

- It must support and enhance the multi-stakeholder model;
- It must maintain the security, stability, and resiliency of the Internet DNS;
- It must meet the needs and expectations of the global customers and partners of the IANA services; and,
- It must maintain the openness of the Internet.

NTIA has repeatedly stated that they will not accept any proposal that does not meet these criteria or that would replace its role with a government-led or inter-governmental organization solution.

The Subcommittee on Communications and Technology held a hearing on April 2, 2014, to discuss the NTIA announcement and efforts by the multistakeholder community to meet the terms set forth by NTIA. At the hearing, the Subcommittee heard from NTIA and ICANN, as well as a panel of stakeholder witnesses. The discussion with stakeholder witnesses generated significant discussion around ICANN accountability and the topic of “stress tests”—a series of tests designed to simulate a set of “plausible, but not necessarily probable, hypothetical scenarios” in an effort to determine the resiliency of ICANN under any proposed solution.

Additionally, on June 5, 2014, Chairman Fred Upton led a group of six Republican Members in asking the Government Accountability Office (GAO) to examine specific aspects of any IANA transition, including the national security implications for the United States, how to retain and enforce the Affirmation of Commitments,

and whether NTIA should require ICANN to meet any additional criteria before NTIA approves a transition.

ICANN's next scheduled meeting is in Buenos Aires, Argentina from June 21–26, 2015. NTIA has requested that both the IANA Stewardship Transition Coordination Group (ICG) and Cross Community Working Group on ICANN Accountability (CCWG-Accountability) provide timelines for completion and implementation of the respective plans by the end of June. The existing contract for the IANA functions expires on September 30, 2015; however, the contract can be extended by NTIA to accommodate a complete development and implementation process beyond September 30.

Developing a proposal built to withstand hypothetical stress tests and takeover of government control is no simple task. The Committee has continued discussions with NTIA and the global multi-stakeholder community on the efforts and progress of the working groups in meeting NTIA's challenge to propose a successor solution capable of addressing the complex needs of the Internet ecosystem. The Committee urges NTIA, through its role on the ICANN Government Advisory Committee and using all of the tools at its disposal to faithfully pursue an outcome that furthers the United States' economic and national security.

While the DOTCOM Act does not specify specific terms that must be a part of the output of the multistakeholder process, the Committee is acutely aware of specific issues that are of concern to U.S. interests.

The Committee has heard from a number of commenters expressing concerns related to the treatment of the .mil and .gov top-level domains. By virtue of the Internet's historical home in the United States, our national military and government Internet sites are in their own top-level domains located in the root, rather than as domains within our country code top-level domain. For example, the website for the U.S. Congress is found at congress.gov, while the Canadian Parliament is found at parl.gc.ca. The Committee is aware of the implications of expanding access to the .mil and .gov domains beyond U.S. government use and urges NTIA to resolve these concerns through the multistakeholder process. As both a beneficiary of the benefits of the .gov domain and the U.S. representative in the ICANN Government Advisory Committee, the Committee expects NTIA to ensure that the .mil and .gov domains are handled in the transition in a way that maximizes U.S. national security and the security of our national Internet assets. Moreover, section 2(A)(ii) and 2(A)(iii) of the bill require NTIA to ensure the security and stability of the DNS and to meet the needs of IANA's global partners and customers, including the U.S. government.

Additionally, a number of U.S. interests have raised concerns regarding Internet registries and registrars failing to fulfill and enforce their contractual obligations created through the multistakeholder process. Specifically, the Committee has heard from a number of stakeholders that they are not following through on requirements to prohibit use of domain names for illegal activity, such as spreading malware; operating botnets; engaging in phishing, counterfeiting, illegal sale of drugs, or child exploitation; stealing physical or intellectual property; violating trademarks; or committing fraudulent or deceptive practices.

Sections 3.7.7, 3.7.7.9, and 3.18 of the Registrar Accreditation Agreement, and Public Interest Commitment 3(a) in Specification 11 of the Standard Registry Agreement, require registrars and registries to prohibit holders of domain names from engaging in illicit conduct, to investigate claims of abuse, and to provide consequences for violations, including suspension of domain names in some cases. Failure to enforce these provisions would call into question whether NTIA can certify that proposed transition meets three of the criteria in the bill: section 2(b)(2)(A)(i)'s requirement that the transition proposal support and enhance the multistakeholder model, section 2(b)(2)(A)(ii)'s requirement that the proposal maintain the security, stability, and resiliency of the domain name system, and section 2(b)(2)(A)(iii)'s requirement that the proposal meet the needs and expectations of the customers and partners of IANA services.

Failure to enforce obligations created through the multistakeholder process would jeopardize the transparency, credibility, and accountability needed for the multistakeholder governance model to work and give credence to those who argue that governments, not stakeholders, must define relationships on the Internet. Additionally, if ICANN, registries, and registrars do not enforce contract terms prohibiting use of domain names for illegal activity, the security, stability, and resiliency of the system will start to decay. Lastly, failure to enforce obligations created through the multistakeholder process would suggest disregard for the needs and expectations of the IANA's customers and partners.

To be clear, we are not asking NTIA to insist that ICANN become "the content police." The Internet is and should remain an open forum for creativity, commerce, and communication. Preventing the spread of malware, phishing, counterfeiting, illegal sale of drugs, child exploitation, theft, and fraud neither chills expression nor amounts to censorship. In fact, enforcing contract provisions prohibiting use of domain names for unlawful activity will promote another provision of the bill: section 2(b)(2)(A)(iv)'s requirement that the proposal maintain the openness of the Internet. There cannot be healthy discourse in an unhealthy ecosystem, and without trust that the Internet is safe, people will be reluctant to engage online, whether for commercial or non-commercial purposes. The Committee therefore asks the NTIA to work with ICANN and stakeholders so that the transition proposal ensures the contractual obligations created through the multistakeholder process are fulfilled and effectively enforced.

Finally, the Committee adopted an amendment to H.R. 805 that changed from "implemented" to "adopted" the standard for NTIA to certify that the changes to ICANN's bylaws have been made. The Committee made this change in response to concerns that the term "implemented" was undefined in law, whereas the term "adopted" better conforms to the norm for U.S. corporation law. To be clear, the Committee intends NTIA to ensure that changes made to ICANN's bylaws are actionable under California law. The changes being considered by the multistakeholder community include provisions to empower the Internet community to remove members of ICANN's Board of Directors and a requirement that the community approve changes to "fundamental bylaws," including the scope of ICANN's mission. The Committee expects that should these provi-

sions survive the multistakeholder process as conditions for the transition, that NTIA will not certify their adoption until such time as the Internet community can avail themselves of the terms, either through ICANN's processes or through the courts.

HEARINGS

The Subcommittee on Communications and Technology held a hearing on H.R. 805 on May 13, 2015. The Subcommittee received testimony from:

- Steve DelBianco, Executive Director, NetChoice;
- Danielle Kehl, Senior Policy Analyst, New America's Open Technology Institute;
- Audrey Plonk, Director, Global Cybersecurity and Internet Governance Policy, Intel Corporation;
- Matthew Shears, Representative and Director, Global Internet Policy and Human Rights Project, Center for Democracy and Technology; and,
- Brett Schaefer, Senior Research Fellow in International Regulatory Affairs, The Heritage Foundation.

COMMITTEE CONSIDERATION

On June 10, 2015, the Subcommittee on Communications and Technology met in open markup session and forwarded H.R. 805 to the full Committee, as amended, by a voice vote. On June 16 and 17, 2015, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 805 reported to the House, as amended, by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 805 reported. A motion by Mr. Upton to order H.R. 805 reported to the House, with amendment, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal and objective of H.R. 805 is to provide Congress with additional time to review the plan proposed by NTIA to transition the Domain Name System authority to the global multistakeholder community.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 805, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives, the Committee finds that H.R. 805 contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 19, 2015.

Hon. FRED UPTON,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 805, the Domain Openness Through Continued Oversight Matters Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

KEITH HALL, *Director.*

Enclosure.

H.R. 805—Domain Openness Through Continued Oversight Matters Act of 2015

Under current law, the National Telecommunications and Information Agency (NTIA) has certain responsibilities in overseeing the Internet Domain Name System (DNS). The DNS is the system that maintains files that link domain names with numerical addresses needed to locate computer services and devices. The agency has announced plans to transfer those responsibilities to the international community; in preparation for that event, NTIA has requested a proposal from global stakeholders outlining a transition plan.

H.R. 805 would direct the NTIA to retain those responsibilities for a 30-day period after the agency submits a report to the Congress that contains the proposed transition plan and a certification by the agency that the plan meets NTIA's criteria for acceptance and that certain accountability measures have been adopted by the group of stakeholders proposing the plan.

Based on information from the NTIA, CBO estimates that implementing H.R. 805 would have an insignificant effect on discretionary costs over 2016–2020 period. CBO expects that the new reporting requirement would not have a significant effect on the agency's workload. Pay-as-you-go procedures do not apply to this

legislation because enacting the bill would not affect direct spending or revenues.

H.R. 805 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The staff contact for this estimate is Susan Willie. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 805 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

Enacting H.R. 805 does not require any rule making.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides that the bill may be cited as the “Domain Openness Through Continued Oversight Matters Act of 2015” or the “DOTCOM Act of 2015.”

Section 2. Requirements for IANA stewardship transition

Subsection (a) requires the NTIA to continue to serve in its role as steward of the IANA functions in the Internet’s DNS until thirty legislative days after the Assistant Secretary of Commerce for Communications and Information submits the report required by subsection (b) of the Act.

Subsection (b) requires the Assistant Secretary to submit a report to Congress that contains two certifications. First, the Assistant Secretary must certify that the proposal for transition that was submitted to NTIA by ICANN meets NTIA’s stated criteria for a successful successor to the U.S. government’s role in IANA. Specifically, that the proposal:

- Supports and enhances the multi-stakeholder model of Internet governance;
- Maintains the security, stability, and resiliency of the Internet domain name system;
- Meets the needs and expectations of the global customers and partners of the Internet Assigned Numbers Authority services;
- Maintains the openness of the Internet; and,
- Does not replace the role of the NTIA with a government-led or intergovernmental organization solution.

Second, the Assistant Secretary must certify that the changes to ICANN's bylaws that are required by the multistakeholder community as prerequisites to the IANA transition have been adopted by ICANN.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.