

113TH CONGRESS
2D SESSION

H. R. 5737

To prohibit the National Telecommunications and Information Administration from relinquishing responsibilities with respect to Internet domain name functions unless it certifies that it has received a proposal for such relinquishment that meets certain criteria, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 2014

Mr. KELLY of Pennsylvania (for himself and Mr. McCAUL) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To prohibit the National Telecommunications and Information Administration from relinquishing responsibilities with respect to Internet domain name functions unless it certifies that it has received a proposal for such relinquishment that meets certain criteria, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Defending Internet
5 Freedom Act of 2014”.

1 **SEC. 2. REQUIREMENTS FOR NTIA RELINQUISHMENT OF**
2 **DNS RESPONSIBILITIES.**

3 (a) IN GENERAL.—Unless the Assistant Secretary
4 submits the certification described in subsection (b) to the
5 appropriate congressional committees at least 60 days be-
6 fore the date described in subsection (c)—

7 (1) the Assistant Secretary may not relinquish
8 the responsibilities of the NTIA with respect to
9 Internet domain name functions, including responsi-
10 bility with respect to the authoritative root zone file,
11 the IANA functions, or the related root zone man-
12 agement functions;

13 (2) if there exists on such date an option to ex-
14 tend the IANA functions contract, the Assistant
15 Secretary shall exercise such option; and

16 (3) if there does not exist on such date an op-
17 tion to extend the IANA functions contract, the As-
18 sistant Secretary shall seek to enter into a new con-
19 tract for the performance of the IANA functions
20 that meets the requirements of subsection (d).

21 (b) CERTIFICATION DESCRIBED.—The certification
22 described in this subsection is a written certification that
23 the Assistant Secretary has received a proposal for relin-
24 quishing the responsibilities of the NTIA with respect to
25 Internet domain name functions that ensures the fol-
26 lowing:

1 (1) Control over the management of the Inter-
2 net domain name system will not be exercised by a
3 governmental or intergovernmental body.

4 (2) The bylaws of ICANN will be amended to
5 provide for the following:

6 (A) No director or officer of ICANN will
7 be selected by or represent a governmental or
8 intergovernmental body.

9 (B) ICANN is prohibited from receiving
10 advice from the Governmental Advisory Com-
11 mittee unless such Committee reaches con-
12 sensus regarding such advice. For purposes of
13 the preceding sentence, the term “consensus”
14 means general agreement in the absence of any
15 formal objection.

16 (C) ICANN is committed to upholding
17 freedom of speech, freedom of the press, free-
18 dom of assembly, and freedom of association,
19 applying a standard that is at least as protec-
20 tive of such freedoms as is the First Amend-
21 ment to the Constitution.

22 (D) The term “supermajority” is defined
23 for purposes of the bylaws of ICANN to mean,
24 with respect to a vote of the board of directors,

1 an affirmative vote by at least four-fifths of all
2 directors.

3 (E) A change in the bylaws of ICANN will
4 require a vote of a supermajority of the board
5 of directors.

6 (F) A change in the fees that ICANN
7 charges for its services will require a vote of a
8 supermajority of the board of directors.

9 (G) The directors, president, secretary,
10 and chief financial officer of ICANN will be
11 subject to removal in a vote of confidence by
12 the board of directors at least once every 3
13 years and will serve no longer than 9 years in
14 a single position.

15 (H) ICANN will have a simplified, trans-
16 parent process for selecting its directors under
17 which such selections are linked with key stake-
18 holders in the Internet community.

19 (I) ICANN will have an independent proc-
20 ess (such as the process between ICANN and
21 the International Centre for Dispute Resolution
22 for independent review of contested actions of
23 the board of directors of ICANN and under
24 which the Centre serves as a dispute resolution
25 service provider for objections to new generic

1 top-level domain expansions) for resolving dis-
2 putes between ICANN and external parties in
3 all matters related to the operations of ICANN.

4 (3) ICANN has adopted, if necessary through
5 amendment to its bylaws, measures recommended by
6 the multistakeholder community to increase the
7 transparency of ICANN deliberations and decisions,
8 such as providing public access on the Internet to
9 meetings of the board of directors and associated
10 materials.

11 (4) ICANN will adopt policies and procedures
12 for disclosing to the public records and other infor-
13 mation that are at least as protective of public ac-
14 cess as the policies and procedures required by sec-
15 tion 552 of title 5, United States Code (commonly
16 known as the Freedom of Information Act). The
17 policies and procedures adopted will include a means
18 by which the denial of a request for access to
19 records or other information may be appealed
20 through the independent dispute resolution process
21 described in paragraph (2)(I).

22 (5) There will be established a private, non-
23 profit corporation, to be known as the IANA Consor-
24 tium, that is financed and managed by the top-level
25 domain registries and not by ICANN.

1 (6) The IANA Consortium, and not ICANN,
2 will—

3 (A) manage the content of the root zones;

4 (B) select an entity to carry out the edit-
5 ing of the root zone files that—

6 (i) is separate from the IANA Consor-
7 tium; and

8 (ii) the IANA Consortium is satisfied
9 demonstrates technical competence that is
10 at least equal to that of VeriSign; and

11 (C) oversee the performance of such entity
12 in the editing of the root zone files.

13 (7) There will be established within ICANN a
14 body to be known as the Internet Freedom Panel,
15 which shall be composed of representatives of the
16 Internet community, including registrars, technology
17 groups, and civil society. No member of the Panel
18 will be selected by or represent a governmental or
19 intergovernmental body.

20 (8) The bylaws of ICANN will provide that the
21 Internet Freedom Panel will have the power to re-
22 view and to veto changes to the domain name system
23 proposed by ICANN that the Panel considers to
24 threaten freedom of expression, the openness, sta-
25 bility, resiliency, or security of the Internet, respon-

1 siveness to the user community, or other commit-
2 ments undertaken by ICANN in the Affirmation of
3 Commitments in effect between the NTIA and
4 ICANN on the date of the enactment of this Act.
5 Any such veto will be final and will not be subject
6 to override by any director or officer of ICANN.

7 (9) The entity selected by the IANA Consor-
8 tium to carry out the editing of the root zone files
9 in accordance with paragraph (6)(B) will implement
10 a policy decision adopted by ICANN unless the
11 Internet Freedom Panel vetoes such decision.

12 (10) ICANN will remain subject to United
13 States law (including State law) and to the jurisdic-
14 tion of United States courts (including State courts).

15 (11) The United States Government will be
16 granted ownership of the .gov and .mil top-level do-
17 mains, and the A and B root servers that manage
18 such top-level domains will be maintained in the
19 United States.

20 (12) ICANN will conduct and publicly release
21 the results of an audit of its operations during its
22 5 fiscal years preceding the fiscal year in which the
23 proposal is submitted to the Assistant Secretary and
24 demonstrate that its financial and management deci-

1 sions during such 5 fiscal years have been sound and
2 comport with accepted business practices.

3 (13) An annual audit of ICANN and the IANA
4 Consortium will be performed by an internationally
5 recognized auditing firm that will not have had a
6 contract with ICANN during the 2-year period pre-
7 ceding the audit. The costs of the audit will be paid
8 by ICANN and the IANA Consortium.

9 (14) Neither ICANN nor the IANA Consortium
10 will enter into an agreement or modify an existing
11 agreement to impose on a registrar or registry with
12 which ICANN or the IANA Consortium, as the case
13 may be, conducts business any condition (such as a
14 condition relating to the regulation of content) that
15 is unrelated to ICANN's core mission of coordi-
16 nating the global interoperability and uniqueness of
17 domain names.

18 (15) There will be established a joint office of
19 inspector general for ICANN and the IANA Consor-
20 tium that will be jointly funded by ICANN and the
21 IANA Consortium. Such office shall be headed by an
22 Inspector General that is appointed by the board of
23 directors of ICANN for a non-renewable, fixed term.
24 The Inspector General will be granted full access to
25 ICANN and the IANA Consortium, which will in-

1 clude access to such matters as the finances, docu-
2 ments, and activities of ICANN and the IANA Con-
3 sortium.

4 (16) The reports of the Inspector General will
5 be made publicly available and will not be subject to
6 approval or editing by ICANN, the IANA Consor-
7 tium, or the officers or directors of ICANN or the
8 IANA Consortium.

9 (c) DATE DESCRIBED.—The date described in this
10 subsection is the following:

11 (1) During the base period of performance of
12 the IANA functions contract, the date on which the
13 Assistant Secretary must give ICANN preliminary
14 written notice of the intent to exercise the option to
15 extend the contract through the first option period.

16 (2) During the first option period of the IANA
17 functions contract (if the contract is extended
18 through such period), the date on which the Assist-
19 ant Secretary must give ICANN preliminary written
20 notice of the intent to exercise the option to extend
21 the contract through the second option period.

22 (3) During the second option period of the
23 IANA functions contract (if the contract is extended
24 through such period), the date on which such period
25 expires.

1 (d) REQUIREMENTS FOR NEW CONTRACT FOR PER-
 2 FORMANCE OF IANA FUNCTIONS.—A contract for the
 3 performance of the IANA functions meets the require-
 4 ments of this subsection if such contract—

5 (1) is between the NTIA and ICANN or an-
 6 other private, nonprofit entity; and

7 (2) provides for each assurance listed in para-
 8 graphs (1) through (16) of subsection (b), except
 9 that, in the case of a contract with an entity other
 10 than ICANN—

11 (A) each assurance listed in such para-
 12 graphs with respect to ICANN shall be consid-
 13 ered to be an assurance with respect to such
 14 entity; and

15 (B) such contract is required to provide for
 16 the assurance listed in paragraph (12) of such
 17 subsection only with respect to years during
 18 which such entity is in existence.

19 (e) DEFINITIONS.—In this section:

20 (1) APPROPRIATE CONGRESSIONAL COMMIT-
 21 TEES.—The term “appropriate congressional com-
 22 mittees” means the Committee on Energy and Com-
 23 merce of the House of Representatives and the Com-
 24 mittee on Commerce, Science, and Transportation of
 25 the Senate.

1 (2) ASSISTANT SECRETARY.—The term “Assist-
2 ant Secretary” means the Assistant Secretary of
3 Commerce for Communications and Information.

4 (3) BASE PERIOD OF PERFORMANCE.—The
5 term “base period of performance” means, with re-
6 spect to the IANA functions contract, the period be-
7 ginning on October 1, 2012, and ending on Sep-
8 tember 30, 2015.

9 (4) FIRST OPTION PERIOD.—The term “first
10 option period” means, with respect to the IANA
11 functions contract, the period beginning on October
12 1, 2015, and ending on September 30, 2017.

13 (5) IANA CONSORTIUM.—The term “IANA
14 Consortium” means the private, nonprofit corpora-
15 tion established pursuant to subsection (b)(5).

16 (6) IANA FUNCTIONS.—The term “IANA func-
17 tions” means the Internet Assigned Numbers Au-
18 thority functions.

19 (7) IANA FUNCTIONS CONTRACT.—The term
20 “IANA functions contract” means the contract that
21 is in effect on the date of the enactment of this Act
22 between the NTIA and ICANN under which ICANN
23 is required to perform the IANA functions.

1 (8) ICANN.—The term “ICANN” means the
2 Internet Corporation for Assigned Names and Num-
3 bers.

4 (9) INTERNET FREEDOM PANEL.—The term
5 “Internet Freedom Panel” means the body estab-
6 lished pursuant to subsection (b)(7).

7 (10) NTIA.—The term “NTIA” means the Na-
8 tional Telecommunications and Information Admin-
9 istration.

10 (11) SECOND OPTION PERIOD.—The term “sec-
11 ond option period” means, with respect to the IANA
12 functions contract, the period beginning on October
13 1, 2017, and ending on September 30, 2019.

14 (12) STATE.—The term “State” means each of
15 the several States, the District of Columbia, each
16 commonwealth, territory, or possession of the United
17 States, and each federally recognized Indian tribe.

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