

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM

March 16, 2016

To: Subcommittee on Communications and Technology Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Hearing on “Privatizing the Internet Assigned Number Authority”

On **Thursday, March 17, 2016, at 10:15 a.m. in room 2123 of the Rayburn House Office Building**, the Subcommittee on Communications and Technology will hold a hearing entitled “Privatizing the Internet Assigned Number Authority.” The hearing will examine the status of the Internet Assigned Numbers Authority (IANA) transition and accountability proposal approved by the Internet Corporation for Assigned Names and Numbers (ICANN) on March 10, 2016.

I. BACKGROUND

The Internet has its origins in ARPANET, a network created by the Department of Defense in 1969, and its successor, the National Science Foundation’s NSFNET. To facilitate the flow of information across the network, the domain name system (DNS) was created as the Internet’s “phone book.” Instead of typing in the series of numbers that makes up the IP address for a specific website, the DNS allows users to type in an alphanumeric domain name. For example, the IP address for the House of Representatives is 143.228.181.132 but an Internet user simply types in www.house.gov. The DNS is what maps the alphanumeric address to the appropriate numeric IP address.

Congress passed the Scientific and Advanced-Technology Act in 1992 to permit NSFNET to connect with commercial networks.¹ Efforts to commercialize the Internet

¹ 42 U.S.C. § 1862(g).

continued as the Clinton Administration sought to reduce U.S. government involvement in domain name system governance.²

The President first directed the Secretary of Commerce in 1997, to move DNS governance to the private sector to increase competition and promote international cooperation.³ The Department of Commerce issued a White Paper a year later outlining the U.S. government's commitment to a "transition that will allow the private sector to take leadership for DNS management[.]"⁴ That White Paper also noted that "the U.S. continues to believe, as do most commenters, that neither national governments acting as sovereigns nor intergovernmental organizations acting as representatives of governments should participate in management of Internet names and addresses."⁵

The National Telecommunications and Information Administration (NTIA) entered into a Memorandum of Understanding (MOU) in November 1998, with ICANN, a private non-profit headquartered in Los Angeles that was created specifically to assume key responsibilities for Internet functions.⁶ The MOU was revised and replaced as the private sector developed the capacity to assume technical coordination and management of the DNS.

Today, ICANN performs the IANA functions to help manage the domain name system "root zone" files – the master files of top level domain names – as well as coordinate the allocation of IP addresses through a contract with the Department of Commerce. This contract ensures that changes to, and distributions of, the lists of names and addresses for all top level domains are performed properly. These functions are critical to the ongoing operation of the DNS.⁷

Of the IANA functions, NTIA retains only the procedural role of approving changes to the authoritative root zone file that the agency describes as "largely symbolic."⁸ NTIA has a

² Memorandum from the White House to Heads of Executive Departments and Agencies, Memorandum on Electronic Commerce (July 1, 1997).

³ Management of Internet Names and Addresses, 63 Fed. Reg. 31741, 31741 (June 10, 1998) (summarizing the White House Memorandum).

⁴ National Telecommunications and Information Administration, Statement of Policy, Management of Internet Names and Addresses (June 10, 1998).

⁵ *Id.*

⁶ National Telecommunications and Information Administration, Memorandum of Understanding Between the U.S. Department of Commerce and the Internet Corporation for Assigned Names And Numbers (Nov. 25, 1998).

⁷ More specifically, the IANA functions include: (1) the coordination of the assignment of technical Internet protocol parameters; (2) the processing of change requests to the authoritative root zone file of the DNS and root key signing key (KSK) management; (3) the allocation of Internet numbering resources; and (4) the management of the .ARPA and .INT domains.

⁸ National Telecommunications and Information Administration, *IANA Functions and Related Root Zone Management Transition Questions and Answers* (Mar. 18, 2014) (online at

cooperative agreement with Verisign, a private corporation, by which Verisign actually maintains and implements changes to the authoritative root zone file.⁹ Specifically, Verisign’s responsibilities include editing the file to reflect recommended changes, publishing the file, and then distributing the file to the root server operators all over the world.

The current extension of the IANA functions contract is set to expire on September 30, 2016, however, it contains additional options which could keep the agreement current through September 30, 2019.¹⁰

II. IANA TRANSITION

NTIA announced on March 14, 2014, that the U.S. Government would seek to transfer the IANA functions to the private, global, multi-stakeholder community, as first directed in 1997. NTIA requested that ICANN convene global stakeholders to develop a proposal to transition the current role played by NTIA.

The agency highlighted that the transition proposal must have broad community support while adhering to the following principles: (1) support and enhance the multi-stakeholder model; (2) maintain the security, stability, and resiliency of the Internet DNS; (3) meet the needs and expectations of the global customers and partners of the IANA services; and (4) maintain the openness of the Internet. It also specifically stated that “NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution.”¹¹ Companies such as Cisco, AT&T, Verizon, and Google, industry trade groups such as the U.S. Chamber of Commerce, Internet Association, and USTelecom, and public interest groups including Public Knowledge and Center for Democracy and Technology, all expressed support for NTIA’s announcement.

Following NTIA’s announcement, an IANA Stewardship Transition Coordination Group (ICG) was formed to serve as the convener for the development of a transition proposal. The ICG requested proposals on September 8, 2014, for each of the primary IANA functions: 1) protocol parameters, 2) Internet numbering resources, and 3) domain name-related functions.¹² Each of these proposals has now been submitted.

www.ntia.doc.gov/other-publication/2014/iana-functions-and-related-root-zone-management-transition-questions-and-answ).

⁹ National Telecommunications and Information Administration, Cooperative Agreement No. NCR 92-18742, Amendment No. 32 (Nov. 29, 2015) (online at <https://www.ntia.doc.gov/page/verisign-cooperative-agreement>).

¹⁰ National Telecommunications and Information Administration, *Commerce Department Awards Contract for Management of Key Internet Functions to ICANN* (July 2, 2012) (press release).

¹¹ National Telecommunications and Information Administration, *NTIA Announces Intent to Transition Key Internet Domain Name Functions* (Mar. 14, 2014) (press release).

¹² IANA Stewardship Transition Coordination Group, Request for Proposals (Sept. 8, 2014) (online at www.icann.org/en/system/files/files/rfp-iana-stewardship-08sep14-en.pdf).

ICANN also initiated a parallel process to address concerns about ICANN's accountability in the absence of a contractual relationship with NTIA. The Enhancing ICANN Accountability group considered how the community can have better input into processes such as ICANN's budget approval, bylaws changes, and opportunities for review and redress of ICANN decisions. NTIA has emphasized that the proposals for the IANA transition and increased ICANN accountability are linked and that accountability concerns must be addressed before any transition occurs.

III. SUBMISSION TO NTIA

At ICANN 55 in Marrakech, Morocco earlier this month, the global stakeholder community considered a final proposal to submit to NTIA to help begin the transition process. On March 10, 2015, ICANN approved an IANA transition and accountability proposal. Under the proposal, the Internet's multi-stakeholder community would become the new steward of the IANA functions that are central to the Internet's Domain Name System. The proposal also reconfigures the structure of the ICANN by suggesting 12 separate recommendations to address ICANN's accountability to the multi-stakeholder community.¹³

Among other things, this proposal would create a new Empowered Community that could take certain remedial actions if ICANN were to be acting in ways that are inconsistent with the views of the Internet's multi-stakeholder community.¹⁴ ICANN subsequently submitted this proposal to the NTIA for review, marking the culmination of a two-year effort by the multi-stakeholder community.¹⁵ NTIA has noted that it expects this review to take approximately 90 days.¹⁶

¹³ See CCWG-Accountability Supplemental Final Proposal on Work Stream 1 Recommendation, Cross-Community Working Group—Accountability, Feb. 23, 2016 (<https://www.icann.org/en/system/files/files/ccwg-accountability-supp-proposal-work-stream-1-recs-23feb16-en.pdf>).

¹⁴ *Id.* at 13.

¹⁵ ICANN, *Plan to Transition Stewardship of Key Internet Functions Sent to the U.S. Government* (Mar. 10, 2015) (online at <https://www.icann.org/news/announcement-2016-03-10-en>).

¹⁶ Assistant Secretary for Communications and Information and NTIA Administrator Lawrence E. Strickling, *Reviewing the IANA Transition Proposal* (Mar. 11, 2016) (online at <https://www.ntia.doc.gov/blog/2016/reviewing-iana-transition-proposal>).

IV. CONGRESSIONAL ACTION

The House of Representatives passed H.R. 1580 on May 14, 2013, on a 413-0 vote, stating that “it is the policy of the United States to preserve and advance the successful multi-stakeholder model that governs the Internet.”

Representatives John Shimkus (R-IL), Todd Rokita (R-IN) and Marsha Blackburn (R-TN) introduced H.R. 4342, the Domain Openness Through Continued Oversight Matters (DOTCOM) Act, on March 2014. The DOTCOM Act would prevent NTIA from “relinquishing responsibility over the Internet domain name system” until the U.S. Government Accountability Office (GAO) submits a report to Congress on the advantages and disadvantages of transferring such functions to a multi-stakeholder group. The Subcommittee on Communications and Technology voted 16-10 in favor of the bill on April 10, 2014, with all Democrats present voting no. At that point, Republican Committee leadership requested that the GAO go forward with a review of the IANA transition. The GAO issued their report in August 2015.¹⁷ GAO recommended that the NTIA review relevant frameworks for evaluating the multi-stakeholder community’s transition proposal. GAO noted that using such a framework could help NTIA identify and manage risks related to the transition.¹⁸ The Department of Commerce agreed with this recommendation and has committed to using such a framework.¹⁹

The DOTCOM Act was reintroduced as H.R. 805 this Congress. During the markup process, H.R. 805 was amended to reflect a bipartisan compromise. H.R. 805, as amended, directs NTIA to submit to Congress a report that certifies (1) the transition proposal meets the five criteria outlined in NTIA’s March 2014 announcement, and (2) that the accountability changes recommended by the community have been implemented. NTIA would not be able to terminate the IANA functions contract for 30 legislative days after the submission of the report. The DOTCOM Act, as amended was passed by the House, but subsequently stalled in the Senate. Since then, the NTIA has committed to following the oversight framework laid out in the bipartisan DOTCOM Act, regardless of whether it becomes law.²⁰

In addition, the Consolidated Appropriations Act, 2016 included language that restricts NTIA from using appropriated funds to relinquish its stewardship of the IANA functions in fiscal year 2016.²¹ NTIA is not prohibited from continuing to participate in the multi-stakeholder community’s planning for the transition and is required to report quarterly to Congress on its activities.

¹⁷ Government Accountability Office, *Internet Management: Structure Evaluation Could Help Assess Proposed Transition of Key Domain Name and Other Technical Functions* (Aug. 19, 2015) (GAO-15-642).

¹⁸ *Id.* at 47.

¹⁹ Letter to Mark L. Goldstein, Director, Physical Infrastructure Issues, GAO from Bruce Andrews, Deputy Secretary of Commerce (Aug. 10, 2015).

²⁰ House Committee on Energy and Commerce, Subcommittee on Communications and Technology, *Hearing on Internet Governance Progress After ICANN 53* (July 8, 2015).

²¹ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, § 539 (Dec. 18, 2015).

V. WITNESSES

The following witnesses have been invited to testify:

Ms. Alissa Cooper

Chair

IANA Stewardship Transition Coordination Group

Mr. Steve DelBianco

Executive Director

NetChoice

The Honorable David A. Gross

Former U.S. Coordinator, International Communications and Informational Policy

Wiley Rein LLP

Ms. Audrey Plonk

Director, Global Security and Internet Governance Policy

Intel Corporation

Mr. Matthew Shears

Representative and Director, Global Internet Policy and Human Rights Project

Center for Democracy & Technology

Ms. Sally Shipman Wentworth

Vice President, Global Policy Development

Internet Society