



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

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

**Hearing on "Stakeholder Perspectives on the IANA Transition"**

**May 13, 2015**

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

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

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

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

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

## **I. The Timing is Right for the IANA Transition**

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

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

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

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

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

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

<sup>4</sup> For a list of statements of support for the IANA transition, see “Report on the Transition of the Stewardship of the Internet Assigned Numbers Authority (IANA) Functions,” *National Telecommunications and Information*

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

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

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Association, January 31, 2015, at 6-9, available at [http://www.ntia.doc.gov/files/ntia/publications/iana\\_report\\_013015.pdf](http://www.ntia.doc.gov/files/ntia/publications/iana_report_013015.pdf).

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

<sup>6</sup> “Statement of Policy on the Management of Internet Names and Addresses,”

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

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

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

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

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

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

<sup>9</sup> Historically, many countries have objected to the way ICANN operates and its ties to the U.S. government. In 2011, for example, India proposed the creation of a UN Committee for Internet-Related Policies (CIRP) that would have placed many of the policymaking functions performed by ICANN and issues discussed at the Internet Governance Forum under the purview of a 50-country government committee with four advisory groups (for civil society, the technical and academic community, businesses, and international and intergovernmental organizations) to “advise and assist” them—an inversion of the ICANN model. See “India’s Proposal for a United Nations Committee for Internet-Related Policies (CIRP),” Statement by Mr. Dushyant Singh, Honorable Member of Parliament, India, Sixty Sixth Session of the UN General Assembly, October 26, 2011, available at [http://itforchange.net/sites/default/files/ITfC/india\\_un\\_cirp\\_proposal\\_20111026.pdf](http://itforchange.net/sites/default/files/ITfC/india_un_cirp_proposal_20111026.pdf). Efforts have also been made to bring some or all of the tasks related to the management of the DNS under the oversight of the International Telecommunication Union, the UN specialized agency responsible for the interoperability of global telecommunications networks.

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

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

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

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

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

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

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

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

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

Finally, while we share the Committee's concern that the stakes for this transition are high, legislation like the DOTCOM Act is not necessary, and could in fact make it substantially more difficult for the U.S. government to ensure that the transition happens in a way that meets

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

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

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



both our interests and those of the global Internet community.<sup>17</sup> The better strategy is to focus efforts on ensuring that the transition is carefully planned, and that it contains robust accountability mechanisms.

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

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

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

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

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



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

#### **IV. Conclusion**

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