**Testimony of**

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

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**"Protecting Internet Freedom:**
**Implications of Ending U.S. Oversight of the Internet"**

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Chairman Cruz, Ranking Member Coons, 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 welcome the opportunity to update you on the current status of the transition planning process and the need to complete the transition to preserve the stability, security, and openness of the Internet.

The existing bottom-up, multistakeholder approach to Internet governance has led to economic prosperity and empowerment for individuals around the world. Relying on private-sector stakeholders rather than government control has strengthened the open Internet, resulting in private sector innovation that has changed our lives for the better. Indeed, the past three Administrations have worked closely with Congress in a bipartisan manner to reinforce the U.S. government's opposition to ceding control of the Internet to the International Telecommunication Union (ITU), an arm of the United Nations, or to any other governmental body.[1]

## Final Steps in the Privatization of the DNS

To support and enhance the multistakeholder model of Internet policymaking and governance, NTIA announced on March 14, 2014, its intent to complete the privatization process initiated in

[1] In 2012, S. Con. Res. 50 unanimously passed both the Senate and the House of Representatives, a rare instance of bipartisan agreement on such an important topic. The Senate passed a similar Resolution in 2015, S. Res. 71 recognizing Internet Governance Awareness Week.

1997.[2] In the announcement,[3] NTIA stated that the transition proposal must have broad community support and address the following four principles:

1. Support and enhance the multistakeholder 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 Internet Assigned Numbers Authority (IANA) services; and
4. Maintain the openness of the Internet.

NTIA further specified that it would not accept a proposal that replaces its role with a government-led or intergovernmental organization solution.

The IANA Stewardship Transition Proposal is made up of two parts. The first is focused on maintaining the secure and stable performance of the IANA functions. It addresses each of the three primary IANA functions – domain names, numbering, and protocol parameters. The proposal relies on the existing operational practices of the Internet Corporation for Assigned Names and Numbers (ICANN). This proposal replaces NTIA's stewardship under the IANA functions contract with direct agreements between the operator of the IANA functions and the customers in which they directly specify the terms for performance.

The second part of the IANA Stewardship Transition Proposal calls for enhancements to ICANN's accountability to the global Internet community. The ICANN accountability proposal establishes seven community powers that can be enforced directly by the community in cases of disputes between the ICANN Board and the multistakeholder community. These new powers include the ability for the community to reject ICANN budgets and bylaw changes and to remove a board member or the entire board if the community ever finds it necessary.

ICANN, on behalf of the multistakeholder community, submitted the final IANA Stewardship Transition Proposal to NTIA on March 10, 2016. NTIA, along with other U.S. Government agencies through the DNS Working Group,[4] reviewed the plan, and NTIA on June 9, 2016 issued the IANA Stewardship Transition Assessment Report.[5] As documented in the report, NTIA found that the IANA Stewardship Transition Proposal meets the March 2014 criteria. NTIA also evaluated the proposal against relevant principles in the Committee of Sponsoring

[2] See page 6 for more background on the history since 1997.
[3] NTIA Announces Intent to Transition Key Internet Domain Name Functions (March 14, 2014), *available at: https://www.ntia.doc.gov/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions*.
[4] NTIA convenes the DNS Interagency Working Group at least monthly to coordinate and develop policies and positions on DNS-related issues. NTIA utilized this group to engage U.S. federal government agencies on matters related to the IANA Stewardship Transition, including proposal review and assessment. Participating agencies include: NTIA, U.S. Department of Defense, U.S. Department of Justice, Federal Bureau of Investigation, Federal Trade Commission, U.S. Department of State, U.S. Patent and Trademark Office, U.S. Department of the Treasury, U.S. Department of Homeland Security, U.S. Department of Health and Human Services, National Institute of Standards and Technology, General Services Administration, National Economic Council, National Security Council, and the White House Office of Science and Technology Policy. *See* Section V, IANA Stewardship Transition Proposal Assessment Report (June 9, 2016), *available at:* https://www.ntia.doc.gov/report/2016/iana-stewardship-transition-proposal-assessment-report.
[5] IANA Stewardship Transition Proposal Assessment Report (June 9, 2016), *available at:* https://www.ntia.doc.gov/report/2016/iana-stewardship-transition-proposal-assessment-report.

Organizations of the Treadway Commission (COSO) Framework related to internal controls, as recommended by the U.S. Government Accountability Office (GAO), and found that the proposal adequately addresses those principles. Lastly, an expert panel of corporate governance experts reviewed the ICANN Accountability proposal and concluded the proposal is consistent with sound principles of good governance. For these reasons, NTIA found that the IANA Stewardship Transition Proposal meets the criteria necessary to complete the long-promised privatization of the IANA functions.

On August 12, ICANN informed NTIA that it has completed or will complete all the necessary tasks called for in the transition proposal by the end of the contract term. NTIA has thoroughly reviewed that report. NTIA informed ICANN on August 16 that based on that review and barring any significant impediment, NTIA intends to allow the IANA functions contract to expire as of October 1. NTIA has been transparent and regularly provided Congress with updates on its activities regarding the Internet DNS including its plans to assess the transition proposal.

**Completing the IANA Stewardship Transition Protects Internet Freedom**

Protecting Internet freedom and openness has been a key criterion for the IANA transition from the day NTIA announced it in March 2014. The best way to preserve Internet freedom is to depend on the community of stakeholders who own, operate, and transact business and exchange information over the myriad of networks that comprise the Internet. Free expression is protected by the open, decentralized nature of the Internet, the neutral manner in which the technical aspects of the Internet are managed, and the commitment of stakeholders to maintain openness. Freedom House reported that "Internet freedom around the world has declined for the fifth consecutive year ...." Its prescription for defending Internet freedom is to encourage the U.S. Government to "complet[e] the transition to a fully privatized Domain Name System."[6]

What will not be effective to protect Internet freedom is to continue the IANA functions contract. That contract is too limited in scope to be a tool for protecting Internet freedom. It simply designates ICANN to perform the technical IANA functions of managing the database of protocol parameters, allocating IP numbers and processing changes to the root zone file. It does not grant NTIA any authority over ICANN's day-to-day operations or the organization's accountability to the stakeholder community. The IANA Stewardship Transition Proposal goes beyond any authority that NTIA or the U.S. Government has today by enhancing the power of stakeholders to ensure ICANN's accountability. For example, the U.S. Government has no ability to reject an ICANN budget or to remove an ICANN board member—two of the new enumerated community powers.

Privatizing the DNS has been a goal of Democratic and Republican administrations since 1997. Extending the current IANA functions contract could actually lead to the loss of Internet freedom we all want to maintain. The potential for serious consequences from extending the contract beyond the time necessary for ICANN to complete implementation of the IANA Stewardship Transition Proposal is very real and has implications for ICANN, the multistakeholder model and

[6] Mark Lagon and Eileen Donahoe, "Keeping Internet Governance out of the Wrong Hands." (The Hill, July 7, 2016), *available at:* http://thehill.com/blogs/pundits-blog/technology/286785-keeping-internet-governance-out-of-the-wrong-hands.

the credibility of the United States in the global community. Prior to NTIA's 2014 announcement to complete the privatization, some governments used NTIA's continued stewardship of the IANA functions to justify their demands that the United Nations, the International Telecommunication Union (ITU) or some other intergovernmental body take control over the DNS. Failing to follow through on the transition or unilaterally extending the IANA functions contract will only embolden authoritarian regimes to intensify their advocacy for government-led or intergovernmental management of the Internet via the United Nations.

Former Homeland Security Secretary Michael Chertoff and retired Vice Chairman of the Joint Chiefs of Staff James Cartwright wrote in June that rejecting or even delaying the transition would be a gift to those governments threatened by a free and open Internet.[7] The Global Commission on Internet Governance, a group of leading experts from around the world, echoed this message by recently calling on the U.S. Government to adopt the IANA Stewardship Transition Proposal and to meet the September 2016 target date for the transition of the IANA functions. Failure to do so, the Commission said, would "send the wrong message to the international community, increase distrust, and will likely encourage some governments to pursue their own national or even regional Internets."[8]

Over the past two years, the global Internet community, comprised of businesses, technical experts, public interest groups, and governments, has engaged in one of the most compelling demonstrations of a multistakeholder process ever undertaken. The IANA Stewardship Transition Proposal is a thoughtful plan that was developed through consensus over two years by hundreds of stakeholders around the world. Stakeholders spent more than 26,000 working hours on the proposal, exchanged more than 33,000 messages on mailing lists, held more than 600 meetings and calls and incurred millions of dollars in legal fees. Given the intensive level of effort that went into constructing the IANA Stewardship Transition Proposal and obtaining support for it from all parts of the ICANN community, it is no surprise that the community supports the transition and wants to see the United States follow through on its long-standing, bipartisan commitment to privatize the DNS.

Despite the open and transparent two-year process that developed the plan, the many pages of documentation provided by the community to describe and support the plan, and the exhaustive review we conducted, misperceptions and outright misrepresentations about the plan continue to circulate.

Among the most persistent misconceptions is that we are giving away the Internet. That is simply not true. To be crystal clear, the United States does not control the Internet. No one country or entity controls the Internet. The Internet is a network of networks that operates with the cooperation of stakeholders around the world. The most significant operational change required by the IANA functions transition is to end the largely clerical role NTIA plays in

[7] *See* article by Michael Chertoff and James Cartwright on "How to Keep the Internet Free and Open," Politico, (June 8, 2016) *available at:* http://www.politico.com/agenda/story/2016/06/keep-internet-free-and-open-icann-000140.

[8] *See* Global Commission on Internet Governance Statement, *available at:* https://www.ourinternet.org/news/press/statement-global-commission-internet-governance-regarding-iana-transition.

reviewing updates to the root zone file, where NTIA just confirms that ICANN has followed agreed to processes and procedures.

Even more extreme is the claim that ending the IANA Stewardship Transition Proposal will result in Russia, China, and other authoritarian governments being able to censor content on the global Internet. No one has set forth even a plausible scenario as to how that could happen, and the fact is it simply will not happen as a result of completing the IANA functions transition.

Within ICANN, the IANA Stewardship Transition Proposal does not expand the role of governments vis-à-vis other stakeholders. ICANN's bylaws retain the prohibition on government officials serving as voting board members. The role of governments in ICANN policymaking remains advisory. Under the proposal, governments will continue through the Governmental Advisory Committee (GAC) to provide input to the Board in the normal course of business. As is currently the case, the Board is free to reject GAC advice.

Today, the Board does give special consideration to consensus GAC advice. The transition proposal codifies current practice through a bylaw change that defines consensus as agreement to which no one formally objects. It is true that the threshold for rejecting GAC consensus advice would increase from 50 percent to 60 percent. However, given the codification of "consensus" in the bylaws, this standard only applies to advice from governments to which no government, including the United States, has objected.

The GAC also would have the potential to participate in the Empowered Community (i.e., the mechanism for the community powers), but only at a level commensurate with other stakeholders. The GAC would not be able to unilaterally exercise the community powers. Moreover, ICANN's bylaws expressly prohibit the GAC from participating in the community powers when the issue in contention is a Board action on GAC advice.

Some argue that the United States is naive for thinking that the IANA transition will stifle authoritarian countries' efforts to achieve governmental control the DNS. Our goal has never been to persuade authoritarian regimes that the U.S. view of the Internet is the best approach, but what matters is what the rest of the world thinks. There, we have made great progress over the last few years.

At the ITU's World Conference on International Telecommunications in Dubai in 2012, 89 countries joined in a resolution to expand the authority of the ITU relative to Internet issues. The United States opposed the expansion and was in the minority that day. Since then, we have worked hard with countries in the developing world to build support for the multistakeholder model of Internet governance. Due in part to the IANA stewardship transition announcement and focused diplomacy of the U.S. Government coordinated by the State Department, we have made significant progress, as represented by the fact that almost 30 of those 89 countries have now demonstrated their support for multistakeholder governance of the domain name system by joining in the GAC consensus position to move the IANA Stewardship Transition Proposal forward.

Another false claim is the fear that ICANN will move its headquarters abroad once the transition is complete and "flee" the reach of U.S. law. This ignores the fact that the stakeholder community spent the last two years building an accountability regime for ICANN that, at its core, relies on California law and on ICANN to remain a California corporation. ICANN's bylaws confirm that "the principal office for the transaction of the business of ICANN shall be in the County of Los Angeles, State of California, United States of America." ICANN's Board cannot change this bylaw over the objection of the stakeholder community. Additionally, ICANN's Articles of Incorporation already state that ICANN "is organized under California Nonprofit Public Benefit Corporation Law." Changes to the Articles of Incorporation now require support of a 75 percent majority of the empowered community. ICANN is a California corporation and will remain so.

The Internet, a network of networks, operates based on a system of voluntary standards, best practices, cooperation, and trust. Like the Internet itself, the multistakeholder model is characterized by its open participation and decentralized processes. The Internet thrives only through the cooperation of many different parties. The multistakeholder model reflects this fact by enabling a diversity of stakeholders to participate, fostering a diversity of opinions and ideas. The result is more creative problem solving. It is a nimble, flexible approach, much better suited to rapidly changing technologies, business practices, and markets than traditional regulatory or legislative models. This multistakeholder model is the key reason why the Internet has grown and thrived as a dynamic platform for innovation, economic growth and free expression.

There is no question that within the ICANN community, the last two years have strengthened the multistakeholder model. Moreover, these accomplishments are serving as a powerful example to governments and other stakeholders of how the process can be used to solve complex and difficult issues. However, as we work toward completing the IANA functions transition, we must recognize that the multistakeholder model will continue to face challenges. The U.S. Government remains dedicated to working within the multistakeholder construct at ICANN and all relevant venues to vigorously defend and advance U.S. interests.

The IANA Stewardship Transition Proposal has met the high bar NTIA established to complete the long promised privatization of the DNS. It has the support of the global DNS community and U.S. businesses, civil society, and academics. ICANN and the global community are ready for the IANA transition to occur, and Congress should not act to undermine this transition that has been almost 20 years in the making.

**Background on NTIA's Stewardship Role of the Internet DNS**

The DNS allows users to identify websites, mail servers, and other 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.

In July 1997, President Clinton issued an Executive Memorandum directing the Secretary of Commerce to privatize the DNS in a manner that increases competition and facilitates

international participation in its management.[9] In 1998, NTIA issued a Statement of Policy on the privatization of the DNS, also known as the DNS White Paper.[10] The DNS White Paper concluded that the core functions relevant to the DNS should be primarily performed through private sector management. To this end, 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 DNS. Private sector interests formed the Internet Corporation for Assigned Names and Numbers (ICANN) for this purpose. In the fall of 1998, NTIA entered into a Memorandum of Understanding (MOU) with ICANN to transition technical DNS coordination and management functions to the private sector.

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 evolved through several iterations and revisions over time as ICANN tested these principles, learned valuable lessons, and matured as an organization.

In 2009, NTIA and ICANN replaced the MOU with the Affirmation of Commitments. The Affirmation signified a critical step in the successful transition to a multistakeholder, private sector-led model for DNS technical coordination, while also establishing an accountability framework of ongoing multistakeholder reviews of ICANN's performance. Key elements of the Affirmation include: an endorsement of the multistakeholder, private sector-led governance model; a new commitment by ICANN to act in the interests of global Internet users and not just in the interests of active stakeholder participants that directly benefit from ICANN's decisions; and the establishment of mechanisms and timelines for regular reviews by the ICANN community of ICANN's execution of core tasks. The four subjects of the ongoing reviews are: (1) ensuring accountability, transparency, and the interests of global Internet users; (2) preserving the security, stability, and resiliency of the Internet DNS; (3) promoting competition, consumer trust, and consumer choice in generic top-level domains (gTLDs); and (4) enforcement of WHOIS policy, subject to applicable laws.

To date, two iterations of the Accountability and Transparency Review Team (ATRT) have occurred. These teams, on which I have personally participated along with a broad array of international stakeholders from industry, civil society, the Internet technical community, and other governments, have served as a key accountability tool for ICANN -- evaluating progress and recommending improvements. Over time, ICANN has improved its performance by implementing key recommendations from the ATRT.

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[9] 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.

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

NTIA has never had the legal or contractual authority to exercise traditional regulatory oversight over ICANN, nor has it played any role in the internal governance of day-to-day operations or management of ICANN.

**Internet Assigned Numbers Authority Functions**

In the 1998 DNS White Paper, NTIA announced its intent to ensure the continued secure and stable performance of certain DNS functions, including the IANA functions, initially through contracts, until the transition was complete. The IANA functions are a set of interdependent technical functions that enable the continued efficient operation of the Internet. The three principal 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; and (3) the allocation of Internet numbering resources.[11]

The IANA functions were initially performed under a series of contracts between the Department of Defense's Defense Advanced Research Projects Agency (DARPA) and the University of Southern California (USC), as part of a research project known as the Terranode Network Technology (TNT). As the TNT project neared completion and the DARPA/USC contract neared expiration, USC entered into a transition agreement with ICANN under which ICANN secured directly from USC all necessary resources, including key personnel, intellectual property, and computer facility access, critical to the continued performance of the IANA functions. In 2000, NTIA then entered into a short-term, sole-source, no-cost-to-the-government contract with ICANN to perform these functions.

NTIA and ICANN entered into subsequent contracts for the performance of the IANA functions in 2001, 2003, and 2006. In July 2012, NTIA awarded ICANN, via a full and open competitive procurement process, the current IANA functions contract. The original base period of performance for this contract was October 1, 2012 to September 30, 2015. The period of performance has most recently been extended to September 30, 2016. All of the IANA functions contracts have been at no cost to the U.S. Government.

ICANN performs administrative responsibilities related to the three primary IANA functions. First, ICANN is the central repository for protocol name and number registries, as defined by the Internet Engineering Task Force (IETF).[12] Second, ICANN coordinates allocations of Internet Protocol and Autonomous System numbers to the Regional Internet Registries (RIRs).[13] Third, ICANN processes root zone file change requests for top level domains (TLDs) and makes publicly available a Root Zone WHOIS database with current and verified contact information for all TLD registry operators. In all three cases, ICANN applies policies developed by the

[11] The IANA functions also include "other services," which refer to the administration of the .ARPA and .INT top level domains.

[12] The IETF is a large open international community of network designers, operators, vendors, and researchers concerned with the evolution of the Internet architecture and the smooth operation of the Internet. *See*, https://www.ietf.org.

[13] Regional Internet Registries (RIRs) manage, distribute, and register Internet number resources (IPv4 and IPv6 addresses and Autonomous System Numbers) within their respective regions. *See*, https://www.nro.net/about-the-nro/regional-internet-registries.

customers of the IANA functions. The ICANN Board has no authority to make unilateral policy decisions or changes related to performance and operation of the IANA functions.

Each of the contracts entered into between NTIA and ICANN with respect to the IANA functions has required the contractor, ICANN, to furnish the necessary personnel, material, equipment, services, and facilities to perform the IANA functions. None of these contracts has required the Government to provide ICANN with United States Government property. On September 12, GAO issued a report that concluded, "we find it is unlikely that either the authoritative root zone file or the Internet domain name system is U.S. Government property under Article IV [of the Constitution]. We also find that the possible U.S. property interests that we have identified either would not be disposed of in connection with the proposed transition or would be disposed of in compliance with Article IV."[14]

NTIA's role as the historic steward of the DNS via the administration of the IANA functions contract is limited and clerical in nature. NTIA has no role in the management of Internet numbering resources or Internet protocol parameters functions. For the root zone management function, NTIA verifies that ICANN followed established policies and procedures in processing change requests, and then authorizes implementation of those changes by the root zone maintainer, Verisign. NTIA's role does not involve the exercise of discretion or judgment with respect to such change requests.[15]

The DNS White Paper stated that "agreement must be reached between the U.S. Government and the new corporation (ICANN) relating to the transfer of the functions currently performed by IANA."[16] As such NTIA's role in the IANA functions was at the outset directed to be transitional and temporary. NTIA has fulfilled this temporary role not because of any statutory or legal responsibility, but as a transitional measure at the direction of the President. Indeed, Congress never designated NTIA or any other agency to be responsible for managing the DNS. Thus, NTIA has no legal or statutory responsibility to manage the DNS. Just as federal agencies can enter into contracts they need to fulfill their missions without specific legislative authority, federal agencies can discontinue such contracts when they no longer need them. As NTIA made clear at the time of its Statement of Policy, it intended only to reach agreement with ICANN for the performance of the IANA functions until such time as the transition to private sector management of the Internet DNS was complete.

**Conclusion**

For almost 20 years, Democratic and Republican Administrations, with bipartisan support from Congress, have worked closely with businesses, civil society groups, governments, and technical experts to develop a multistakeholder, private sector-led system for the global coordination of the Internet DNS. NTIA's announcement in 2014 initiated the final step in the privatization process

[14] *See* GAO Report "Department of Commerce –Property Implications of Proposed Transition of U.S. Government Oversight of Key Internet Technical Functions." (September 12, 2016). *Available at: http://www.gao.gov/products/B-327398*.
[15] For further information on the NTIA role in root zone management and the IANA functions, *see* http://www.ntia.doc.gov/other-publication/2014/ntia-s-role-root-zone-management.
[16] DNS White Paper, *supra* n. 2.

by asking ICANN to convene global stakeholders to develop a transition plan. The two years of effort by the Internet multistakeholder community to develop the transition plan reflect truly historic and unprecedented work. The plan developed by the community has strengthened the multistakeholder process and holds ICANN even more directly accountable to the customers of the IANA functions and to the broader Internet community. The proposal also ensures the continued leadership of the private sector in making decisions related to the technical underpinnings of the Internet. The time to transition the IANA functions is now, and I urge this Congress to once again demonstrate strong support for the multistakeholder process related to Internet governance.