For Strickling and Marby

Some have expressed concern that this transition will somehow allow ICANN to avoid the jurisdiction of antitrust enforcement authorities here in the U.S. and possibly to take advantage of consumers.

Mr. Strickling, how does NTIA's transition plan ensure that consumers will be protected from anti-competitive practices after the transition?

Was the importance of market competition and consumer protection considered in the development of the IANA transition plan?

Q1Marby: Mr. Marby, what will ICANN's obligations be as a non-governmental actor in the marketplace?

Answer to Q1Marby:

ICANN has been, since its inception, a non-governmental entity. ICANN remains a California Nonprofit Public Benefit Corporation, subject to state and U.S. Federal laws.

The transition that occurred on 1 October 2016 was the ending of a zero-cost technical services contract between ICANN and the National Telecommunications and Information of the U.S. Department of Commerce ("NTIA") called the IANA Functions Contract, through which ICANN performed a set of interdependent technical functions that enable the continued efficient operation of the Internet's domain name system (DNS). 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) other services related to the management of the ARPA and INT top-level domains (TLDs). ICANN still performs all of this work today, after the transition, though it no longer holds a contract with the U.S. Government to perform this service.

ICANN is not, and never has been exempted from antitrust laws. ICANN has not been granted an antitrust exemption through any of its contracts with NTIA or the

U.S. Department of Commerce. No court ruling in favor of ICANN has ever cited an antitrust exemption to support its ruling. ICANN anticipates that it will continue to be, named as a defendant to suits which may contain allegaions or assertions involving antitrust laws. For a view of litigation about ICANN and its role, please see https://www.icann.org/resources/pages/governance/litigation-en.

Q2Marby: What sort of scrutiny will your organization be exposed to after the transition, in terms of competition policy and consumer protection?

Answer to Q2Marby:

As explained above in answer to Q1, ICANN remains subject to the exact same laws to which it has always been subject.

Issues of competition and consumer choice and trust have been prominent within ICANN for years. Part of ICANN's longstanding core values are to "depend[]on market mechanisms to promote and sustain a competitive environment in the DNS market [and] [i]ntroduc[e] and promot[e] competition in the registration of domain names where practicable and beneficial to the public interest." See https://www.icann.org/resources/pages/governance/bylaws-en.

In 2012, ICANN launched its New gTLD Program, which is the most recent program through which the domain name system is expanded. During the work to implement the community-developed policy on the introduction of new top-level domains, there was significant participation from consumer protection agencies and advocates, intellectual property rights advocates, privacy advocates and others to build in protections into the Program. As committed to the U.S. Government through the 2009 Affirmation of Commitments, and as now embedded into ICANN's Bylaws, ICANN is committed to performing reviews over the introduction of new top-level names into the DNS specifically to consider issues of competition, consumer choice and consumer trust. See https://www.icann.org/resources/pages/governance/bylaws-en, Section 4.6(d).

Currently, the first such review is underway. That Competition, Consumer Trust and Consumer Choice Review Team's work can be followed at https://community.icann.org/pages/viewpage.action?pageId=56135383.

Q3Marby: How can ICANN reassure us that consumers and the public at large will not be harmed by this transition?

Answer to Q3Marby:

As explained in response to Q1 above, the transition is about the ending of a technical services contract. The IANA functions are technical in nature, and everyday Internet users, including consumers and the general public at large, should not experience any change in how they use and experience the Internet as a result of the end of this contract. The transition does not impact ICANN's role as a home for the community-based policy development with respect to gTLD registries or registrars, or the contracts that ICANN holds with those entities. All consumer protections that are in place through those contracts remain in place after transition.

With the end of the IANA Functions Contract, ICANN now has a series of community-based agreements in place that allow the customers of the IANA functions to hold a direct oversight role on how ICANN performs that work. Each of the communities served by the IANA functions had an opportunity to directly negotiate new service level agreements to make sure that the functions are performed to their needs.

The transition actually increases the ability for those who believed they are harmed by ICANN's actions (or inaction) to bring challenges against ICANN. Instead of only having to resort to litigation, with the transition comes enhanced accountability measures through which ICANN can be required to reconsider its action or be subject to an independent review of whether its actions were consistent with its Bylaws.

With the transition, ICANN's work already has continued, and is expected to continue, with no impact on the end users of the Internet. As witnessed on 1

October 2016, the Internet's functionality did not change with the ending of the IANA Functions Contract. Further, the ICANN community has more tools to hold ICANN directly accountable for its actions. Taken together, ICANN has already demonstrated that the transition will not bring harm to the consumers and public at large.