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Subcommittee on Communications & Technology

## Stakeholder Perspectives on the IANA Transition

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

The Center for Democracy & Technology is pleased to submit testimony to the
House Energy and Commerce Committee Subcommittee on Communications
and Technology, to provide our perspectives on the IANA Transition. CDT works
to preserve the open, user-controlled nature of the Internet and to champion
human rights online. We support laws, corporate policies, and technology tools
that protect the privacy of Internet users, and advocate for stronger legal controls
on government surveillance. We believe in the power of the Internet. Whether it's
facilitating entrepreneurial endeavors, providing access to new markets and
opportunities, or creating a platform for free speech, the Internet empowers
people around the world.

CDT has been deeply involved in the Internet Assigned Numbers Authority
(IANA) functions transition process since the announcement by National
Telecommunications Information Administration (NTIA) over a year ago.  We
recognized, as did the NTIA and numerous other stakeholders, that this transition
of stewardship over the Domain Name System (DNS) was not only important in
its own right, but would have significant consequences for international Internet
governance and the future of open, participatory, stakeholder-driven governance
processes.  I have had the pleasure of participating in the work of the both the
Working Group on the IANA transition for the domain names community as well
as the Working Group on enhancing Internet Corporation for Assigned Names
and Numbers' (ICANN) accountability.

Today, I will cover several key points, including perspectives on the two working
groups, the importance of the accountability reforms, why ICANN should not hold
the IANA functions in perpetuity, and what CDT expects to see in the final
transition proposal.

The IANA transition and ICANN accountability working groups are dealing with
very complex challenges.  Replacing the oversight role of the NTIA is not a

simple matter, nor is changing the governance structure of an organization as unique as ICANN. Yet the global multistakeholder community – comprising businesses, governments, the technical community, civil society, academia, ICANN Board and staff, and outside legal counsel – has risen to the challenge. Through my work in both working groups, it has become clear to me that these disparate stakeholders are united by shared goals: the continued stability, security, and resiliency of the DNS, and an IANA function that continues to operate in a neutral, fully accountable, and transparent manner.

The IANA transition working group is responsible for developing a proposal for the future operation and oversight of the IANA functions, which necessarily raises questions about the future of ICANN's role in the IANA functions. The accountability working group is focused on developing proposals for strengthening accountability mechanisms for ICANN in all of its operations.

As these proposals evolved, the two working groups have worked closely together, ensuring that the dependencies between them were adequately addressed. Working group participants have shown admirable commitment to resolving challenging questions. These issues – of accountable corporate governance and oversight mechanisms that are impervious to capture – are complex and require a broad range of technical, legal, and policy expertise. It is abundantly clear that this process could not have proceeded without the input of this broad cross-section of the global multistakeholder community. And, after months of hard work, both of these proposals are out for public comment.

As with any community, there are differing points of view on various aspects of the work, but there is no doubt that the overall intent of those engaged in this process is to see a credible and effective solution that meets the criteria that have been established by NTIA and the expectations of the multitude of stakeholders who are affected by the IANA functions. These working groups represent the multistakeholder process in action: proceeding in an open, transparent, and inclusive manner, with participants committed to the continued stability and success of the open Internet.

I'd like now to address why the enhancements to ICANN's overall accountability framework, which focus on empowering the multistakeholder community to exert oversight over ICANN, and the linkages between the two working group proposals are central to the success of the IANA transition proposal.

There is no doubt that ICANN as an organization has suffered from accountability and transparency challenges. The working group on enhancing ICANN's accountability is focused on addressing these deficiencies and finding ways to empower the community (the ICANN Supporting Organizations and Advisory Committees) to give it, appropriately, increased oversight of ICANN processes and governance. These new powers are important mechanisms for keeping

ICANN accountable to its membership.  They are also critical to the success of the IANA transition proposal.

Throughout the debate over possible post-NTIA IANA functions oversight, the two main categories of proposal have been 'external' models (that would keep the IANA functions entirely separate from ICANN) and 'internal' models (that would continue to house the functions within ICANN while also giving ICANN oversight of the functions).  Both of these categories of proposal have their strengths and weaknesses.

The current proposal for the IANA transition is a hybrid approach that places the operation of IANA functions within a subsidiary of ICANN (thereby avoiding needing to create an external entity).  In this proposal, ICANN will serve as the contracting entity for the IANA functions.  This proposed structure would organizationally separate the IANA functions operator (the subsidiary) from the oversight body (ICANN).  This will make it easier to hold the post-transition IANA operator accountable for its performance of the IANA functions: A key mechanism for ensuring the continued neutral operation of the IANA functions is the ability for the contracting party to revoke the IANA functions contract.

It is abundantly clear, however, that for this proposed structure to work, ICANN (as the IANA functions oversight body) must itself be held accountable by its own internal governance structures. It is essential to ensure that ICANN is accountable to the broader community and that it provides neutral and transparent oversight to the IANA functions.  This will only be possible with a community that is more empowered than it is today.  Thus, the ultimate oversight of the IANA functions, under the current proposal, is fully dependent upon the new community powers that are a part of the proposal from the working group on accountability.  It is absolutely essential that the proposed accountability enhancements are embraced – and committed to – by ICANN and its board, both at the time of the transition and beyond.  The transparent and accountable operation of the IANA functions under the current proposal can only be assured by adoption of these overall accountability reforms.

 These community powers will also militate against capture and mission creep.   Even greater than the threat of capture by an outside entity or community within ICANN is the potential that ICANN itself will stray from its mandate.  The new accountability enhancements will make more explicit the narrow mission and purpose of the organisation – and will make those delineations harder to change.  New measures, including the ability to question budgets and review strategic plans, will be key to keeping in check what ICANN does and how it fulfills its role in the Internet ecosystem.  The community will be able to veto changes to bylaws, ensuring that neither ICANN's relationship to the IANA functions nor these important accountability reforms can be changed at the whim

of the Board – now or in the future.  The community will be able to recall individual Board members, changing the current Board dynamics and making the Board members more directly accountable to the stakeholders they are supposed to represent.  Currently, none of these measures exist, which is why it is so important to ensure that these accountability enhancements are in place before the IANA functions transition is resolved.

A final key element of the transition is that no one should presume that ICANN will always be the IANA functions operator.  CDT has long argued that ICANN should not be given the IANA functions in perpetuity.  The ability to take the IANA functions away from ICANN should be an integral part of the IANA transition proposal.  As I noted above, this separability or revocation of the contract to perform the IANA functions is an essential element in ensuring that the IANA functions operator remains efficient, neutral, and responsive to customer needs.  The community must be able to seek another operator for the IANA function if necessary.  There must be regular performance reviews of the operator, where it is evaluated against key performance criteria, and the community must be able to withdraw and rebid the IANA contract.  Without such safeguards, moving the IANA functions into ICANN in perpetuity would represent a dangerous consolidation of policy-making and policy-implementing powers at the heart of the DNS.

The IANA transition is the culmination of a long-planned move to multistakeholder management of the DNS.  It is an important expression of multistakeholderism in action.  The transition also supports the US Government's commitment to multistakeholderism in international Internet policy-making.  One of the greatest threats to the free and open Internet comes from governments and others who seek a predominate role for governments in Internet governance institutions.  The NTIA's role in overseeing the IANA functions has been a major point of contention over the years.  It will be increasingly hard to credibly refute the calls for a controlling role for governments in Internet governance if we do not complete a successful transition of the IANA functions.

Further, while we deeply appreciate the interests of Representative Shimkus and other supporters of the DOTCOM Act in ensuring that the IANA functions transition occurs in a thoughtful, transparent, and accountable way, we strongly urge members of this committee not to move forward with legislation that would allow Congress to override the transition proposals developed by the global multistakeholder community.  Such an effort, though intended to ensure that the Internet remains an open platform for free expression and innovation, free from government control, would have the unintended consequence of lending misplaced legitimacy to accusations that the United States government "controls" the Internet.

CDT expects – and, indeed, is working hard to ensure – that the global multistakeholder community will develop a transition proposal that satisfies NTIA's principles and stakeholder expectations, safeguards against capture or undue influence by stakeholders (government or otherwise), and anticipates and forecloses vulnerabilities that could undermine the stability and security of the Internet. The transition proposal must be accompanied by governance reforms that ensure the accountability of ICANN to the global community and that keep it closely tethered to its mission and mandate. We welcome Congress's attention to this important and complex issue and encourage members of this committee to work with the community to ensure a transparent, accountable, and successful transition.