CENTER FOR
DEMOCRACY
& TECHNOLOGY

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Hearing before the U.S. Senate Committee on Commerce, Science, & Transportation "Examining the Multistakeholder Plan for Transitioning the Internet Assigned Number Authority"

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Chairman Thune, Ranking Member Nelson, and members of the Committee:

Thank you for the opportunity to submit these comments on behalf of the Center for Democracy & Technology (CDT). CDT is a nonpartisan, nonprofit technology policy advocacy organization dedicated to protecting civil liberties and human rights on the internet and around the world. We have been fully involved in the Internet Assigned Numbers Authority (IANA) functions transition since it was announced by the National Telecommunications and Information Administration (NTIA) in March 2014. We have participated in both the Working Group on IANA stewardship as well as the Working Group on enhancing the Internet Corporation for Assigned Names and Numbers' (ICANN) accountability. Now that the IANA transition plan has been forwarded to NTIA for inter-agency review, CDT and others are reviewing the draft ICANN bylaws and participating in the implementation planning for the post-transition IANA. We are committed to ensuring that the transition fully reflects the intent of the multistakeholder community's transition and accountability proposals.

Replacing the oversight role of the NTIA is not a simple matter, nor is changing the governance structure of an organization, let alone one as unique as ICANN. Yet the global multistakeholder community rose to the challenge and over two years crafted a robust and credible transition plan. The work was considerable: the IANA transition was organized, planned, discussed and debated in more than 1,100 events around the world, with stakeholders spending more than 800 hours in meetings and exchanging more than 33,000 messages on mailing lists. This community effort shared common goals: the continued stability, security, and resiliency of the Domain Name System (DNS), an IANA function that continues to operate in a neutral and transparent manner, and an ICANN that is fully accountable to its global, multistakeholder community.

Throughout the work on the transition we have been acutely aware of the need to satisfy NTIA's requirements that the proposal: 1) support and enhance the multistakeholder model; 2) maintain the security, stability, and resiliency of the internet DNS; 3) meet the needs and expectation of the global customers and partners of the IANA services; and 4) maintain the openness of the internet. NTIA further stated that it would not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution. CDT believes that the IANA transition plan that was forwarded by the multistakeholder community to NTIA at the March 2016 ICANN meeting in Marrakech accounts for and satisfies these requirements.

The IANA transition plan places the responsibility for the Domain Name System firmly with ICANN's multistakeholder community. This community has been successfully developing policies for the DNS through multistakeholder processes since 1998. It comprises professionals from across the main stakeholder groupings of ICANN – businesses, registries and registrars, the technical community, entrepreneurs, academia, civil society, and users – all of whom are committed to the stability, security, and resiliency of the internet. Transitioning the U.S. government's administrative role and stewardship to this community is not a step into the unknown; it is a transition to a highly competent and experienced community that has managed the DNS to date and will safeguard it into the future.

Nor is this transition imperilling the internet or making it more susceptible to government capture; safeguarding against this potential was another key criteria for NTIA and for the community that developed these proposals. To date, the United

States Government's role has been effectively hands-off, entrusting the management of the internet to this community since the creation of ICANN. As NTIA noted in its press release announcing its intent to transition oversight of the IANA functions in March 2014, the U.S. government has "envisioned that the U.S. role in the IANA functions would be temporary. The Commerce Department's June 10, 1998 Statement of Policy stated that the U.S. Government "is committed to a transition that will allow the private sector to take leadership for DNS management."

The U.S. government's current role is two-fold: the first is a clerical function to ensure that any changes to the root zone file have followed the appropriate procedures; the second is a stewardship role that is largely related to the award of the contract to ICANN for the provision of the IANA services in other words, if ICANN had not fulfilled its contractual obligations at some point, NTIA could have awarded the IANA functions contract to another entity). While the U.S. government will be stepping back, its role will not be assumed by other governments but by the community that has managed the DNS all along. This community has delivered a transition plan that empowers the whole of the multistakeholder community, which was the goal of the U.S. government when setting up ICANN and a key NTIA criterion for the transition proposal to be successful. The transition does not empower governments alone – and certainly not individual governments.

When the community and the ICANN Board endorsed the IANA transition plan in Marrakech, it was clear that this significant achievement could not have happened without the input of the broad cross-section of the global multistakeholder community and the range of business, technical, legal, and policy know-how and expertise that this input brings. The IANA transition plan has been a proving ground for multistakeholder approaches to internet governance. This two-year process has delivered two proposals that are possibly the most successful expression of multistakeholder approaches to internet governance yet. And the two Working Groups have demonstrated the efficacy of processes that are open, transparent, and inclusive – characteristics that are essential to ensuring that the openness of the internet is maintained.

The transition plan both supports and enhances the multistakeholder model; it also meets the needs and expectations of the global customers and partners of the IANA services. The accountability measures that have been put in place reinforce the role of the multistakeholder community in ICANN and place important checks on

the organization's mission. The new, limited powers provided to the community ensure that the community as a whole – and no one stakeholder group – remains firmly in control when it comes to ICANN's governance.

These new community powers include, among others, the powers to: 1) reject ICANN Budgets, IANA Budgets, or Strategic/Operating Plans; 2) reject changes to ICANN's Standard Bylaws; 3) approve changes to new Fundamental Bylaws and Articles of Incorporation; 4) remove an individual ICANN Board Director; 5) recall the entire ICANN Board; 6) initiate a binding Independent Review Process (where a panel decision is enforceable in any court recognizing international arbitration results); and 7) reject ICANN Board decisions relating to reviews of the IANA functions. From rejecting strategic plans and budgets to, in the worst case of board-overreach, removing and replacing the entire ICANN Board, these accountability powers are an effective way of ensuring that the stability and continuity of the internet remain front and center at ICANN post-transition.

Of course, these powers may not be exercised on a whim; the community must go through a rigorous process of engagement and escalation that should exhaust all possibilities of resolution before pursuing the use a particular power. Should there be no resolution, there must be agreement to use a power among a minimum number of constituencies within the ICANN community. This ensures that no one party can unilaterally take actions that could impact ICANN, the IANA functions or the DNS. Post-transition accountability will reside with the empowered ICANN multistakeholder community as a whole; its significant expertise and know-how will very capably guide ICANN, the IANA functions, and the DNS in the future.

The imperative that the transition must not imperil the security, stability, and resiliency of the internet has been foremost in the community's mind. The IANA transition plan emphasizes continuity of operations by having ICANN be the IANA functions operator post-transition. At the same time, the plan provides mechanisms for the community, and particularly the global customers and partners of the IANA functions, to ensure that ICANN meets agreed performance targets. Were ICANN to fail to meet these targets, the community could change the IANA functions operator – in other words, seek an alternative to ICANN to undertake essential DNS-related administrative tasks.

It is important to note that within the ICANN multistakeholder community, the U.S. government will continue to play its role in the Government Advisory

Committee, just as representatives of U.S. businesses, registries and registrars, technical bodies, and civil society organizations will continue to play their roles in their respective constituencies. The transition plan does not diminish the role of any stakeholder – quite the opposite: all stakeholders are appropriately empowered to hold ICANN to account and to ensure that the stability, security, and resiliency of the DNS post-transition.

Of course the community's work is not over. Work on the new ICANN bylaws has been going smoothly and we hope they will be adopted by the ICANN Board on May 27th. Additional accountability-related work – known as Work Stream 2 – will continue beyond the transition in areas such as human rights, community accountability, and ICANN transparency.

There is no doubt that the community and particularly the WGs must remain vigilant in the implementation planning for the post-transition IANA. But by producing a transition plan that is robust, credible, and implementable – and, importantly, that satisfies NTIA's criteria – the community's work on IANA stewardship and ICANN accountability paves the way for the multistakeholder community to take on the mantle of stewardship that the U.S. government currently assumes. CDT is convinced that the community and the U.S. government can transition on the anticipated date.

There are those who suggest that an extension of the contract between NTIA and ICANN is needed because the IANA transition plan is untried and untested. We do not support such an extension. It would indicate a clear lack of confidence in the multistakeholder transition plan and would undermine not only the legitimacy of ICANN's community but also the legitimacy of multistakeholder approaches to internet policy more generally.

Nor, for similar reasons, does CDT support a call for a vote in Congress on the IANA transition. A vote would represent an attempt by one government to unilaterally decide the future of key technical functions of the internet – precisely the outcome the IANA functions transition is designed to avoid. Such an act would only provide fuel to those governments who seek greater government control over the internet and who decry multistakeholder approaches around the world.

We must all understand that if there is an unwarranted delay or if the transition does not occur, the multistakeholder model of internet governance could be irretrievably undermined and there would be unprecedented ammunition for those

nations that want to see increased intergovernmentalism and state control of the internet. A failure to transition would be seen as a license by some governments to assert greater control over the internet and place greater restrictions on its openness. This, in turn, would jeopardize the future of the internet, its role in promoting free speech and human rights, and the significant benefits it can bring to societies and economies across the globe.

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