

Testimony of Michael Beckerman
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“Examining the Multistakeholder Plan for Transitioning the Internet Assigned
Number Authority”
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Introduction

Chairman Thune, Ranking Member Nelson, and distinguished members of the Committee, thank you for inviting me to testify before you at this important hearing on the Internet Assigned Numbers Authority (IANA) transition.

My name is Michael Beckerman, and I am the President and CEO of the Internet Association. The Internet Association represents almost 40 of the world’s leading Internet companies.¹ Our mission is to foster innovation, promote economic growth, and empower people through the free and open Internet. As the voice of the world’s leading Internet companies, our job is to ensure that all stakeholders understand the benefits the Internet brings to our economy.

The companies represented by the Internet Association depend on the global, open Internet. Accordingly, the Internet Association and its member companies have been actively involved in the IANA transition process to ensure that the final proposal is good for our member companies, users around the world, and the Internet writ large. This is a plan that will transition the IANA functions to the global multistakeholder community -- and remove unnecessary government involvement in the management of the engine of the 21st century digital economy -- in a way that will keep the Internet safe, security, reliable, and resilient. We know this because we were involved in making sure the proposal accomplished these goals. Alongside our direct engagement in the IANA transition process, the Internet Association is also a member of the ICANN Business Constituency.²

¹ The Internet Association’s members include Airbnb, Amazon, Coinbase, DoorDash, Dropbox, eBay, Etsy, Expedia, Facebook, FanDuel, Google, Groupon, Handy, IAC, Intuit, LinkedIn, Lyft, Monster Worldwide, Netflix, Pandora, PayPal, Pinterest, Practice Fusion, Rackspace, reddit, Salesforce.com, Snapchat, Spotify, SurveyMonkey, Ten-X, TransferWise, TripAdvisor, Turo, Twitter, Uber Technologies, Inc., Yahoo!, Yelp, Zenefits, and Zynga.

² The mission of the Business Constituency is to promote the development of an Internet that promotes user confidence, that the Internet is a safe place to do business, is competitive in the supply of registry and registrar services, and is technically stable, secure, and reliable. The Business Constituency supported the final proposals by the IANA Stewardship Transition Coordination Group (ICG) and Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability).

I will address my testimony today in three parts, which are also important questions for the Committee to consider as it moves forward:

- **First**, are U.S. interests best served by an IANA transition?
- **Second**, do the IANA transition proposals sent from the Internet Corporation for Assigned Names and Numbers (ICANN) to NTIA this March ensure a successful transition?
- **Third**, what issues should a post-transition ICANN focus on in the short to long term?

The IANA transition has been long contemplated, beginning in 1997, when the U.S. government first moved to privatize Internet technical functions in an effort to promote innovation and competition online. Our goal throughout this process has been to ensure that a post-transition ICANN is aligned with the stringent criteria set forth in 2014 by the National Telecommunications and Information Administration (NTIA) and is fortified with the appropriate separation of powers necessary to protect the system from capture by any one stakeholder group, thus preserving a free and open Internet.

U.S. Interests Are Better Served By A Successful IANA Transition

The successful transition of the IANA functions serves U.S. interests because it will ensure that people with the most at stake in the Internet's future growth -- the small and medium businesses, the technologists, the companies and members of civil society, and individual users -- are entrusted with the responsibility to ensure the open Internet, and are given the powers to do so.

This is not a foregone conclusion. There are countries that want to impose a top-down, state-centric governance model for the Internet. These countries believe that something as powerful as the Internet needs to be tamed by governments, or in some cases fragmented so that networks stop at national borders. If they have it their way, the global and open Internet as we know it will cease to exist. This will be bad for Internet companies, bad for Internet users, and bad for the global economy -- to say nothing of free expression and human rights around the world.

The Internet Association believes that a robust multistakeholder model is the best method to maintain an Internet free from government control. Maintaining the U.S. government's "special" role -- which has always hidden the reality that it was the Internet community itself that was primarily responsible for keeping the Internet working around the world -- could encourage other governments to break off and create their own systems, endangering the seamless functionality and openness of the global Internet.

Fragmentation of the Internet would impede the free flow of information online and free speech worldwide, and would have political, economic, social, and cultural costs to society.³ The risks to the multistakeholder model should a transition not proceed are significant, and as such, the transition should be supported.

Failure to implement a successful IANA transition will serve to undermine the multistakeholder model, potentially stripping power from a model that has helped make the Internet the success it is today. It could further expose Internet governance to the whims of individual governments around the world looking to fill the void of a failed IANA transition, in turn creating a risk to the economic, social, and cultural engine that we all agree must be protected. Instead, we must focus on not only moving forward with a transition, but on all stakeholders creating an ecosystem for success in a post-transition world.

IANA Stewardship Transition Coordination Group (ICG) Proposals Match Principles For Successful Transition

A transition alone is not enough: the Internet Association agrees that the IANA transition must be done with carefully crafted proposals that provide for a successful transition.

In March 2014, when NTIA announced that it intended to transition the ICANN functions to a global multistakeholder community, NTIA told ICANN that the transition proposal must have broad community support and address the following four principles:

- Support and enhance the multistakeholder model;
- Maintain the security, stability, and resiliency of the Internet DNS;
- Meet the needs and expectations of the global customers and partners of the IANA services; and
- Maintain the openness of the Internet.

NTIA also stated that it would not accept a proposal that replaces the NTIA role with a government-led or an intergovernmental organization solution. These criteria for the transition are well-founded principles for the success of a transition.

The companies, members of civil society, technologists, and users that drive the Internet worked together to craft proposals that meet these criteria, and ICANN delivered

³ See Julius Genachowski and Gordon Goldstein, “‘Global’ Internet Governance Invites Censorship,” (April 3, 2014) available at: <http://www.wsj.com/articles/SB10001424052702303978304579471670854356630>

proposals on both the IANA transition and enhanced ICANN accountability to NTIA for review in March 2016. To highlight, here are four examples of the way these proposals create the checks and balances needed to ensure that post-transition ICANN is truly accountable to the community, even without a special role for NTIA:

- Under the Accountability Proposal submitted to NTIA, ICANN’s mission is explicitly “limited to coordinating the development and implementation of policies that are designed to ensure the stable and secure operation of the Domain Name System and are reasonably necessary to facilitate its openness, interoperability, resilience, and/or stability.”⁴ Helpfully, the proposal also explicitly states that anything not articulated in the bylaws would be outside ICANN’s mission.
- The proposal for the first time distinguishes between ICANN bylaws and fundamental bylaws. Included in the fundamental bylaws are mechanisms establishing new accountability checks and balances and changes to ICANN’s mission. This designation of fundamental bylaws matters because fundamental bylaws cannot be amended by board action alone.
- The proposal creates a further check on ICANN by improving the Independent Review Process (IRP) and Request for Reconsideration (RFR) mechanisms. As we know from the U.S. experience, judicial review of decisions is a very important tool in our democracy. The counterpart to judicial review in the ICANN system is IRP. Under the Accountability Proposal, the current IRP mechanism is independent arbitration that ensures that ICANN does not go beyond its limited mission through its actions and does not violate its bylaws. Under the Accountability Proposal, this arbitration mechanism is strengthened to make it more accessible and less costly. It is also made permanent through the establishment of a standing panel of independent experts with expertise in ICANN-related fields.
- The Governmental Advisory Committee (GAC) will be more constrained in the future than it is presently. This will significantly limit the GAC’s ability to overturn multistakeholder policy:
 - that GAC advice be issued without objection in order to compel the Board to attempt to seek a mutually agreeable solution if the Board does not accept that advice;

⁴ CCWG-Accountability Supplemental Final Proposal on Work Stream 1 Recommendations, ICANN, (Feb. 23 2016) at 26 available at <https://www.icann.org/en/system/files/files/ccwg-accountability-supplemental-work-stream-1-recs-23feb16-en.pdf>

- that GAC advice must be accompanied by a rationale; and
- that the Board must not violate its own bylaws when implementing GAC advice.

These restraints represent significant reforms to the way the GAC issues advice, and more than outweigh raising the threshold for the Board to reject GAC advice is raised to 60%. Additionally, while the GAC may participate in Empowered Community processes, it may not participate as a decisional entity in any matter related to the Board's implementation of GAC advice.

The transition proposals satisfy NTIA's stringent criteria. They satisfy our condition that any transition happen in a thoughtful way that protects the open Internet and removes unnecessary government involvement. Put simply, the proposals ensure that the same community of innovators, entrepreneurs, and users who made the Internet will be entrusted with keeping it safe for future generations.

Priorities For The Post-Transition ICANN

As the IANA transition proceeds, our companies -- and the rest of the global Internet community -- are going to stay intimately involved and will keep close watch on the implementation of the accountability proposals.

Successful implementation of what the proposals for the Internet Association includes:

- First, ICANN, under the leadership of its new CEO, should demonstrate a clear commitment to the Accountability Proposals in the first one hundred days post-transition. This will serve as an important signal to all stakeholders that that it intends to honor both the letter and the spirit of the transition.
- Second, ICANN must prioritize not only Workstream 1, but also the Workstream 2 proposals. This latter Workstream is not yet complete and includes several very important issues for the multistakeholder community going forward. As one important stakeholder in ICANN - the GNSO- explained, Workstream 2 issues "remain vitally important and must be budgeted and supported at a level sufficient to ensure their development and implementation."⁵

⁵ Thomas Rickert, Mathieu Weill, León Felipe Sánchez Ambia, *Transmittal of results of GNSO Council consideration of CCWG-Accountability Supplemental Final Proposal*, (Mar. 9, 2016) at 10, available at <http://gns0.icann.org/en/correspondence/bladel-to-ccwg-accountability-chairs-09mar16-en.pdf>

- Third, the new ICANN CEO should within his first 100 days in office send a clear signal to the multistakeholder community at the next ICANN gathering in Helsinki that ICANN will not engage in mission creep beyond its core mission statement and that it honors this fundamental bylaw and the clarity it brings to the multistakeholder community. Of particular concern to Internet Association members is that a post-transition ICANN would become a new forum for policing and enforcement beyond its core mandate. Specifically, ICANN should leave intellectual property content policing and enforcement to the stakeholders better equipped to handle these issues.

Ensuring the proper limitations on ICANN is important to the future of the Internet and the future of other international multistakeholder communities that wish to keep the Internet free and open for future generations.

Thank you for having me testify on this important issue. I look forward to any questions you may have.