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Congress of the United States
House of Representatives

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COMMITTEE

March 26, 2015

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Frank Pallone
Ranking Member
Committee on Energy and Commerce
2322A Rayburn House Office Building
Washington, D.C. 20515

Chairman Upton and Ranking Member Pallone:

On March 14, 2014, the U.S. National Telecommunications and Information Administration (NTIA) announced that it planned to relinquish responsibility for critical Internet functions, known collectively as the Internet Assigned Numbers Authority (IANA) functions, to the Internet Corporation for Assigned Names and Numbers (ICANN).

The link between U.S. stewardship and ICANN's management of the IANA functions, while benign in the past, has also prevented other countries from aggressively trying to achieve economic, commercial and geopolitical goals through influencing ICANN. Around the world, countries continue to stifle Internet freedoms - from China's increased crack down on virtual private networks and restrictions on Gmail, to Russia's push to create a "national server" and require all Russian data to be stored in-country. If NTIA moves forward with this relinquishment of U.S. stewardship as planned, it could open the door for the United Nations or countries like China or Russia to increase their influence and even take control.

During the 2015 Fiscal Year, NTIA has been prohibited from relinquishing responsibility for these technical functions of the Internet. As the September 30th deadline for that prohibition approaches, this proposed transfer should face even greater scrutiny and investigation by the committees of jurisdiction.

I ask that the House Committee on Energy and Commerce hold hearings in the near future to ask industry stakeholders and preeminent experts, in addition to NTIA officials and ICANN executives, the attached questions on the implications of the proposed transition.

I appreciate your consideration of this request and look forward to working with you to improve accountability for NTIA's proposal and obtain answers to these questions.

Sincerely,

Sean P. Duffy
Member of Congress

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Questions for Congressional Hearing on
NTIA's Proposed Transfer of IANA Function Responsibility to ICANN

- What structural and symbolic mechanisms will exist through which the international community will confer legitimacy to ICANN through consent of the governed?

- To whom will ICANN be accountable and how will that accountability be binding on a long-term basis?

- What escalating measures will be available against ICANN Board actions, up to and including removing selected or all Board members?

- At a February 25, 2015 Senate Commerce, Science & Technology Committee Hearing, ICANN CEO Mr. Fadi Chehadé stated that a proposal to amend ICANN's bylaws to require a two-thirds vote to reject Governmental Advisory Committee (GAC) advice was "off the table". Could that amendment be offered in the future? And will the ICANN Board still follow its informal practice of requiring a two-thirds vote to reject GAC advice?

- Foreign government and outside interest influence has been limited to date, but isn't that because the U.S. stands as a guardian of ICANN's independence?

- What indications does the Administration have that other governments are committed to the proposed, revamped ICANN model and would continue to support a post-transition, multi-stakeholder ICANN once the U.S. steps out if its unique role?

- What guarantee is there that governments, or any other interests, won't become unduly influential within ICANN in the absence of direct U.S. stewardship?

- I understand that the current contractual arrangement with ICANN executing the contact on behalf of the U.S. government affords First Amendment protections from censorship. What First Amendment protections will there be should the IANA functions transition to ICANN? What remedy in federal court will there be should any transition result in censorship?

- At the February 25th Senate Commerce Committee hearing on this subject, NTIA Administrator Lawrence Strickling stated "there is no government property that is the subject of this contract." Yet, the October 21, 2012 contract between the NTIA and ICANN, in section F.5, plainly states, "All deliverables under this contract become the property of the U.S. Government." How can there be no property that is subject of this contract when the contract says there is?

- At the February 25th Senate Commerce Committee hearing on this subject, Senator Dan Sullivan (R-Alaska) asked for NTIA's legal analysis regarding the status of ICANN deliverables as government property and NTIA's authority to relinquish IANA responsibility without Congressional approval. Can NTIA provide this legal analysis – including any analyses that occurred before March 14, 2014?