Senate Commerce, Science and Transportation Committee Holds Hearing on Internet Governance and Stakeholders

LIST OF PANEL MEMBERS AND WITNESSES

THUNE:

This hearing of the commerce, science and transportation committee will get underway. Today, we convene the committee to evaluate the multi-stakeholder system of Internet governance. There's been no shortage of activity in this space in recent years, as I'm sure each of our panelists can attest.

The goal of everyone here is the same. We want one, global Internet that is not fragmented nor is hijacked by authoritarian regimes. The question is how do we get there. This is the commerce committee's first hearing on Internet governance in quite some time, but this is not the beginning of our oversight on this issue.

Following last year's announcement by the National Telecommunications and Information Administration of its intent to transfer the Internet Assigned Numbers Authority or IANA functions to the global multi-stakeholder community, Senator Ruby and I -- Rubio and I led 33 of our Senate colleagues on an oversight letter to NTIA about the proposed transition.

We stated our support for the current bottom up multi-stakeholder approach to Internet governance and stressed the importance of standing firm on the administration's promise that it would not accept a proposal that replaces NTIA's role with the government led or intergovernmental solution.

We encouraged the multi-stakeholder community to act deliberately and transparently as it puts together a transition proposal. That remains as true today as when we first said it. In July, Senator Ruby and I -- Rubio and I weighed in on proposals to reform ICANN via the enhancing ICANN accountability workstream to support specific accountability measures that we believe must be achieved before any transition of the IANA functions.

We continue to believe the stakeholder community should demand robust and significant accountability reforms such as curtailing governmental involvement in apolitical governance matters, requiring a higher vote threshold for the ICANN board in making major decisions, providing additional oversight tools to the multi-stakeholder community and adopting an independent dispute resolution process.

Administrator Strickling has encouraged the multi-stakeholder community to address how to remove board members and how to incorporate current accountability tools like the affirmation of commitments reviews. I completely agree.

This morning, we'll hear from a mostly government panel about how best to ensure the multi-stakeholder model. But the private sector and civil society are active on this issue as well, and as the IANA transition process moves forward, it may be appropriate for the committee to dive deeper and to hear from stakeholders who require an open and secure Internet to create jobs and to grow our economy.

If an IANA transition plan is presented to NTIA, I will scrutinize that plan to make sure it both meets the requirements laid out by NTIA and adopts meaningful accountability reforms that Senator Rubio and I have called for. Administrator Strickling has been very clear, that accountability reforms go hand in glove with a transition plan, and I pledge that I'll hold the administration accountable for the redlines it has established throughout this process.

In particular, I will be interested to see whether the stakeholder community can deliver a proposal that allows Internet users to continue to have faith the IANA functions are carried out effectively and seamlessly, and I'll focus on the adequacy of the accountability reforms in any proposal.

Some worry that in the absence of U.S. involvement in the IANA functions, ICANN may be subject to capture by authoritarian regimes and these are valid concerns. I also worry that in the absence of the contract with the U.S. government, ICANN could become an organization like FIFA, the international soccer organization that is flushed with cash, unresponsive to those it supposedly serves and unaccountable -- and I should say, unaccountable to no one.

The ICANN board can demonstrate its own commitment to the multi- stakeholder model by accepting the stakeholder communities proposed reforms even if that means lessening the board's powers in some areas. The multi-stakeholder community has one opportunity to get this right because the Internet is too important for democracy, for world culture and the interconnect global economy to allow poor governance to jeopardize its future.

The mantra for all of us should be measured twice, cut once. We have a distinguished panel here before us today to share their experiences and views, and I'm looking forward to hearing from each of you. And I guess, in the absence of our ranking member being here at the moment, we'll skip right to opening statements from our panel.

And so, I want to welcome them here. And we'll start on the left with Mr. Strickling. Lawrence Strickling is the Assistant Secretary for Communications Information, and the Administrator of the National Telecommunications Information Administration under the Department of Commerce. He will be followed by Mr. Fadi Chehade, is the Chief Executive Officer of the Internet Corporation for Assigned Names and Numbers, and then we'll hear from Ambassador David Gross, and he's a partner with Wiley Rein and the former U.S. coordinator for international communications and information policy at the U.S. Department of State.

So we look forward to hearing your comments this morning, and we'll start on my left, on your right with Mr. Strickling. Welcome.

STRICKLING:
Thank you, Chairman, and members of the committee. I'm very pleased to be here today to testify how the IANA transition will protect and preserve the security and stability of the global Internet. In 1998, the Department of Commerce launched the process of privatization that is the subject of today's hearing, stating then that the U.S. government is committed to a transition that will allow the private sector to take over NTIA's limited management role.

I'd like to underscore that we're not talking about management of the whole Internet. We're talking about a few technical

functions that are necessary to ensure that the plumbing of the Internet is working. ICANN develops policy through bottom up multi-stakeholder processes. These efforts are open to all stakeholders, whether they are businesses, civil society organizations, technical experts or governance. And it is this global multi-stakeholder community that makes Internet policy today, whether it be sending domain name policy or developing Internet technical standards.

I want to emphasize that NTIA does not exercise any control or oversight over policymaking in -- at ICANN. The U.S. government has been a vigorous supporter of the multi-stakeholder model. Both Republican and Democratic administrations have consistently emphasized that the multi-stakeholder process is the best mechanism for making decisions about how the Internet should be managed.

Congress agrees. Earlier this month, the Senate unanimously passed Senate Resolution 71, which states that the United States remains committed to the multi-stakeholder model of Internet governance in which the private sector works in collaboration with civil society, governments and technical experts in a consensus fashion, and we thank you for that show of support.

In further ends of this long-standing bipartisan policy the United States, on March 14th of last year, NTIA announced the final phase of the privatization of the domain name system. We ask ICANN to convene global stakeholders to develop a proposal to transition the current role played by NTIA in the coordination of the domain name system. And in making this announcement, we stated that the transition proposal must have broad community support and must satisfy four conditions.

It must support and enhance the multi-stakeholder model. It must maintain the security, stability and resiliency of the Internet domain name system. It must meet the needs and expectations of the global customers of the IANA services. And it must maintain the openness of the Internet, and we made crystal clear, as the Chairman mentioned, that we will not accept a proposal that replaces our role with the government led or intergovernmental solution.

The business community, civil society and other stakeholders responded to our announcement with strong statements of support, and they have responded enthusiastically to our call to develop a transition plan that will ensure the stability, security and openness of the Internet. And today, after several months of planning, I want to emphasize the following points.

Based on my first-hand observations of the community at work in Singapore earlier this month, I am confident that the global Internet community will work diligently to develop a consensus plan in each of the conditions we have laid out. But until such time, there will be no change in our current role.

I also want to make clear that we have not set any deadline for the transition. September 15 -- 2015 has been a target date, because that is when the base period of our contract with ICANN expires. However, this should not be seen as a deadline. We have said from the start that if the community needs more time, we have the ability to extend the IANA functions contract for up to four years. It is up to the community to determine the time line that works best for stakeholders as they develop a proposal that meets the conditions, but also works.

This transition benefits American interest. Our economic and political interest depend on a growing and innovative global Internet, especially in the developing world. Despite this symbolic role the U.S. government has played over the years, the fact is that no country controls the Internet today and no country will control the Internet after the transition. The Internet's continued growth and innovation depends on building trust among all users worldwide and strengthening the engagement of all stakeholders.

Since our announcement, we have seen a growing acceptance of the multi-stakeholder model around the world, especially in the governments of developing countries. Last April, Brazil hosted the successful NETmundial conference, which brought

together a wide range of stakeholders, all on an equal footing with each other. And at this meeting, not only did participants agree that Internet governance should be built on Democratic multi-stakeholder processes, the entire meeting was a demonstration of the open participative and consensus- driven governance.

Last November, at the international telecommunication Union's plenipotentiary conference in Busan, Korea, the United States worked successfully with countries in both the developed and developing world to avoid expansion of the ITU's mandate into Internet issues.

Building the support for the multi-stakeholder model among other nations is the best strategy to limit the influence of authoritarian regimes and prevent attempts to expand their restrictive policies beyond their own borders. It is also the best strategy for protecting against the possible fragmentation of the Internet that some countries have threatened.

In conclusion, all of these factors give me confidence that when the transition is completed, we will have a stronger and more secure Internet that will continue to grow and thrive throughout the world.

Thank you, and I look forward to answering your questions.

THUNE:
Thank you, Mr. Strickling. Mr. Chehade?

CHEHADE:
Mr. Chairman, ranking members, members of the committee, I am Fadi Chehade. I am the President and CEO of ICANN, and I'm very honored to be in front of you today. 35 years ago, I started my American journey. I was peeling onions in the back of a restaurant and going to a community college to learn English. And here I am in front of you. This is the American dream that actually I lived.

And the reason I bring it up today is because at the heart of what we're discussing is keeping that dream, and what is that dream? It's about values that keep our lives, our system open, inclusive, and really an opportunity for anyone who's really ready to work hard to participate in the system.

The Internet is no different than this system. It is the greatest American invention and it is an invention that supports these values, the values of openness, of inclusivity, of participatory openness to anyone who is willing to come and make a real difference. We've taken that Internet to the world. And today, we look at it, driving a $4.2 trillion global digital economy and growing. It's the fastest-growing part of the global economy.

I, with you, agree, we must maintain the values of that system. If that system, in any way, is jeopardized, if its stability is punctured, we all stand to lose, America and the world. And it is based on these values that over two -- almost two decades ago, this country created the multi-stakeholder institution called ICANN, and we did it because we believed that a private sector led institution that had the checks and balances of the governments of the great institutions of this country can actually govern the Internet. And for 20 years almost, that's what we've done.

ICANN has grown to become a global institution that is respected, that is trusted, and it has, in its core, the values of the American system that I have witnessed personally and that the Internet embodies. Therefore, I want to give you first, an unequivocal assurance that whatever we do here must and will retain the values with which we started this endeavor.

For example, the letter that the Chairman and Senator Rubio sent us and prepared on how to strengthen the accountability of

ICANN includes six very powerful and very good ideas on how we can take this forward. And then, frankly, many of these are already in motion at ICANN. And those that are not, the community is now discussing actively.

For example, you mentioned how we can limit the possibility of governments exercising undue influence at ICANN. Already, governments cannot be on our board. Governments can only give advice that we will strengthen this further, as you suggested in your letter.

Another concrete idea you gave us in your letter is to make sure our affirmation of commitments to the world are enshrined in our bylaws. We are very actively looking at doing that right now, and I believe this is a good idea and I hope our stakeholders will agree with me. These affirmation of commitments, by the way, are very clear that the jurisdiction of ICANN shall remain in the United States of America, and we stand by these.

I've been in the stand now for 24 hours, and I heard the same question asked again and again. Why? Why is this transition necessary? In a world where cybersecurity and issues of the Internet are growing and on our mind, why give up American oversight now at a time when the world and we need it most.

Some answer this question by saying, because if we're true to our beliefs that we believe in private sector led multi-stakeholder institutions, you know we can't be ourselves as the U.S. government, engaged with a unique whole when we believe in that model. Therefore, we should be an example to the world and let the multi-stakeholder model thrive as Senator Rubio's and Senator McCaskill's resolution in 2012 affirms, and we believe in these concepts.

Others say we should do it because if the U.S. doesn't step back, some governments who don't share our values will step in into intergovernmental bodies and try and force us to control what we do at ICANN and other aspects of Internet governance. Both of these parties may have a point, but I want to finish by telling you why I believe this is the time to do this transition.

Multiple administrations over the last two decades have supported the multi-stakeholder model. This transition is not a surprise. This is the planned progression we have all believed in and supported for almost two decades. It is now time to show the world that when we say we believe in private sector led multi-stakeholder institutions, we do what we say, and the world is watching, and I think we won't let them down.

Thank you, Mr. Chairman.

THUNE:
Thank you, Mr. Chehade. Ambassador Gross?

GROSS:
Thank you very much, Mr. Chairman, ranking member, members of the community, it's a great honor and privilege to be back here. Thank you very much for the invitation to testify. This hearing is a very timely hearing not only for the reasons that my colleagues have here on the panel have identified, but also for at least two other reasons.

One is Internet freedom is on the decline. Freedom House has said for the last four years, Internet freedom has been declining. This is an issue that concerns everyone and should concern everyone.

Second is we are at a time of a global inflection point with regard to Internet access. The GSMA, the Wireless Association, the Global Wireless Association has said that in 2013, there've been about 2.2 billion -- 2.2 billion subscribers for Internet mobile services, and for most of the world, they get their Internet through wireless technology. That's about a third of the

global population.

They estimate that in less than five years, by 2020, that there will be an additional 1.6 billion, 1.6 billion people worldwide who will become mobile Internet subscribers. A total of about 3.8 billion people, about half the world's population will have Internet access because of that technology.

So we are at a time when this is a critically important, because we are at the cusp not only of ensuring that the world's population has Internet access, but we'll get Internet access for the first time. The members of the Internet -- Internet governance coalition, of which I have the privilege of leading, has an extraordinary interest in the issues before us today. They are committed fulsomely to the five points that Assistant Secretary Strickling laid out in his announcement in March on behalf of the administration, including the announcement that any transition will ensure that no government or intergovernmental organization can find a way of controlling these functions.

Our members have been very actively involved in this process from the beginning. And importantly, I am here to tell you that we are not only actively involved in this, but we are watching this process like a hawk to ensure that any proposal that comes out of this process meets the five-part test set forth as the standard by the administration and by Assistant Secretary Strickling, and we will be amongst the first to say if we don't think that it meets the test.

Now we are optimistic. I am optimistic that it will come forward with a proposal that can be adopted -- that will meet that test, but time will tell. Importantly, the administration has made clear, and we wholeheartedly agree that there is no rush to a decision.

As Assistant Secretary Strickling has indicated, the September 30th date is a date when the current contract expires, but it can be automatically renewed. We believe that it is much more important to get this right than to rush and we wholeheartedly agree in making sure that the process goes fulsomely towards a happy and successful completion.

That successful conclusion is affirmance of the role of the private sector and the multi-stakeholder approach that many administrations have endorsed that have gone to the mat to defend globally, and importantly, has had the fulsome support of the Congress, especially led by the Senate.

We are greatly appreciative of that. We believe that, that important involvement is critical to a successful outcome of this process, and we support the process with the hope and expectation it will meet, not only the needs of our community, but importantly, the approximately 3.3 billion people around the world who will have or soon will have Internet access.

Thank you very much.

THUNE:
Thank you, Mr. -- thank you, Ambassador Gross and I want to yield now to my partner on this committee, our ranking member, the senator from Florida, Senator Nelson for opening statements.

NELSON:
Mr. Chairman, I support the multi-stakeholder model of ICANN. As an institution, it represents one in which the Internet's diverse stakeholders can come together and make sure that the Internet remains free, open, secure and a global network.

Mr. Chairman, I'll give you a present today. I will cease my opening comments. I will seek permission to enter into the record, so we can get into the questions.

THUNE:
OK. Well, I thank the Senator from Florida, but we just assure him that we always enjoy listening to your wise comments, so feel free to proceed if you want to.

Well, listen, let me start by asking Mr. Chehade, ICANN's own government -- governance guidance's state that the fundamental responsibility of its directors is to act in the best interest of ICANN in the global public interest taking account of the interest of the Internet community as a whole rather than any individual group or interest. That's a quote.

There must be times, however, when what's best for ICANN the organization or its board isn't necessarily what's best for the Internet community. So the question is what if the stakeholder community proposes to diminish the power of the Board in some way?

CHEHADE:
The stakeholder community already proposed measures to review the decisions of board members to make sure they can recall board members, if necessary, and the board in Singapore at our recent meeting a few weeks ago has indicated its openness to all these measures in order to make sure that the community keeps a very close eye on our board, its decisions and to ensure that its powers are always bound by the words you read, Mr. Chairman; that our main goal is to ensure the public interest and to have full public responsibility.

So yes, the board is considering these and we're looking forward to the stakeholders to come back with proposals, and I can assure you that we will be taking them very seriously and adopting them where possible.

THUNE:
Will the ICANN board send a proposal to NTIA that lessens the board's power or authority?

CHEHADE:
We will, if the community and the stakeholders present us with a proposal, we will give it NTIA, and we committed already that we will not change the proposal, that if we have views on that proposal, we should participate with the community. But once that proposal comes from our stakeholders, developed bottom up, we will pass it on to NTIA as is.

THUNE:
Thank you. Ambassador Gross, the United Nations ITU has a broad framework of regulations on terrorists for telecommunication services, but not for Internet services. My understanding is that Democrat and Republican administrations alike, including the current one have argued the ITU shouldn't impose similar regulations on the Internet.

In your opinion, will the FCC's reclassifying of the Internet as a telecommunication service for domestic regulations strengthen or weaken our ability to keep the ITU from regulating or tarriffing the Internet?

GROSS:
Thank you very much for that -- for that question. I'll start with a disclaimer, and then perhaps give you an answer. The

disclaimer is, of course, we are all waiting to see what the FCC does presumably tomorrow and the details will be important in answering your question fully.

It has been a long policy starting to include administration and being very rigorously pursued by the Bush administration, and I will say by the first part of the Obama administration, that is the first term or so to be very clear that the ITU should have no jurisdiction with regard to Internet and internet-related issues.

We have made the point, repeatedly that the Constitution of the ITU set forth in Article 1 that its scope is in telecommunications. We have argued consistently that telecommunications is not the same as the Internet, that the Internet is fundamentally different. And therefore, the ITU does not have jurisdiction on internet-related issues.

We will have to see what the FCC's does and says tomorrow. If they were to find that the Internet or Internet services are a telecommunication service, that will undoubtedly make the job of my successors much more complicated that it has been in the pass in ensuring that the ITU does not seek to have jurisdiction over the Internet.

It is certainly an issue because many governments around the world have sought to have the ITU have such jurisdiction. And to date, we have been very successful in ensuring that the ITU does not. I hope that, that would be the same going forward. Clearly, we continue to believe that the multi-stakeholder approach, which is fundamentally different than intergovernmental approach is the appropriate way for dealing with internet-related issues.

THUNE:
Mr. Strickling, it seems like reclassifying broadband administrations talking about doing is losing a valuable argument, as Ambassador Gross just said. So how do you prevent ITU involvement when you're pushing to reclassify the Internet under Title II of Communications Act. And is everybody aware of that inherent contradiction?

STRICKLING:
So I don't think it's quite as stark as your description suggested, Senator. First off, the jurisdiction or the activities of the ITU are set in their constitution convention and in the International Telecommunications Regulations. So just last November, we were in Korea, at which point there was an international discussion among governments in terms of whether to modify the Constitution or the convention to bring in some of these issues.

It is quite typical that in all of these international conferences, going back to at least 2006, there are countries that seek to bring Internet-related issues into the Constitution or convention or ITRs of the ITU. We have opposed that. Countries in Europe and Canada have opposed it, and interestingly, both Europe and Canada view Internet access as a telecommunication service and these arguments never come up because they view it as telecommunications that somehow that answers the question at the ITU.

What matters is what's the right place for these issues to be debated and discussed and resolved. And on that, we have made great progress in the last year with the developing world, the governments of the developing world in building their support for the multi- stakeholder models, the right place to deal with these questions. That was reflected in the outcomes in Korea where we, as a group of nations, rejected proposals of countries such as Russia to again, as they have made in past years, bring these issues into the ITU.

So I fundamentally don't think this is going to change going forward. The United States is opposed to intergovernmental resolution of these Internet issues. We will remain opposed to that, and what's key is having the support of governments

around the rest of the world to share that view with us.

Today, we are in good position. That could change in the future. And what's important here, particularly with this transition, is that we carry out this transition in a responsible way and a way that meets our conditions and demonstrate to countries that might still be somewhat skeptical about this that the process works, and it is the superior way of dealing with Internet issues.

THUNE:
Thank you. And I would -- I hope you're right, but I think we're sending entirely the wrong message with reclassification. I think it does, in the U.S. obviously, it will be a very influential role in this process, so -- but I certainly hope that you're correct that this is not going to be a factor.

I will turn to my colleague Senator Nelson and then after that, I have Senator Fischer, Senator Daines, Senator Gardner, Senator Sullivan, and I believe we got Senator from Michigan, and I think Senator from Missouri following. So Senator Nelson?

NELSON:
Mr. Chehade, you know what's on everybody's mind. We have the state actors that are trying to do us in, Russia, China, North Korea, Iran. I mean, there's a bunch of nonstate actors trying to do us in. Would you discuss this in light of the proposal? And how is this transition going not to have an adverse effect upon U.S. national security?

CHEHADE:
Thank you, Senator Nelson. There is no question that the countries that don't share our values, and they don't share the values of openness, the values of an Internet that serves everyone that all of us here share. There is no question. And boy would they like to be able to change the nature of the Internet as an open platform. They would like to do that.

So how would this transition either empower them or weaken them is the real question. And I'm here to tell you that after a couple of years of traveling the world and meeting with many global leaders that this transition, when it is finished, affirming our belief in the multi-stakeholder model, will actually turn many, many middle governments on our side.

Many governments are looking for a model that they can sell to their own people and say this is a good model, and we have equal participation in it. So I'm not going to be able to assure you that those on the edges of this debate are going to walk away and suddenly love our open platform. But I will assure you that I've met tens of governments who are looking for a stable solution that they can tell their people is a good solution, and I believe ICANN, as an open multi-stakeholder institution, that is inclusive that allows anyone to participate.

We don't have a membership model. Anyone's welcome, and where government had an advisory role that they're all equally at the table rather than having one government have a unique role is a model we can attract many middle governments to, and that's our best security against the edge governments trying to change this model.

NELSON:
Did your consultations include the national security organizations and the Department of Defense?

CHEHADE:

Yes. Working through NTIA, which has, of course, an interagency process, everything we have done working with NTIA has been discussed and deliberated across agencies including those that you bring up.

NELSON:
All right, discuss that internal administration consultation process.

CHEHADE:
I think it's best I ask Secretary Strickling to do that, because he and his team lead that process today.

STRICKLING:
Yes, Senator. Prior to our announcement last March, this issue had received tremendous amount of interagency review including all the security agencies, so we obtained their views and discussed any concerns they might have had prior to proceeding with the announcement we made last March.

CHEHADE:
And if I may add, Senator Nelson, we have -- as part of our coordination work, 13 root services, these are very important services that are in the plumbing of the Internet. Two -- 10 of these are in the United States. The other three are in Sweden, the Netherlands and Japan. Of the 10 in the United States, one is with the Department of Defense. So they are keenly engaged and aware, and in fact, they participate in the operational aspects of the system ICANN oversees.

NELSON:
Mr. Secretary, would you talk about how IANA services can be resistant to attacks?

STRICKLING:
So what we're talking about are a series of basically databases that are managed by ICANN in the case of the root zone file that's actually managed by Verisign pursuant through a cooperative arrangement we have with Verisign. I have -- all of the -- both ICANN and Verisign engage and employ the most modern and sophisticated of protections against attacks. And to date, we've not had an issue of the IANA functions being subjected to a cyber attack of any consequence. Again, Mr. Chehade may have more details on.

NELSON:
Well, let me ask you, I assume that one of your reasons would be that you want to decentralize distributed authority structure, so as to avoid single points of failure manipulation and capture. Describe that to us.

STRICKLING:
I'm not -- I'm not sure to what extent that bore into our decision to proceed with the complete privatization of ICANN. I think what you're describing is solid practice, and I think Mr. Chehade again may want to describe how that is put into practice at ICANN. And again, my understanding is Verisign employs the most modern and up-to-date principles of how to protect itself against cyber attacks.

NELSON:

OK, Mr. Chehade, stability security?

CHEHADE:

That's our mission, and that's all we care about. It is more important than anything else we do. And in fact, the record is clear. In ICANN's 16 plus years operating what we do, we have not had a single nanosecond of downtime, and that is the core mission that we will pursue.

Now you brought up, Senator Nelson, the concept of distributed management. I think you are spot on that this is actually both from a technical standpoint, as well as from an organizational standpoint, a very sound approach to stability, because if we have a central point of failure, either technically or operationally, I think we are much more prone to be brought down.

And so, from the beginning, the wise architecture of the system we coordinate was to ensure that multiple roots are established, multiple systems are in place, and therefore, of the 13 root services, it will have to have all 13 be down before our services are affected, and that is nearly impossible, given that all 13 are operated by different organizations under different but -- different rules but common principles that are guided and coordinated by ICANN.

THUNE:

Thank you, Senator Nelson. Senator Fischer?

FISCHER:

Thank you, Mr. Chairman. Mr. Chehade, the NTIA stated and Mr. Strickling highlighted this point that it would not accept a proposal that puts government or intergovernment organizations in the lead role NTIA has with ICANN. I want to bring your attention to proposed changes to ICANN's consideration related to the Governmental Advisory Committees advise. The GACS advised that ICANN provides a government perspective on policies, and I understand that there is a proposal that could increase the likelihood that GACS advise is taken unless 2/3 of voting members deny it.

If we really are concerned about government getting involved, and having government intrude into ICANN, why are some contemplating this move? Now why -- why would we give government such power?

CHEHADE:

Thank you, Senator, and you -- you are right. This will be incongruent with the stated goals. The board has looked at that matter and has pushed it back, so it's off the table.

FISCHER:

It's off the table.

CHEHADE:

It's off the table.

FISCHER:

Thank you. Mr. Strickling, how would you respond to allegation that the administration's process and the factors it weight, even in looking at that procedure, and that process, have they been fully disclosed? Where did it come from?

STRICKLING:

I'm sorry, which process?

FISCHER:

With the -- I'm sorry, yes, with the transition.

STRICKLING:

So this transition has been planned since 1998 at the time that ICANN was formed. It was the decision of the government that the U.S. government should get out of this business back in 1998. The original plan was to have it done in 2000. 9/11 intervened, and of course, the transition wasn't completed at that point in time.

Over the last few years though, we have seen ICANN continue to grow and mature as an organization to where we felt that they had gotten to a stage which their level of accountability and transparency, and quite frankly, their performance of the functions justified proceeding to complete this privatization that have been planned in 1998.

At the same time, we were seeing growing support for the multi- stakeholder model internationally, which again gives us further encouragement that this is a good time to complete that transition.

FISCHER:

I believe it was released to Congress or released on March 14, 2014?

STRICKLING:

That's correct.

FISCHER:

And Congress was not informed about that. So I would question the transparency and the process that's involved.

STRICKLING:

Senator, I was up here briefing many members of Congress prior to the announcement on the 14th. So we did endeavor to brief leadership up here on both sides in terms of what was being planned.

FISCHER:

Would you be more open to briefings in the future where all members could have that information?

STRICKLING:

Absolutely, Senator. As you know, based on the rider in our appropriations last December, Congress has imposed or asked us to report regularly to Congress. We've already submitted the first written report here at the end of January.

We'll be reporting on a regular basis, and as in my meetings with leadership, we have offered to come up here at any time to update staff or members of the progress of the transition plan, so we would be happy to do that directly with you.

FISCHER:

I would appreciate it, sir. Thank you. Thank you, Mr. Chairman.

NELSON:

Thank you, Senator. Senator Daines?

DAINES:

Thank you. Back in the 1990s, I spent six years and my 12 years working for Procter & gamble, six of those years working in mainland China, launching an American business, selling products into that market.

One of our great concerns we have there was protecting American IP. As we consider the transition by IANA from the U.S. Department of Commerce to ICANN, I want to express my concern and serious interest in protecting American intellectual property in this process. And by the way, Mr. Chehade, I was so struck by your testimony about the American dream, and it resonated with me personally.

But as I look at what's going on with IP, in fact, given the nature here, the fact we can have our iPhones up here in the bias (ph), I did a quick Google search on Pirate Bay, and what's it returned? Returns to me the fact that the second search here on Google is a -- the proxy Bay, because Pirate Bay's been trying to take down. You can hit a list of Pirate Bay proxy sites in years. I tap that and I can find 35 proxies and near redirects right now on Pirate Bay.

And so, concern is how do we protect American intellectual property? And a lot of this -- I mean this is software, it's music, it's games, it's the core of IP and I spent 13 years at a software company, cloud computing company we took public as well. So I wouldn't expect some more products as well as cloud computing.

And we know when you have a cloud computing company or technology company, if you ever close-up the doors and move on, all that's left are cubicles, some computers, it's intellectual property is what you create there, it's the people. How do we protect IP in this transition when I'm looking right here in real time examples.

In fact, you look at the -- you know, it's .sx, I can look up where is .sx? Well, it's St. Martin in the Netherlands. You look at .lu, it's Luxembourg. These are the proxy mobile redirects right now, near redirects that we see on Pirate Bay. So help me out on IP. Yes, please. Mr. Chehade, yes.

CHEHADE:

Thank you, Senator. As the founder of many software companies, one of which acquired by IBM, I am very, very aware of the importance of protecting our IP. I worked very hard to protect my own IP, and I know that it is the greatest asset that can be challenged through these open networks.

Let me first be clear that ICANN has nothing to do with content. We do not deal with content. Our work is very limited to the

names and numbers and the protocol parameters which are way down in the plumbing of the Internet. And therefore, from a remit (ph) standpoint, ICANN does not have a particular role in managing or enforcing at a high level IP and content around the world.

Having said that, I think the world needs good policies around that to help us and to protect IP, not just American IP, but all IP of people who work hard around the world. And I hope that these policies will arrive through a multi-stakeholder process, which brings me back to ICANN, and I will answer you directly on two levels. One that everything we can do on our side to protect IP in the domain name system, we are doing.

For example, in partnership with IBM, ICANN launch the first global trademark clearinghouse. Nobody had done that before, so that when somebody tries to register you know IBM.sx somewhere, we can actually flag that and make sure we manage that ahead of time before IBM has to go fight for retrieving its name from the domain somewhere in St. Martin. So we're doing our part as best we can. The second thing we're doing is we're cooperating with other efforts to protect IP, and that's important. We cannot just say we have nothing to do with content. We're going to step back where we can, we cooperate. So this law enforcement agencies within the law serve us with requests for help to protect IP, we are always doing that in a very active way.

DAINES:

I mean, as a follow up on that, given ICANN's agreements with registrars that include requirements to deter illegal activity on these domain spawns by the registrar, do you think it's an appropriate response for registrars to do nothing when informed that illegal activity is occurring on a domain name they sponsor?

CHEHADE:

I, I -- frankly, I assure you that if a registrar is served with legal notice in the country that they are breaching any laws, they are reacting. I'm putting them on noticing. I'm sure you know, Senator, that our new agreements, the new registrar agreement and the new register agreement are far stronger, the ones we just enacted recently than what we have before, making sure that these registrar and registry understand that they are part of the system that needs to respect and protect these rights.

It is a complicated issue, and I just appointed a new very, very experienced American attorney, Allen Grogan (ph) as Head of Compliance reporting to me, and he's also very focused on consumer advocacy and issues of IP and his background is he's an IP attorney to ensure that ICANN again does everything in its power to support these contracts.

DAINES:

Thank you very much,

CHEHADE:

And to enforce them.

DAINES:

Thank you, helpful. Mr. Gross, I was struck by a comment you made that I wrote down is that Internet freedom is in decline. How do you measure that?

GROSS:

Thank you very much, Senator. It's actually not my statistics. It's really from Freedom house. Freedom House, which of course, enjoys bipartisan support and has been around for many, many years does an annual report on Internet freedom, and this is the basis for -- the statistic I gave you is a basis from their most recent report. They also do a report, of course, on freedom in the world generally which is just released as well. I always found them to be a very useful guide for how those things are measured.

DAINES:

What do you think is the greatest threat to Internet freedom?

GROSS:

I think it's the rise of government control of various aspects of the Internet, particularly content within the borders of those countries. We see the rise of protectionism, we see the rise of control over speech, and I think at the core, those are probably the primary drivers of that change.

DAINES:

Thank you. I'm out of time, Mr. Chairman.

NELSON:

Thank you, Senator Daines. Senator Sullivan?

SULLIVAN:

Thank you, Mr. Chairman, and I want to thank the panelist. In full disclosure, Mr. Chairman, I will let you know that I've worked very closely with Ambassador Gross, previous jobs two of us have held together, and I could tell you, no finer public servant for the United States in Ambassador David Gross. So it's really wonderful to see him and some of our previous team together, so.

So I'd like to just start, and I'd like to kind of put forward these questions really for everybody. Mr. Chairman, you mentioned you know kind of elephant in the room here, right, which is what you mentioned what's on everybody's mind. We have a system that I think has been kind of the wonder of the world in many ways. And we -- it's very clear that we have countries that don't share our interest, particularly with regard to open Internet freedom, Russia, China, and I'll be a little bit more frank and a little bit more blunt.

I think we have an administration that, with all due respect, to what has been said has not been very adapted global negotiations on some of the key strategic interest to the country of which an open Internet to me is one. And we have the Chinese and the Russians and others who seem very, very determined on this issue.

As you know, they just put forward another proposal last month, that looks to be very focused on gaining more control over the Internet. And again, I worry that we're just going to continue to back pedal the way we have in another areas like the Iran negotiations going on right now, particularly with a determined group of countries.

So you know I guess I just want to start with some basic questions. You know, Mr. Strickling, you -- I think you mentioned one government having a unique role wasn't the plan. So I'm assuming you're referring to the United States.

STRICKLING:
Yes, sir.

SULLIVAN:
So is there a problem with one government having a unique role particularly when that government has done a fantastic job? It goes to the broader issue. If there's not a problem, what are we trying to fix here? And I'm not sure I'm convinced by your, "hey, we're going to transition in 1998, but 9/11 happened and holy cow, we waited for 15 years".

I think we waited for a long time because we didn't see that there was a problem. So I'd be very interested in what is the problem. And then, finally, there's been a lot of articles in the paper -- very concerned about this, I certainly am. But one of those has actually raised a very important issue I also like you to address is your legal authority to to do this. Again, another issue with this administration I have a problem with is taking action where you have no legal authority under the Constitution.

The Congress has the power to transfer federal government property. ICANN is federal government property, it's valuable property, and I don't think you've been authorized by Congress to take this action yet. So I know there's been a lot of questions out to you, but I feel free to all of you please jump in on these questions. Thank you.

STRICKLING:
So let me start with your second question, which is that there is no government property that is the subject of this contract. All the contract does is designate ICANN to perform the IANA functions. They were given no assets to the United States with which to perform these functions. The domain name file is...

SULLIVAN:
Is there a Commerce Department legal opinion on this issue?

STRICKLING:
Yes, there is, sir.

SULLIVAN:
Can we see that?

STRICKLING:
I'll take that back. Not in position today to say yes or no, but I will take your...

SULLIVAN:
Because I think a lot of people will dispute what you're saying right now on that issue.

STRICKLING:

Well, I think the GAO agrees with us as well based on a study that they did back in 2000 when they looked at this question. But the fact of the matter is all the contract does for which we received no compensation. ICANN pays nothing to the United States for this. It simply designated them to perform a role that until 1998 was being performed in the United States government. So the question was how do you take this function and now have it performed by somebody outside of the government.

SULLIVAN:

How about the issue of what's the problem? This has gone -- this has gone very, very well under a unique government role, our government, our country, a lot of people don't have a problem with this in this country. What's the problem we're trying to fix?

STRICKLING:

Well, there has been a problem, sir. At the end of 2012, when the world's governments got together in Dubai for the ITU wicket, the world conference on international telecommunications, you had around 80 countries who voted to say the ITU needs to be more involved in Internet governance, and these were largely countries in the developing world who were siding with the more authoritarian regimes.

Part of the impetus for this was at that time, the continued irritation that many governments feel and which has been exploited by the authoritarian countries that the United States, with a special role with ICANN, was in a position to control the Internet in these developing countries and to turn it off in these countries and to otherwise interfere with the ability of countries to manage their own affairs with respect to the Internet.

After this announcement was made, the next two large international meetings at which governments came together, you saw a major change in position among the developing countries. We didn't see any change in the position of the authoritarian countries and you're not (ph). They're not going to change their views on this, but the key to succeeding in this on the global stage is to bring the rest of the world along with us and that's what we saw at the NETmundial conference in Brazil last April, where the only countries who spoke out in opposition to the multi-stakeholder model of Internet governance were Russia and Cuba.

We've been flash fast forward to the ITU plenipotentiary conference in Busan last November and again, you had Russia with the same proposals that's been making for 10 years that these functions ought to be transferred to the ITU and managed by governments and that was beaten back in a coalition of both developed and developing countries.

So we have seen immediate results or significant results by the basis of art (ph) having been able to take this issue off the table for these countries to get them to look at what's really best for them without this overhang of a U.S. role that was unique among governments and which was a source of irritation to governments and which was being exploited to our detriment by foreign governments.

The fact of the matter is that the role we play with respect to the IANA functions is a clerical role. It's truly stewardship. As I said before, we don't provide any oversight of the policy judgments that ICANN and the multi-stakeholder community make. We participate as a government in the government advisory committee, and we will continue to do that in the future and we'll be vigorous advocates for a free and open Internet.

But the specific role we play with respect to the IANA functions is totally administrative and clerical, yet it has been exploited by other governments, authoritarian governments, to our detriment. We've taken that off the table by announcing the transition, and as we completed, we will continue to see the benefits of that through the continued adoption and support for this model by the developing world.

DAINES:
Thank you, Mr. Chairman. I would -- just the questions I propose, I know we didn't get to them, I would ask if they be submitted for the record, so the other witnesses have the opportunity to answer those as well.

THUNE:
Without objection. Thank you, Senator Sullivan. Senator Gardner?

GARDNER:
Thank you, Mr. Chairman and thank you to the witnesses for being here and to -- Mr. Strickling, it's exciting to be here. We're not talking about ego let (ph) or let anything else like that, so it's good -- good to be with you here.

STRICKLING:
That's a great statistics for you.

GARDNER:
You're off the hook. You're off the hook, so at least today. So thanks for the opportunity to do this with all of you. And my first question is to you just to ask about the process and the proposals that we have -- that are before us right now, a proposal moving forward. Who else will examine -- examine this proposal?

STRICKLING:
So the proposal, when it's completed and submitted here, we will put it out and have a large public discussion about it. The Chairman has indicated to me he would like to have a conversation about it back here at some point in the future, so we certainly -- we anticipate and we'll welcome the opportunity to come up in either in briefings or hearings before any of the committees with jurisdiction to talk about it up here as well.

We want to make sure that the proposal meets our conditions, and so we will have a full public explication of what's in the proposal, a demonstration that it supports, and we will invite anyone to respond and react to it.

GARDNER:
And so, what was the process with receiving feedback from the multi-stakeholder community look like, how do you anticipate that part of the process?

STRICKLING:
Well, the goal is that the multi-stakeholder community will have already provided that input before the proposal gets to us. We have said we want a proposal that has broad community support. The process that the community is engaging in, in addition

to having these working groups pulls in public comment at a number of points in the process, and we would expect that, again, anybody who has ideas in this regard, we encourage them to participate.

So -- and as you heard Fadi Chehade say in his earlier remarks, even some of the matters that have been raised in correspondence from Congress to us or to ICANN has been put in the process to make sure that the community is taking up those issues. So I think all of us have a responsibility between now and the completion of the process to make sure the issues are getting into the groups, to make sure that they're able to have a full discussion of them, and we will expect then that the proposal that comes to us will have the full support of the community.

GARDNER:
Ambassador, I believe it was your testimony where we talked about great challenges associated with ensuring a safe, secure, open interoperable and sustainable Internet. From the information that you've gathered, in the simple terms as you can make it for this committee, what could happen if the transition process moves forward too quickly without proper oversight or precaution?

GROSS:
Thank you very much, Senator. The concern is multiple. One, of course is -- and I don't mean to preface by saying I have no expectation. This will in fact be the problem, because we are committed -- the coalition with whom I work is committed to ensuring that if it creates any of the problems I will mention in a moment that we would be strongly opposed to it, and I have no -- I have full expectation that if such a proposal be rejected by NTIA and by the administration.

Having said that, there are key aspects to what it is that is currently being performed and go to the stability and reliability of the Internet. If there are challenges to how that process works, it could undercut the ability to have an Internet that works smoothly, seamlessly, and as Mr. Chehade said, flawlessly to date. So this is a huge and important set of issues.

Similarly, as is often been discussion prior to the hearing, we are keenly concerned about the ability of governments to directly or indirectly take control. And so, we are assured by the statement by NTIA that they will accept no such proposal, and we'll be watching that with great care, because that too could have an impact on the various things that you listed.

GARDNER:
Thank you. And Mr. Chehade, I'll give you a chance to answer that question as well, but I want to add another question to it and perhaps Mr. Strickling could follow up on this. In the Thune and Rubio letter in 2014 it talked about increased oversight tools, annual audits, you've talked a little bit about that. I think you said you look at the additional or seems support of additional oversight.

But you're just talking about additional oversight, audits that are mentioned in their letter, is there a concern that, that could be a problem? Would it be helpful?

CHEHADE:
Extremely helpful. We have no concern with the six concrete suggestions that came in Senator Thune and Senator Rubio's proposed letter. We already have fed this into the system, so this is very welcome, and we hope the senators will continue to help us in order to make sure we put every possible belt and suspender on this institution as we move forward, not just to protect it today and after the transition, but for the next decades.

GARDNER:
Are there additional audits that -- or are additional oversight that might be helpful as well? Addition to us?

CHEHADE:
Yes, yes, absolutely. And in fact, our community itself is looking at tens of possible different mechanisms in addition to the six concrete ones that came through your letter. So we are -- we have experts involved, we have stakeholders of all walks of life, governments as well as businesses involved.

So when Ambassador Gross says we're watching, he is right, but many, many members of this coalition, companies like AT&T and Cisco and others are all part of the process as well. They're participating today, and they will make sure that we never come back to you with anything that does not take care of these five fundamental principles. These principles are rooted in all the efforts we're undertaking today.

So when you ask Secretary Strickling whether you will check them and then Ambassador Gross says we will check them, but the reality is the entire community and stakeholders is checking them, because we know that if we don't, it's dead on arrival. We don't have a proposal. And secondly, because we believe in them. These are our values.

Many of the people at ICANN, other people who created the Internet, we don't want an Internet that is controlled by governments anyway. And in your earlier question, Senator Gardner, I can assure you, nothing will happen in the dark here. Everything we're doing today is transparent, is open, and when that proposal is ready, we will come back to you, even if Senator Thune doesn't invite us, we will come back to you, and we will show you these proposals.

We will discuss them with you. We need to all have consensus. This is good for America, first, and this is good for the Internet, and this is good for the world. And I believe all these are the same. What's good for America should be good for the world.

GARDNER:
I'm out of time, but Assistant Secretary, would you want to add to that or?

STRICKLING:
I would just -- in addition to the accountability tools you've talked about, when you talk to the community, what they're really worried about is what happens when the board doesn't carry out the views of the community. What we see in the work to date is discussions of how to create an escalating series of appeal mechanisms to get the board to do what the community wants.

The one piece that is missing in the current structure is the ability to remove board members if they still fail to act as the community wants. I think there is a lot of progress made in Singapore at the beginning of February where this issue really was brought out into the open and discussed quite directly with members of the board.

Because today, under the bylaws, the community can't remove a board member. They can only be removed by vote of other board members. But there was a direct willingness expressed by members of the board to see a provision added to their bylaws, under which as the final option, when all else fails, the actual removal of board members in order to make sure that ICANN continues to act in the interest of the global Internet community.

I thought that was a very positive advance to see that being discussed and being accepted by board members and we'll see how that works into the overall community proposal that we get.

GARDNER:
Thank you. Thank you, Mr. Chairman.

THUNE:
Senator Gardner, Senator Peters?

PETERS:
Thank you, Mr. Chairman, and thanks to the witnesses for being here today in this interesting conversation, and I appreciate you taking the time to come to talk with us.

Mr. Strickling, NTIA's decision to start the process to transition to the IANA functions, certainly the contract to a multi-stakeholder entity is certainly a very clear affirmation of the U.S. commitment to a multi-stakeholder model of Internet governance and the transition of IANA functions has been certainly a long time coming, but I believe now's the time to get it done, but we also have to make sure obviously that we're getting it done correctly and right.

STRICKLING:
We all agree.

PETERS:
Right. So if you could further expand on what sort of changes you have seen in the past year since your announcement with regard to the international debate on the Internet governance. If you expand, you've mentioned some of this, but expand on the responses of other governments. And importantly, how have perceptions generally changed over this last year?

STRICKLING:
So I think our announcement really reverberated through the governments of other countries, particularly those in the developing world. Again, this was the fact that the U.S. had this unique relationship with ICANN has been a source of irritation, as I described earlier in response to other questions.

But that we've seen as a result, and I briefly summarized some of the actions of last year, in particular the NETMundial conference in Brazil, where you had -- that conference was hosted by a nation, Brazil, that until that time, had expressed a certain amount of skepticism about ICANN and the multi-stakeholder model as practiced in ICANN, even though in Brazil itself, domestically, they were one of the first countries to adopt the multi-stakeholder model to deal with Internet issues domestically.

And really, it wasn't that they were hostile in multi- stakeholder, but I think they couldn't get past the fact that the United States had this particular relationship with ICANN, which they felt was unfair to other governments and could be exploited in some fashion to their detriment. In fact, they couldn't be, but that didn't mean they didn't have the perception of that. So they

saw an immediate change in perception in Brazil and in the countries that attended that conference.

As I mentioned before, at the end of that conference, the only two nations that stood up and said we don't like the multi-stakeholder model were Russia and Cuba. Other governments there, particularly those in the developing world all joined in to the final documents of that conference, which expressed[very direct support for that.

I think the other key milestone was the plenipotentiary in Korea, and again, I don't want to repeat all what I said earlier, but a coalition of United States working with both countries in the developed world and developing world were able to give back these proposals largely driven by Russia in that conference to bring the ITU more into direct Internet governance matters.

So I think our announcement as well as other diplomatic efforts in the last year have resulted in very direct benefits to us in terms of the international community's response and reaction to supporting this model.

PETERS:
That sounds very positive, and we're certainly moving well down the road, so I guess that leads to the obvious question. What happened if this transition doesn't occur? What are the risk involved if this does not occur?

STRICKLING:
While I really hesitate to speculate on that, because it really matter why it didn't happen. I think it would be tragic though if the community does deliver a proposal that meets all the conditions, vectors, consensus, that it meets the conditions and we don't proceed with the transition.

I think that would have a very negative impact on our interest internationally. I think all of the good work we've done in the last two years with the developing world, we could lose that overnight, if something were to intervene to prevent a good proposal from being implemented.

PETERS:
Right. Ambassador Gross, the NTIA's announcement to transition to end (ph) a contract to a multi-stakeholder entity has certainly received very broad support from a wide variety of stakeholders. And if you could just comment what United States corporations and entities that participate in this model, and can you describe kind of their feelings with this transition?

And importantly, what would happen to these businesses if the multi-stakeholder model somehow undermined in this transition? What would be the response to those businesses or from these businesses?

GROSS:
Thank you very much. Obviously, I can't speak on behalf of all corporations, but I will speak on behalf of our coalition, which, Senator, as you pointed out, is an extraordinary group of companies, a cross-section of those major U.S. multinational companies that are involved in Internet-related issues in one way or another.

They are very comfortable with the approach that's being taken, because of the assurances, the strong assurances that had been made about the five principles that we've been talking about this morning. As Mr. Chehade has pointed out, many of our members are actively involved in the formulation of the process that will come forward at an appropriate time, and that's a very positive one.

But all the companies are very interested, acutely interested, and are supportive as long as it meets that five-part cast. As I've indicated before, I have no reason to think it will be anything other than a successful outcome at this stage, but it is far from assured.

Nevertheless, if it were not meant to be, we will be amongst the first, and I realize that Mr. Chehade could be first, but it doesn't matter, there'll be many who will be speaking out at what the problems are. And in theory, therefore, how those problems could be solved, because we do think that this will be a productive approach, assuming it meets that five-part cast.

PETERS:
Right. Thank you. Out of time, Mr. Chairman.

NELSON:
Thank you, Senator. Senator Cantwell?

CANTWELL:
Thank you, Mr. Chairman, and obviously, we're here talking about best practices and how the U.S. can also influence Internet governance. Tomorrow, we're likely to hear from the FCC on its net neutrality rulings, and I hope that our strong net neutrality rules can be the basis for an open Internet practice. So I was just trying to get Mr.-- I guess, Mr. Strickling, your comments on you think net neutrality is consistent with good government principles.

STRICKLING:
Absolutely, Senator. And in terms of how it relates to what we're doing here, both with the IANA transition and with respect to net neutrality principles, both have us a goal of free and open Internet. And so I think in that sense, they're both very much aligned.

CANTWELL:
And so, what else can we do to promote this idea on a global basis? Obviously, the Europeans are regulated in a different way than we are already, so tomorrow is about us taking a step probably a little closer to their approach. But what else do we need to do to promote this?

STRICKLING:
Again, as I've said earlier, this transition is really important in terms of being able to demonstrate the values that we hold in terms of a free and open Internet, the multi-stakeholder model of Internet governance, and proving how it can work, and we are demonstrating that in a most concrete way to other governments around the world.

And I get -- I think the best thing we can do internationally is to continue to keep our eye on that target to continue to encourage the community to develop a strong proposal for us, and then if we get a good proposal that meets all the conditions to proceed with the completion of the transition. That will be as concrete a demonstration to the rest of the world as anything else we can do in this area in the next 12 months.

CANTWELL:

And what about the threat that we've heard some discussions today about an essay going back towards a clipper chip proposal.

STRICKLING:

I can't comment on that. I'm not sure exactly what the proposals you're talking about.

CANTWELL:

OK. But obviously, a government back door to encryption products could become a challenge to an open Internet. Maybe what we'll do is submit a question for the record. Thank you, Mr. Chairman.

NELSON:

Senator Ayotte (ph).

AYOTTE:

Hi, I appreciate all of you being here. One thing I'm trying to understand, Mr. Strickling, you said that you were encouraged by the meeting and the discussion of the stakeholders about removal of a board member, and the reason as I see this as a critical issue is because I know that the actual ICANN bylaws prohibit a government representative from holding a voting position on ICANN, but let's have some straight talk here.

The oligarchs in Russia, not exactly, they may be technically with a private citizens, but with much more government beholdeness (ph) than our average private representative would be. And even in countries like Argentina, China, Iran we can go on and on. There's a lot of countries where it's not quite the same thing as us putting a private representative on.

And so, I see this removal provision as critical. So you said there was a good discussion, there was a lot of stakeholders saying this is a you know this is a good thing. But how do we come to a decision so that, that is part of the terms. And if it's not part of the terms, is that a dealbreaker?

STRICKLING:

So on your last point, I would say not necessarily. We need to see the complete proposal and be able to evaluate it in the context of our conditions. But let me try to give...

AYOTTE:

So just so we're clear in this committee, that is not a dealbreaker from your perspective.

STRICKLING:

I'm saying I would have to evaluate that in the total context...

AYOTTE:

I take that as an answer it's not a dealbreaker, so.

STRICKLING:

Right. Not necessarily, but we would like to look at the total context of the proposal. For us, what's key is that the proposal meet the conditions we described. On the issue of removal of the board, the challenge that the community is facing is that when you get to this point where the board is not being responsive or the institution is not being responsive to the needs and desires and the goals of the community, there are two choices, at least two choices.

One is let's take the business somewhere else and create a new organization to perform all of these same roles or do we change the people in the organization and maintain the organization as it is. Because we're so concerned about maintaining security and stability of the Internet along the lines of some of the questions that the ranking member asked earlier, I'm a little nervous about a proposal that would come to us that say, well, if we don't look at what ICANN is doing, we'll just pick up the business and send it somewhere else, because now, potentially, you're creating a whole new set of accountability issues that have to be overcome.

AYOTTE:

But see, you understand my issue in terms of the concern about this removal position is not insignificant, because you described it, Mr. Chehade, in terms of -- as I understand it, we've got everyone equally at the table, so the U.S. has this unique role that we're going to be giving up here. And frankly, I -- what you've said about the developing countries, to my knowledge, we don't block access the developing countries have. We've not engaged in behavior that other countries have like Russia and some of the other bad players that I've mentioned have engaged in.

And so, we have a sort of a track record there. And as I look at where we are with everyone equally at the table, it depends on who's at the table in terms of the outcome of where you get on important issues that could impact the freedom of the Internet. And so, without this mechanism to remove people from the table that truly aren't representative -- that are really representing a government type position of countries that really -- like China, Russia, who block their citizen's access to the Internet and don't have a free open Internet, and there's a lot of countries in that category, unfortunately. That worries me as I think about the concerns we have going forward about this transition.

STRICKLING:

Well, Senator might help if we spent just a minute to talk about the structure of the ICANN board. It has 16 members, eight of them come from specific segments of the community. In other words, the organization that supports generic top level domains, which are large companies, they have two seats on the board.

The registries, the number of registries have two seats on the board. Mr. Chehade gets a seat on the board. So half of the board is designated based on this constituency and supporting organizations of ICANN. The other eight are brought -- are put on the board through an out large -- I'm sorry, through a nominating committee process, and no more than three a year can be added to that process. And again, the nominating committee is made up of representatives of the supporting organizations.

So the -- there is a prohibition against anybody from a government sitting on the board, but more importantly, when you look at who's actually putting people on the board, the likelihood that any of those groups are going to be putting one, two or certainly a majority of people on the board who represent the interest of these countries we all are concerned about is virtually zero.

AYOTTE:

Well, then, why was it such an important topic of discussion? I guess, I've -- if it's that insignificant, I personally, as I look at this, we have the members that are on the board now, but who makes these decisions especially in a decision- making process where everyone equally has a seat at the table are very significant as I look at this.

So my time is up, but it seems to me that this issue should be a dealbreaker, and I think it's something that you all should be saying is something that needs to be in the provisions of what the stakeholders agree with.

NELSON:

Thank you, Senator. Senator MCCASKILL.

MCCASKILL:

Thank you. Senator Rubio and I, as you probably are aware, did a resolution that had no opposition that spoke to the challenges that you all face, and I will tell you that the moment of truth came for me. I was in a position, and I had heard from some stakeholders here in this country about this concerns about this transition and I was in an international meeting, and there were representatives of the European Union there that are in charge of this issue for the European Union, and a number of other countries.

We're not talking about Russia and China. Our friends, and the negativity and enmity towards the United States of America was so thick you could cut it with a knife, and I was sitting there, and I thought, what in the world, this is terrible. They were really antagonistic and negative. And I was the only one there in the room that was representing the American government, but there were a lot of businesses in the room, small and large that are American businesses and none of them said a word, and I was shocked.

I said, well, surely, the American businesses are going to rise up and defend our country. This is awful. And then I gathered them after it was over and these small and large businesses alike said you need to understand, this is a business issue for us. This is hurting our international business, because there is a sense in the world that this is not a true multi-stakeholder process.

And so I get the other side of this equation and and how important it is for American businesses for us to get this right. And I just wanted to get that on the record, so -- because I think there's a natural inclination in all of us, we don't want to give up our power. Why should we ever give up our power?

Well, in an instance, it's going to help American businesses. It might be wise as long as we do it carefully, and I certainly understand the point that survey (ph) was out making and accountability is incredibly important and I think you need to go slowly and make sure we get it right. I think the process for nominating is appropriate enough. I don't think anybody could ever control this board that was from a country that didn't relish the openness of the Internet like we do.

Let me ask you this about the deadline for completing transition. I know we're running up on the first deadline and there is a two-year option to continue the contract. I'm worried that a two-year option would send the wrong signal to the international community. So could some of you speak to the likelihood of us doing an extension? Because I don't want to rush this. I want to make sure we get it right. Is -- what is the possibility of an extension of a matter of months as opposed to a matter of years?

STRICKLING:
So the way the contract is structured, the United States government can unilaterally extend the contract for two years based on an option that's in the contract. But of course, between the contracting parties, ICANN and the United States, we can mutually agree to an extension of the shorter period. And we'll certainly take a look at that if and when we need to look at an extension.

MCCASKILL:
And you don't want to speak to whether or not an extension's going to be necessary because you're afraid, if you do, an extension's going to be necessary?

STRICKLING:
I'll take you, Senator.

MCCASKILL:
Well, I will -- I think this is hard and -- but we've done it in other places where we have a global interest, certainly, in our airways, which this committee is aware of. We've had international organizations with various stakeholders that have allowed us to operate in a truly borderless world that air traffic represents, and so does the Internet.

So I wish you well, and we'll anxiously await the details of how this is actually going to work particularly in the area of accountability. Thank you, Mr. Chairman.

THUNE:
Thanks, Senator McCaskill. My neighbor from across the border, Senator Klobuchar.

Klobuchar: Thank you very much, Chairman Thune, and thank you for holding this important hearing. As some of you recall, I actually chaired this hearing one point a few years back and know how important this issue is, and I understand there's been a recent meeting in Singapore to discuss the transition of the handling of the contract for the Internet sides numbers (ph) authority up from the NTIA.

And I want also thank you for the update that you've given us today. I was going to start with you Mr. Chehade, I knew you were in our office yesterday. And in 2011, I sent a letter with Senator Ayotte to ICANN expressing some concerns about the expansion of the top level domain names in the system and asking that ICANN work with all the stakeholders to mitigate some of the challenges and risk to consumer businesses and law enforcement that could come in expanding those domain names.

And while this is a different issue than today's topic of general governance, it does touch on the need for accountability, which some of the Senators have discussed in coordination. Can you update me on how ICANN is accounted for some of the concerns of Senator Ayotte and I raised in 2011 and how it is working with law enforcement and protecting consumers and businesses from fraud.

CHEHADE:

Thank you, Senator, and thanks for your continued attention to the work of ICANN. I can assure you that we've come a long way since 2011, the new GTLD program is now up and running and serving the world. We have new domain name system activities in multiple scripts in Arabic and Chinese and Cyrillic.

People around the world are benefiting from a diverse system, from a couple dozen top-level domains, we now have hundreds in the root, and it's working. Everything is working well.

Yes, are there continued matters we need to attend to? Absolutely. But let me give you a couple of examples of things we've done. We work very closely with law enforcement to strengthen our agreements with all the registrars and all the registries. And since your letter, we have now signed new agreements with most of these players, and these agreements incorporate many of the law enforcement tasks to ensure that all these players participate in a lawful way in this system and give trust to the consumer that the system works well. So that's been done.

We've also increased the size of our compliance department remarkably. It is now one of our largest departments, led by an attorney who understands IP, understands the law and is also focused on consumer advocacy. This is new. We did not have that before.

And a third example of our attention is the new trademark clearinghouse, which was built in partnership with IBM and others to ensure that trademarks are protected in the domain name system.

KLOBUCHAR:
OK. Well, very good. Thank you, and I'm also glad you found an attorney that understands the law. There's not that many of them. I understand that ICANN has made significant efforts to improve accountability, but in the past have faced some serious problems with this. I know there is an accountability working group working in ways to improve accountability, both before the transition occurs and in the longer term.

Assistant Secretary Strickling, what are the essential aspects of accountability that NTIA would need to see in place before the transition occurs? And then I'll turn to Ambassador Gross and ask you what accountability do you and the companies you represent see as necessary prior to the transition?

STRICKLING:
So first off, with respect to overall accountability at ICANN, I would say based on my personal experience of having served on the first two accountability and transparency review teams that were convened in 2010 and 2013 under our affirmation of commitments with ICANN, that ICANN's made great progress on accountability.

But it's always in a situation where the standard is very high and where it can always improve. But I would tell you that based on any similar organizations I've ever dealt with, I would say this organization is as accountable and transparent as anything else I've seen out there. But again, we shouldn't just pause there and say that's good enough. We should improve, and that's the spirit in which we've worked on these ATRTs the last two times, and it's the spirit on which the community has come together to look at additional accountability measures as part of this transitions.

The specific issue that's before the working groups is what does it mean for the U.S. to step away from this historic or traditional stewardship role we've had? There has been a perception that by virtue of this contract, we kind of looked at the parent in the room in case ICANN starts to do things that people are worried about. And as I said earlier in my testimony, that's also been a source of tremendous irritation to a lot of other countries around the world. They don't understand why the

U.S. should have that particular role.

So the accountability team that's working on this, which is made up of people from around the world is looking at what does it mean for the U.S. not to be there any longer. If, from our point of view, we have not specified a particular set of practices that we expect to see in any plan that comes back, what we do expect is that a plan that comes back will have the broad support of the community, will have considered all the various options and will have to answer the fundamental question, which is what happens at the end of the day if the ICANN board is not doing what the community wants.

KLOBUCHAR:
Thank you, and Ambassador Gross, you could really briefly answer, because I'm out of time.

GROSS:
Yes, very briefly, I would endorse what this secretary said. This accountability piece is critically important. It is related obviously to the IANA transition. It's independent of it as well. It is critically important, because the ability for those who feel otherwise agrieved (ph) to come to the U.S. governments or to Congress will no longer be in the same way as it is today. And so all companies and all individuals need to know that in fact, ICANN is accountable in a productive and an appropriate fashion.

KLOBUCHAR:
Thank you. And Mr. Chehade, I have a question I'll put on the record about stress testing, even hearing those words brings up memories of the past for us with the fiscal crisis, but I'd like to hear, I'll do it in the record about accountability processes that you're going to put in place with that, because I'm curious about that. Thank you very much.

THUNE:
Thank you, Senator Klobuchar. Senator Markey.

MARKEY:
Thank you, Mr. Chairman, very much. Thank you for being here, and obviously, this is a critical long-term issue. We've got to make sure we get it right. We need a decentralized form of open governance, multi-stakeholder governance, protections which are built in to make sure that this system does not get captured, that we still have the capacity for job growth, for freedom of speech, for innovation that has characterized the Internet from its very origins when it did get privatized in 1991. So from '91 on, we have seen this tremendous change, and of course, the 1996 Act actually spurred the need to have an ICANN in order to have an international governance system.

So my first question then would be to you Mr. Strickling, there was a college student from Hollister, Massachusetts who came up with the idea of Instagram that been sold the idea to a Harvard dropout at Facebook, and boom, once again, revolutionized you know the way in which we communicate. So talk a little bit about how this IANA transition could impact that and what protections we have built in to make sure that there is no change in incentives for innovation in the system?

STRICKLING:
Right. Well, I think you put your finger on it in the sense that the overall goal here is to have a growing, thriving, innovating

Internet. Our belief is, and I think the record demonstrates, destabilitates (ph), that it's the multi-stakeholder model of governance that has allowed the Internet to grow and thrive that under a different model where governments, for example, were making these choices, we would not see the kind of flexibility or not see the kind of innovation that we've been -- that we've actually been able to see.

So above all, we want to protect that model. I think the IANA transition, by being the most direct and concrete demonstration of the multi-stakeholder model at work on a difficult issue that engages everybody in the community, whether they come from the United States or any other part of the world, whether they come from business or civil society or from the technical community is the absolute best demonstration we can make that this is a powerful process, that it delivers outcomes, and that it is a model that we all should aspire to and to protect.

MARKEY:
Thank you. Mr. Chehade, this new system needs to be stress test in order to make sure that it will work, it can't be compromised. So if you could layout for us what are the stress test, how long will they take, and what the state guys built in to make sure that the reporting back is accurate in terms of the system in its state cuts?

CHEHADE:
Absolutely, it must be stress tested and I must commend many members of our stakeholders, some of them in this room who have been developing a series of stress tests, without which we're not coming back to you with a complete proposal. Today, they include about 25 of them that we plan to go through. They come in multiple categories, financial crisis or insolvency, issues of failure to meet operational expectations, legal and legislative action stress test, failure of accountability, failure of accountability to external stakeholders.

So they have already outlined every possible scenario that we should be testing for, and ensuring this institution, which has been built over the last two decades is ready and able not just today but in the future to withstand these stress tests, and we will report on this back to Secretary Strickling as part of our proposal.

MARKEY:
Mr. Strickling, without question, human rights in an open Internet are intrinsically points. Talk if you would about the safe plans we're building in to make sure that censorship does not reign in this new era, that we're not opening up a new era, where there is a dramatic change in the personality of the Internet, as we're trying to reform its governance.

We also want to simultaneously make sure that its essential personality remains the same at a human rights and free speech and in this openness as part of its baked in personality remains intact. Could you talk about that?

STRICKLING:
So I totally agree with your comment. One of the reasons that we have insisted on there being no government solution or no intergovernmental solution is the fear that, that would bring these extraneous issues into the management of the domain name system in a way that might affect free expression.

Now as you know, Senator, there's nothing about the system today that prevents individual countries from acting within their own borders to censor or block content. That won't change going forward, but what we're insisting upon is nothing come out of this process that would allow those countries to be able to extend those beliefs into the mainline system at large. And

again, based on what we've seen, I'm confident we'll get a proposal that protects against that.

MARKEY:

OK, thank you. Thank you, Mr. Chairman.

THUNE:

Thank you, Senator Markey. Senator Nelson?

NELSON:

Thank you, Mr. Chairman. Well, last year, in the omnibus appropriations, a rider was placed that prevents NTIA from spending funds on the transition to IA in a contract before September the 30th of this year, 2015. Can you explain NTIA's interpretation of that rider, Mr. Secretary?

STRICKLING:

Yes. Yes, sir. Yes. We have interpreted that resolution or interpreted that language to prevent us from allowing the transition to occur before September 30th, and we know -- let me know if I could continue...

NELSON:

Please.

STRICKLING:

In consultation with members and staffs up here in the Hill, we start to clarify whether that would in any way restrict our ability to continue to monitor the transition planning process, which is going on in the community and is not subject to any restrictions in the legislation. And in fact, as you know, the rider imposes reporting requirements on this, so it's clear that Congress intended us to continue to monitor the process and report back on what's happening.

And then within that, we had also indicated our need, and I think the needs of the -- of the serving American interest that we provide feedback where we thought it was appropriate, and we have engaged in that. Again, I'm very careful not to steer decision-making one way or the other, but I think through a series of questions that we've been asking and will continue to ask, we are trying to make sure that the process considers all the issues before reaching a final resolve. But we take very seriously the fact that no transition will take place before September 30th.

NELSON:

What happens if that riders continue?

STRICKLING:

Well, again, I wouldn't want to speculate on that. I'm hoping that the process within the community will result in a proposal that will demonstrate to Congress and the valid concerns people have up here about the process. That, in fact, it's being handled in a responsible fashion that the transition will meet the conditions and that there will be no need to extend that particular provision past September 30th.

NELSON:
Well, is the world going to stop revolving, if it is extended?

STRICKLING:
I don't like to speculate on what will or won't happen in the future, but I'm pretty confident the world won't stop revolving. Yes, sir.

NELSON:
Senator Klobuchar, when she left, talked about stress testing. NTIA favors stress testing. Any new ICANN accountability measures in order to judge their effectiveness? Why do you think that, that step is essential?

STRICKLING:
Well, again we need to have a proposal that's been well thought through, that has considered all the options that can answer any question anybody might have, and I think scenarios, no matter how unlikely they may seem to people need to be raised. I mean, the stress testing is really a set of kind of scenario planning or contingency planning where the possible situations and then evaluate the extent to which the organization and the instruments of accountability allow one to protect against bad things from happening.

So yes, we have been strong supporters of stress testing from the beginning, and we think that a good proposal requires that level of evaluation and testing to ensure that it will survive the kinds of challenges that people where it might happen at some point in the future.

NELSON:
Mr. Ambassador, you want to comment?

GROSS:
I'd be happy to comment. I think Mr. Secretary has stated it very well. Let me just add by saying as a way I think of reassuring not only this committee but also our members and as a whole that they've gone beyond stress testing or in the process beyond stress testing. So for example, one of the issues that's been raised by the Assistant Secretary is implementation. No change to be made, not only in terms of getting it done right, making sure that part of giving any proposal done right is that it stress tested and that sufficient time for full implementation to assure that this goes smoothly is taken. And only then is my understanding would a transition take place.

STRICKLING:
That's correct.

THUNE:
Thank you, Senator Nelson. I just have a couple of quick questions here, and I think we'll close this out. But Mr. Strickling,

you recently gave a speech at the state of net conference in which you raised several questions about draft proposals for the IANA functions.

You suggested there was risk in making the proposal too complicated and that creating new committees might just lead to new accountability questions. Were your questions meant to indicate that NTIA is unhappy with the directions the proposals are going?

STRICKLING:
No, sir. We just want to make sure that the community is fully evaluating and understanding the implications of the various proposals it's looking at. In no way have we said that any particular proposal that either has been already been put on paper or might be put on paper wouldn't satisfy the conditions. Although as Ambassador Gross just mentioned, implementation is very much part of this. And so, if one's going to propose that the community is going to propose building new organizations to engage in any of these functions or any of this accountability, there will have to be time put in place to allow those organizations to be constructed and tested, and we need to make sure that they don't create new accountability problems on their own.

So I viewed my questions as simply trying to make sure that the community understood fully the ramifications of the kinds of proposals that might be looking at. And I recommend this body or everyone else in this process to ask questions too, because it will only result in a stronger proposal.

THUNE:
Should your comments there be interpreted by stakeholders as additional requirements, in terms of the transition beyond those that were included in NTIA's initial IANA transition announcement?

STRICKLING:
I don't think anything that I raised in my questions goes beyond the conditions. For example, if a new organization were to be proposed, that in my mind, directly implicates the condition that we do nothing to disturb the security and stability of the existing system. It's working well. All of the customers of the IANA functions today, all three of them say they're getting good service from ICANN. So we want to be very careful that we don't get a proposal that might upset that security or stability that exist today.

THUNE:
Final question. How will you consult with Congress in the event ICANN presents NTIA with an IANA transition plan this year?

STRICKLING:
As I said earlier in my testimony, and as I said to you when we met, we want to work very closely with both houses up here on the hill in terms of making sure there's a full explication of the proposal and make sure it has the full hearing, as any of the committees up here would like to pursue.

THUNE:
OK, I appreciate that and I want to get that on the record one more time. So I think Senator Nelson, anything else from you?

OK. If not, we will wrap this up and keep the record open for a couple of weeks for additional testimony to be provided, and thank our panelists today for their great testimony and to their answers to our questions. I'm sure this is an issue that we'll continue to pay a great deal of attention to going forward. Thank you, all very much. Hearing's adjourned.

NELSON:
Thanks.

CQ Transcriptions, Feb. 25, 2015

List of Panel Members and Witnesses PANEL MEMBERS:

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SEN. JOE MANCHIN III, D-W.VA.

SEN. GARY PETERS, D-MICH.

SEN. TOM UDALL, D-N.M.

WITNESSES:

FADI CHEHADE, CEO, THE INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

DAVID GROSS, PARTNER, WILEY REIN LLP FORMER U.S. COORDINATOR FOR INTERNATIONAL COMMUNICATIONS AND INFORMATION POLICY, THE DEPARTMENT OF STATE

LAWRENCE STRICKLING, ASSISTANT SECRETARY FOR COMMUNICATIONS AND INFORMATION, THE DEPARTMENT OF COMMERCE ADMINISTRATOR, THE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION