To prohibit the National Telecommunications and Information Administration from relinquishing responsibilities with respect to Internet domain name functions unless it certifies that it has received a proposal for such relinquishment that meets certain criteria, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. KELLY of Pennsylvania introduced the following bill; which was referred to the Committee on ______________________

A BILL

To prohibit the National Telecommunications and Information Administration from relinquishing responsibilities with respect to Internet domain name functions unless it certifies that it has received a proposal for such relinquishment that meets certain criteria, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Defending Internet Freedom Act of 2014".
SEC. 2. REQUIREMENTS FOR NTIA RELINQUISHMENT OF DNS RESPONSIBILITIES.

(a) IN GENERAL.—Unless the Assistant Secretary submits the certification described in subsection (b) to the appropriate congressional committees at least 60 days before the date described in subsection (c)—

(1) the Assistant Secretary may not relinquish the responsibilities of the NTIA with respect to Internet domain name functions, including responsibility with respect to the authoritative root zone file, the IANA functions, or the related root zone management functions;

(2) if there exists on such date an option to extend the IANA functions contract, the Assistant Secretary shall exercise such option; and

(3) if there does not exist on such date an option to extend the IANA functions contract, the Assistant Secretary shall seek to enter into a new contract for the performance of the IANA functions that meets the requirements of subsection (d).

(b) CERTIFICATION DESCRIBED.—The certification described in this subsection is a written certification that the Assistant Secretary has received a proposal for relinquishing the responsibilities of the NTIA with respect to Internet domain name functions that ensures the following:
(1) Control over the management of the Internet domain name system will not be exercised by a governmental or intergovernmental body.

(2) The bylaws of ICANN will be amended to provide for the following:

(A) No director or officer of ICANN will be selected by or represent a governmental or intergovernmental body.

(B) ICANN is prohibited from receiving advice from the Governmental Advisory Committee unless such Committee reaches consensus regarding such advice. For purposes of the preceding sentence, the term “consensus” means general agreement in the absence of any formal objection.

(C) ICANN is committed to upholding freedom of speech, freedom of the press, freedom of assembly, and freedom of association, applying a standard that is at least as protective of such freedoms as is the First Amendment to the Constitution.

(D) The term “supermajority” is defined for purposes of the bylaws of ICANN to mean, with respect to a vote of the board of directors,
an affirmative vote by at least four-fifths of all directors.

(E) A change in the bylaws of ICANN will require a vote of a supermajority of the board of directors.

(F) A change in the fees that ICANN charges for its services will require a vote of a supermajority of the board of directors.

(G) The directors, president, secretary, and chief financial officer of ICANN will be subject to removal in a vote of confidence by the board of directors at least once every 3 years and will serve no longer than 9 years in a single position.

(H) ICANN will have a simplified, transparent process for selecting its directors under which such selections are linked with key stakeholders in the Internet community.

(I) ICANN will have an independent process (such as the process between ICANN and the International Centre for Dispute Resolution for independent review of contested actions of the board of directors of ICANN and under which the Centre serves as a dispute resolution service provider for objections to new generic
top-level domain expansions) for resolving disputes between ICANN and external parties in all matters related to the operations of ICANN.

(3) ICANN has adopted, if necessary through amendment to its bylaws, measures recommended by the multistakeholder community to increase the transparency of ICANN deliberations and decisions, such as providing public access on the Internet to meetings of the board of directors and associated materials.

(4) ICANN will adopt policies and procedures for disclosing to the public records and other information that are at least as protective of public access as the policies and procedures required by section 552 of title 5, United States Code (commonly known as the Freedom of Information Act). The policies and procedures adopted will include a means by which the denial of a request for access to records or other information may be appealed through the independent dispute resolution process described in paragraph (2)(I).

(5) There will be established a private, non-profit corporation, to be known as the IANA Consortium, that is financed and managed by the top-level domain registries and not by ICANN.
(6) The IANA Consortium, and not ICANN, will—

(A) manage the content of the root zones;

(B) select an entity to carry out the editing of the root zone files that—

(i) is separate from the IANA Consortium; and

(ii) the IANA Consortium is satisfied demonstrates technical competence that is at least equal to that of VeriSign; and

(C) oversee the performance of such entity in the editing of the root zone files.

(7) There will be established within ICANN a body to be known as the Internet Freedom Panel, which shall be composed of representatives of the Internet community, including registrars, technology groups, and civil society. No member of the Panel will be selected by or represent a governmental or intergovernmental body.

(8) The bylaws of ICANN will provide that the Internet Freedom Panel will have the power to review and to veto changes to the domain name system proposed by ICANN that the Panel considers to threaten freedom of expression, the openness, stability, resiliency, or security of the Internet, respon-
siveness to the user community, or other commit-
ments undertaken by ICANN in the Affirmation of
Commitments in effect between the NTIA and
ICANN on the date of the enactment of this Act.
Any such veto will be final and will not be subject
to override by any director or officer of ICANN.

(9) The entity selected by the IANA Consor-
tium to carry out the editing of the root zone files
in accordance with paragraph (6)(B) will implement
a policy decision adopted by ICANN unless the
Internet Freedom Panel vetoes such decision.

(10) ICANN will remain subject to United
States law (including State law) and to the jurisdi-
tion of United States courts (including State courts).

(11) The United States Government will be
granted ownership of the .gov and .mil top-level do-
mins, and the A and B root servers that manage
such top-level domains will be maintained in the
United States.

(12) ICANN will conduct and publicly release
the results of an audit of its operations during its
5 fiscal years preceding the fiscal year in which the
proposal is submitted to the Assistant Secretary and
demonstrate that its financial and management deci-
sions during such 5 fiscal years have been sound and comport with accepted business practices.

(13) An annual audit of ICANN and the IANA Consortium will be performed by an internationally recognized auditing firm that will not have had a contract with ICANN during the 2-year period preceding the audit. The costs of the audit will be paid by ICANN and the IANA Consortium.

(14) Neither ICANN nor the IANA Consortium will enter into an agreement or modify an existing agreement to impose on a registrar or registry with which ICANN or the IANA Consortium, as the case may be, conducts business any condition (such as a condition relating to the regulation of content) that is unrelated to ICANN’s core mission of coordinating the global interoperability and uniqueness of domain names.

(15) There will be established a joint office of inspector general for ICANN and the IANA Consortium that will be jointly funded by ICANN and the IANA Consortium. Such office shall be headed by an Inspector General that is appointed by the board of directors of ICANN for a non-renewable, fixed term. The Inspector General will be granted full access to ICANN and the IANA Consortium, which will in-
clude access to such matters as the finances, documents, and activities of ICANN and the IANA Consortium.

(16) The reports of the Inspector General will be made publicly available and will not be subject to approval or editing by ICANN, the IANA Consortium, or the officers or directors of ICANN or the IANA Consortium.

e) DATE DESCRIBED.—The date described in this subsection is the following:

(1) During the base period of performance of the IANA functions contract, the date on which the Assistant Secretary must give ICANN preliminary written notice of the intent to exercise the option to extend the contract through the first option period.

(2) During the first option period of the IANA functions contract (if the contract is extended through such period), the date on which the Assistant Secretary must give ICANN preliminary written notice of the intent to exercise the option to extend the contract through the second option period.

(3) During the second option period of the IANA functions contract (if the contract is extended through such period), the date on which such period expires.
(d) Requirements for New Contract for Performance of IANA Functions.—A contract for the performance of the IANA functions meets the requirements of this subsection if such contract—

(1) is between the NTIA and ICANN or another private, nonprofit entity; and

(2) provides for each assurance listed in paragraphs (1) through (16) of subsection (b), except that, in the case of a contract with an entity other than ICANN—

(A) each assurance listed in such paragraphs with respect to ICANN shall be considered to be an assurance with respect to such entity; and

(B) such contract is required to provide for the assurance listed in paragraph (12) of such subsection only with respect to years during which such entity is in existence.

(e) Definitions.—In this section:

(1) Appropriate Congressional Committees.—The term “appropriate congressional committees” means the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.
(2) ASSISTANT SECRETARY.—The term “Assistant Secretary” means the Assistant Secretary of Commerce for Communications and Information.

(3) BASE PERIOD OF PERFORMANCE.—The term “base period of performance” means, with respect to the IANA functions contract, the period beginning on October 1, 2012, and ending on September 30, 2015.

(4) FIRST OPTION PERIOD.—The term “first option period” means, with respect to the IANA functions contract, the period beginning on October 1, 2015, and ending on September 30, 2017.

(5) IANA CONSORTIUM.—The term “IANA Consortium” means the private, nonprofit corporation established pursuant to subsection (b)(5).

(6) IANA FUNCTIONS.—The term “IANA functions” means the Internet Assigned Numbers Authority functions.

(7) IANA FUNCTIONS CONTRACT.—The term “IANA functions contract” means the contract that is in effect on the date of the enactment of this Act between the NTIA and ICANN under which ICANN is required to perform the IANA functions.
(8) ICANN.—The term ‘‘ICANN’’ means the Internet Corporation for Assigned Names and Numbers.

(9) Internet Freedom Panel.—The term ‘‘Internet Freedom Panel’’ means the body established pursuant to subsection (b)(7).

(10) NTIA.—The term ‘‘NTIA’’ means the National Telecommunications and Information Administration.

(11) Second Option Period.—The term ‘‘second option period’’ means, with respect to the IANA functions contract, the period beginning on October 1, 2017, and ending on September 30, 2019.

(12) State.—The term ‘‘State’’ means each of the several States, the District of Columbia, each commonwealth, territory, or possession of the United States, and each federally recognized Indian tribe.