Statement of

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Ensuring the Security, Stability, Resilience, and Freedom of the Global Internet

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Chairman Walden, Ranking Member Eshoo, and distinguished members of the Subcommittee: My name is Steve DelBianco, and I thank you for holding this hearing on *Ensuring the Security, Stability, Resilience, and Freedom of the Global Internet.*

I serve as Executive Director of NetChoice, an association of leading online and e-commerce businesses.[1] At the state, federal, and international levels, NetChoice works to promote the integrity and availability of the Internet. We participated in the past 26 ICANN meetings, and I've been elected four times as policy chair for ICANN's Business Constituency. I've attended seven Internet Governance Forum (IGF) meetings and testified in five Congressional hearings on ICANN and Internet governance.

NetChoice members are deeply invested in the topic of today's hearing because the Internet enables direct online revenue of $200 billion in the U.S. and $1.5 trillion globally.[2] Our businesses need a secure Internet address system that's resilient to cyber attacks and interruptions. We need addressing and routing that works the same around the globe – free from discriminatory regulation and taxation across national boundaries. And we need Internet policies that are predictable and enforceable, allowing innovation while protecting consumers.

My testimony today will focus on three points relevant to this committee:

1. Over 16 years and through three administrations, the U.S. government has protected the ICANN multistakeholder model from government encroachment and helped the organization mature towards independence. However, it is not sustainable for the U.S. to retain its unique role forever, and the current political situation requires that discussions now begin for how to complete the transition.
2. NTIA's principles and requirements for this transition are appropriate to design new mechanisms to oversee Internet addressing functions, to hold ICANN accountable, and to prevent government capture *after* the transition is complete. In addition, we should ask how a new accountability mechanism would respond to potential stress tests.
3. Congress is right to ask questions about the transition. Rather than denying the situation, Congress should channel its energy to help the Internet community design a new accountability mechanism for ICANN, potentially one with independent and external safeguards against potential stress scenarios.

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[1] See http://www.NetChoice.org. This testimony reflects the view of NetChoice and does not necessarily represent the views of any individual member company.

[2] The Internet Economy 25 Years After .com, Robert Atkinson, ITIF, March 2010, at http://www.itif.org/publications/internet-economy-25-years-after-com

1. United States Government Stewardship of ICANN and IANA

America invented the core Internet technologies and promptly gave them to the world. Internet hosts were appearing internationally by the 1980s. The 1990's saw the explosion of commercial uses of the Internet, based on a naming and numbering system also created in the United States. In 1998, the Clinton administration privatized and internationalized the Domain Name System (DNS) with this directive in the *White Paper*:

> "The President directed the Secretary of Commerce to privatize the Domain Name System in a way that increases competition and facilitates international participation in its management."
>
> "The U.S. Government is committed to a transition that will allow the private sector to take leadership for DNS management."[3]

In the sixteen years since, it's been a long road from American invention to internationalized private-sector leadership by an entity the U.S. established for the task: the Internet Corporation for Assigned Names and Numbers (ICANN). Three administrations and several Congresses have worked to help ICANN mature and protect the vision of private-sector leadership from growing pressure for control by governments.

Many governments around the world saw the growth of the Internet and assumed that its governance required an inter-governmental solution. In 2005, the United Nations (UN) held a World Summit on the Information Society to discuss the issue. This UN activity prompted the House of Representatives to respond in November 2005, unanimously approving H.Con.Res.268 to express the sense of Congress:

> (1) the United States and other responsible governments send clear signals to the marketplace that the current structure of oversight and management of the Internet's domain name and addressing service works, and will continue to deliver tangible benefits to Internet users worldwide in the future; and
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> (2) the authoritative root zone server should remain physically located in the United States and the Secretary of Commerce should maintain oversight of ICANN (the Internet Corporation for Assigned Names and Numbers) so that ICANN can continue to manage the day-to-day operation of the Internet's domain and addressing system, remain responsive to Internet stakeholders worldwide, and otherwise fulfill its core technical mission.[4]

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[3] The "White Paper" on Management of Internet Names and Addresses, U.S. Department of Commerce, Jun-1998, see http://www.ntia.doc.gov/ntiahome/domainname/6_5_98dns.htm

[4] H.Con.Res.268, Nov 17, 2005, http://beta.congress.gov/bill/109th-congress/house-concurrent-resolution/268/text?q=%7B%22search%22%3A%5B%22hcres268%22%5D%7D

At the same time, the Bush administration responded with its *Principles on the Internet's Domain Name and Addressing System:*

> The United States Government intends to preserve the security and stability of the Internet's Domain Name and Addressing System (DNS). Given the Internet's importance to the world's economy, it is essential that the underlying DNS of the Internet remain stable and secure. As such, the United States is committed to taking no action that would have the potential to adversely impact the effective and efficient operation of the DNS and will therefore maintain its historic role in authorizing changes or modifications to the authoritative root zone file."[5]

The transition was expected to take a few years, but by 2009 NTIA had made several extensions, the latest through a Joint Project Agreement that expired in September 2009. At the time, NetChoice was among those calling for another extension so that ICANN could develop permanent accountability mechanisms.

Instead, NTIA and ICANN unveiled a new agreement in September 2009, the *Affirmation of Commitments.*[6] The *Affirmation* established periodic reviews giving all stakeholders – including governments – a defined oversight role in assessing ICANN's performance. This was a welcome mat for governments wary of ICANN's unique multistakeholder process, and even those who resented the legacy oversight role of the U.S. government. The *Affirmation* also gave the global Internet community what it wanted: independence for ICANN in a framework bringing governments alongside private sector stakeholders, with a sharpened focus on security and serving global internet users.

But concerns about the U.S. role in naming and numbering remained after the execution of the *Affirmation*. NTIA retained its role in oversight and contracting for the Internet Assigned Numbers Authority (IANA). The IANA contract is deemed essential to ICANN and therefore provided NTIA leverage to hold ICANN to its *Affirmation* obligations.

However, ICANN can quit the *Affirmation* with just 120 days notice. And within a year of signing, ICANN's then-chairman told a group of European parliamentarians that he saw the *Affirmation* as a temporary arrangement ICANN would like to eventually terminate.[7]

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[5] U.S. Principles on the Internet's Domain Name and Addressing System, June 30, 2005, at http://www.ntia.doc.gov/other-publication/2005/us-principles-internets-domain-name-and-addressing-system

[6] Affirmation of Commitments, 2009, http://icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm

[7] Peter Dengate Thrush, in response to a question from Steve DelBianco, at event hosted by European Internet Foundation in Brussels, June 22, 2010.

All of this to say that ICANN needs a persistent and powerful reminder that it serves at the pleasure of global stakeholders; that ICANN has no permanent lock on managing the Internet's name and address system. We said at the time that ICANN's role in IANA functions should disappear if it were to walk away from the *Affirmation of Commitments*.

In 2005 the UN created the Internet Governance Forum (IGF). IGF meetings have become increasingly productive and substantive, yet some governments pressed the IGF to adopt resolutions and address more of the domain name issues managed by ICANN and IANA. In its July-2010 statement to the UN, China's government declared, "First, the future IGF should, in accordance with the provision of Tunis Agenda, focus on how to solve the issue of unilateral control of the Critical Internet Resources." By 'unilateral control', China means U.S. custody of the IANA contract. And 'the Critical Internet Resources' include IP addresses, root servers, and the policy-setting and management of domain names.

China was not alone in its desire for the migration of ICANN and IANA functions to the UN's International Telecommunication Union (ITU). ITU leadership did not like a model where governments share power with industry and civil society technologists, warning ICANN leaders that sooner or later governments would take greater control of the organization.

In 2011, a select group of governments convened to design their own replacement for U.S. oversight and ICANN's model of private sector leadership. India, Brazil, and South Africa (IBSA) declared it was time for "establishing a new global body" to:

i. be located within the UN system;
ii. be tasked to develop and establish international public policies with a view to ensuring coordination and coherence in cross-cutting Internet-related global issues;
iii. integrate and oversee the bodies responsible for technical and operational functioning of the Internet, including global standards setting;
iv. address developmental issues related to the internet;
v. undertake arbitration and dispute resolution, where necessary, and
vi. be responsible for crisis management. [8]

Against this geo-political backdrop in 2011, NTIA began the process to award the next iteration of the IANA contract. First, NTIA opened two rounds of public comment from global

[8] Recommendations of IBSA Multistakeholder meeting on Global Internet Governance, September 2011, at http://www.culturalivre.org.br/artigos/IBSA_recommendations_Internet_Governance.pdf

stakeholders – not just from U.S. interests – on how to improve IANA functions. ICANN's CEO submitted a comment that revealed the organizations' eagerness to end any remaining U.S. oversight, declaring that the United States "relinquished its oversight role" when it signed the *Affirmation*.[9]

But NTIA didn't see it that way, and took the bold step of cancelling the IANA solicitation because ICANN's bid wasn't responsive to increased technical requirements. Here's how NTIA Administrator Strickling described it in July 2012:

> Last year, in anticipation of the expiration of the IANA functions contract, NTIA undertook two consultations of stakeholders, both domestic and international, on how to best enhance the performance of the functions. Based on input received from stakeholders around the world, we added new requirements, such as the need for a robust conflict of interest policy, to exercise heightened respect for local country laws and to increase transparency and accountability.
>
> This spring, we took the unprecedented action of cancelling the initial request for proposals (RFP) because we received no proposals that met the requirements requested by the global community. We then reissued the RFP, and at the end of June we awarded the contract to ICANN, whose submission in response to the reissued RFP did adequately meet the new requirements.[10]

Also in 2012, both houses of Congress unanimously affirmed "the consistent and unequivocal policy of the United States to promote a global Internet free from government control and preserve and advance the successful multistakeholder model that governs the Internet today."[11]

To emphasize the point, Chairman Walden's H.R.1580 reported from this committee and passed the House 413-0 in May 2013, declaring: "It is the policy of the United States to preserve and advance the successful multistakeholder model that governs the Internet."[12]

Clearly, the last 16 years of "transition" have seen significant improvements in globalizing ICANN and IANA, although there have certainly been some challenges. Along the way, some governments and intergovernmental organizations have criticized the U.S. role and openly coveted taking over that role. But throughout, the U.S. Congress and multiple

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[9] p.3 of ICANN response, March 25, 2011, at http://www.ntia.doc.gov/files/ntia/comments/110207099-1099-01/attachments/ACF2EF.pdf

[10] http://www.ntia.doc.gov/speechtestimony/2012/remarks-assistant-secretary-strickling-internet-governance-forum-usa

[11] H.Con.Res.127 and S.Con.Res.50 - Expressing the sense of Congress regarding actions to preserve and advance the multistakeholder governance model under which the Internet has thrived, Aug 20, 2012

[12] H.R.1580 - To affirm the policy of the United States regarding Internet governance, May 14, 2013

administrations have stayed with the vision of multistakeholder, private-sector leadership for Internet addressing and policymaking. And our government has used its contractual tools to improve ICANN's performance and to hold the organization to the only accountability mechanism it has—the *Affirmation of Commitments*.

Still, the U.S. has continued to work towards full privatization of ICANN and IANA, at a deliberate pace and with measurable progress. Then came 2013 and Edward Snowden's revelations of U.S. government surveillance. While not at all related to the Domain Name System or to Internet addressing, the Snowden situation was conflated with U.S. oversight of ICANN and IANA, and gave a big boost to demands for globalization of these institutions.

2. NTIA's Announced Transition for IANA functions and ICANN Accountability

Last month the Commerce Department announced that it would begin a process to relinquish control of its contractual authority over the IANA contract. The positive global response was immediate and vocal, signaling that this move, at this time, could relieve the intense pressure from foreign governments demanding an end to the U.S. role in Internet oversight.

In its announcement, NTIA asked ICANN to develop a transition plan to move control of the DNS into the hands of "the global multistakeholder community" and stated principles for any new mechanism that would replace its role in overseeing Internet addressing functions and holding ICANN accountable:

> NTIA has communicated to ICANN that the transition proposal must have broad community support and address the following four principles:
>
> - Support and enhance the multistakeholder model;
> - Maintain the security, stability, and resiliency of the Internet DNS;
> - Meet the needs and expectation of the global customers and partners of the IANA services; and,
> - Maintain the openness of the Internet.

To these four principles, NTIA added a clear statement that it would not give up IANA control if the plan developed by ICANN would place other governments in the legacy role of the United States:

> Consistent with the clear policy expressed in bipartisan resolutions of the U.S. Senate and House of Representatives (S.Con.Res.50 and H.Con.Res.127), which affirmed the United States support for the multistakeholder model of Internet governance, NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution.[13]

With the experience of the last 16 years, it's appropriate for NTIA to impose this condition. And it will be important for the transition plan to prevent any government-led organization from replacing the former U.S. role *after* the transition is complete. Moreover, how would the transition proposal oversight respond to a range of potential stresses and scenarios it might confront one day?

Below we suggest the use of scenario planning, or stress tests, to help design and assess new accountability mechanisms proposed to replace NTIA's role. If new mechanisms can't answer the potential challenges, NTIA can extend the IANA contract to give the community more time to add stronger accountability mechanisms and protections for the multistakeholder model.

Scenario Planning/Stress Tests

Software designers need more than high-level principles to develop an application. Programming requires anticipating scenarios where users don't follow the expected routine. For non-programmers, here's an analogy: It's a good *principle* to practice safe driving in winter weather. It's a *scenario* to prepare for and respond to a specific situation, such as having your car spin sideways on a snow-covered road.

Knowing the array of possible scenarios helps us design appropriate responses, regardless of whether those scenarios ever actually occur. Today, ICANN is an effective organization that generally performs its core functions, so it can be uncomfortable to imagine a scenario where a future ICANN fails dramatically or is confronted with a serious threat. But we should consider challenging scenarios and develop mechanisms that could resolve those challenges in a way that's at least as effective as the mechanism we have today — where the

[13] Press Release, "NTIA Announces Intent to Transition Key Internet Domain Name Functions", March 14, 2014, at http://www.ntia.doc.gov/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions

U.S. government and technical communities ensure a stable root and where the threat of losing the IANA contract keeps ICANN accountable to its global stakeholders and the public interest.

At ICANN's Singapore meeting last week, I suggested several scenarios/stress tests that could help assess performance and accountability if ICANN were to assume the IANA contract:

1. Scenario: ICANN cancels the *Affirmation of Commitments*, which it may do with just 120 days notice. And if not outright cancellation, ICANN could fail to implement recommendations of an *Affirmation* review. Presently, the discipline imposed by needing to win the IANA contract forces ICANN to adhere to the only external accountability it has today: the *Affirmation of Commitments*. If the *Affirmation* is to remain part of the new ICANN accountability framework, it's essential that the leverage formerly conveyed by the IANA contract be replaced with a new mechanism, which may or may not include parties external to ICANN.
2. Scenario: ICANN takes steps to eliminate its legal presence in a nation where Internet users and domain registrants are seeking legal remedies for ICANN's failure to enforce contracts. This scenario is not about ICANN opening new offices around the world as part of its global outreach. Rather, it's about ICANN creating a new legal entity distinct from its present status as a California non-profit corporation, and eventually relocating its legal presence. ICANN's current corporate presence in California creates legal certainty for U.S. businesses; presence in a new jurisdiction might not.
3. Scenario: ICANN becomes financially insolvent, due to lawsuits or gross mismanagement. However unlikely, this scenario should explore the orderly continuation of IANA functions in the event ICANN could not maintain the necessary qualified technical resources.
4. Scenario: ICANN expands scope beyond its limited technical mission by granting subsidies to promote Internet penetration or online participation in developing nations. ICANN has the power to determine fees charged to TLD applicants, registry operators, registrars, and registrants, so it presents a big target for any Internet-related cause seeking funding sources. However worthy the cause, this scenario should examine how a fully independent ICANN could be held to its limited technical mission, and whether its fees and spending are subject to external accountability.
5. Scenario: ICANN attempts to add a new top-level domain over security and stability concerns expressed by technical community leaders. This scenario actually came close to

occurring when ICANN management did not respond to recommendations of its own Security and Stability Advisory Committee (SSAC) regarding risks of new TLDs interacting with security certificates and internal domains already in use. SSAC recommendations from prior years were not acted upon until late 2013, after significant pressure from a root server operator, Internet service providers, and system integrators. In this instance ICANN responded with a collision mitigation plan. This scenario should assess how the new accountability mechanism could respond to similar technical risks expressed before a TLD delegation, as well as reactive responses to problems reported after a delegation.

6. Scenario: Governments in ICANN's Government Advisory Committee (GAC) amend their operating procedures to change from consensus decisions to majority voting. Today GAC adopts formal advice according to its Operating Principle 47: "consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection."[14] But the GAC may amend its procedures to use majority voting, where each government has equal voting power, such as in the UN and ITU. (Notably, only 61 governments were present at the GAC meeting in Singapore last week). While ICANN's board is not strictly obligated to follow GAC advice, this scenario should assess how ICANN could respond to advice with strong majority backing.

7. Scenario: Picking up on scenario 6, a majority of governments in the GAC might advise ICANN to suspend a TLD that refuses to remove domains with content critical of governments (e.g., **.**corrupt). Today, this kind of censorship routinely occurs at the edge of the Internet when governments block domestic access to websites, such as Turkey now blocking Twitter. But this scenario envisions censorship moving from the edge *to the core of the internet* – the root table of TLDs used by the entire world. It's a critical stress test to examine how the new IANA mechanism could respond if a future ICANN board bowed to GAC advice for censorship at the root of the Internet.

8. Scenario: A new government instructs ICANN to redirect a country code TLD already in the DNS root. For example, if Russia were to annex the rest of Ukraine, it might request Ukraine's **.ua** country code TLD to be redirected to a Russia-based server. This scenario helps to answer how ICANN could respond to this request and how it could be held accountable if the global community disagreed with its decision.

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[14] ICANN Government Advisory Committee (GAC) - Operating Principles, October, 2011, at https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles

Although these scenarios are unlikely, some governments have expressed skepticism and dissatisfaction with the multistakeholder process and might pursue such courses of action through the GAC. Our scenarios should test whether the mechanism we develop could respond to protect the multistakeholder model from those who would usurp it.

One can argue that today's IANA contract includes nothing that explicitly responds to the scenarios listed above. But as noted earlier, the influence of the IANA contract award extends beyond its functional assignments and helps to keep ICANN accountable. Moreover, the performance of NTIA in its IANA oversight demonstrates the U.S. government commitment to the principle of an open Internet. Consider the example of .xxx, an adult content TLD that was approved by ICANN in 2010. GAC advice revealed no consensus to either oppose or support the TLD, and the U.S. government position was against the .xxx contract. That led some observers to speculate that NTIA would block .xxx when exercising its IANA approval role, but NTIA respected the multistakeholder process and the principle of an open Internet.

It's fair to ask how this decision and delegation would turn out if NTIA were not part of the IANA process, and that's a stress test question that should be applied to any proposed replacement for NTIA oversight. If we establish appropriate scenarios and stress tests as part of the process to design new accountability mechanisms, we'll end up with something that will answer to the threats and challenges we're likely to face in the real world.

3. The Role for Congress in Planning this Transition

Members of this committee and Congress in general are right to ask questions and raise concerns about this transition. As described earlier, Congress has supported NTIA in holding ICANN accountable and protecting ICANN from multi-governmental encroachment.

But rather than denying the situation, we recommend that Congress channel its energy to help the Internet community design a new accountability mechanism, including appropriate safeguards against potential scenarios and stresses.

As a member of the global community of stakeholders, Congress is welcome to participate directly in the transition planning process that began last week. If Congress can't participate directly, please consider other means of engagement.

We believe that the best role for Congress and the Commerce Department is to continue holding ICANN accountable to its *Affirmation of Commitments*, ensure a secure and stable Internet addressing system, and protect the multistakeholder model from governmental takeover.

The *White Paper* vision for ICANN should be preserved: ICANN should be led by, and accountable to its multistakeholder communities, including the private sector, civil society, and technology experts – along with governments. These stakeholders have built the Internet into the transformative platform that it is today. And these stakeholders will create the innovations and make the investments to bring connectivity, content, and commerce to the next billion global Internet users and to the next generation of Americans.

I look forward to your questions.