

Before the
National Telecommunications and Information Administration
Washington, DC 20230

In the Matter of)	
)	
International Internet Policy Priorities)	Docket 180124068-8068-01
)	
Notice of Inquiry)	RIN 0660-XC041

The undersigned are public interest organizations, academics, Internet policy specialists, and longtime participants in Internet governance organizations. We offer the following comments on NTIA’s priorities with respect to Internet governance, and the Domain Name System in particular.

I. The Free Flow of Information and Jurisdiction

D. What are the challenges to freedom of expression online?

One of the main challenges to freedom of expression online is that that governments, including the US Government, often fail to make it a priority in Internet governance forums. Instead, government representatives frequently focus on the concerns of major intellectual property holders, who are already well represented in these fora.

E. What should be the role of all stakeholders globally—governments, companies, technical experts, civil society and end users—in ensuring free expression online?

Everyone should be engaged in preserving, protecting and expanding freedom of expression online.

What distinguishes the Internet from other communications networks is its decentralization at the network level, which resulted from the choices of its early designers. At the network level, the Internet has few central control points, making it resistant to censorship. However, the central control points that do exist, including policies set by ICANN that control the functioning of the global domain name system, create opportunities for censorship and other restrictions on the free flow of information. This in turn creates an incentive for capture of these control points by special interests.

A more centralized Internet would more closely resemble cable television networks or telephone networks, and would lose the unique values and advantages of the Internet. This is happening extensively at the application layer, which is increasingly dominated by a small number of services and platforms who have amassed

unprecedented levels of control over the communications they carry and enable. All stakeholders should resist this trend, and particularly its extension to the networking layer of the Internet.

F. What role can NTIA play in helping to reduce restrictions on the free flow of information over the internet and ensuring free expression online?

NTIA could help promote free expression online by reaching out to civil society and public interest groups prior to ICANN meetings, to brief them and talk about upcoming ICANN issues, as NTIA does with business and intellectual property representatives. In addition, NTIA's Government Advisory Committee (GAC) representatives at ICANN would bolster the ability of ICANN and the DNS to support free speech and free expression by talking about the value of these fundamental freedoms at ICANN meetings and as part of materials written for domestic and international audiences.

The perception is that NTIA represents trademark owners and the law enforcement community in ICANN, but that arguments and defense of due process and freedom of expression are reserved for civil society and public interest groups. This is unfortunate. NTIA and federal agencies generally should represent the interests of the broader public. The more NTIA is heard asking how can we ensure free expression online, and supporting answers and policies that support not only trademark owners and the Public Safety Working Group, but all engaged in robust, informative, education, political, personal, and even controversial speech online, the more NTIA will be ensuring free expression online, and setting an example for other governments and GAC representatives to do the same.

II. Multistakeholder Approach to Internet Governance

A. Does the multistakeholder approach continue to support an environment for the internet to grow and thrive? If so, why? If not, why not?

The multistakeholder approach to Internet governance, at its best, has helped to promote many of the positive changes wrought by the Internet. End-to-end connectivity, and the ability to host data and services with few gatekeepers, would have been far less likely on an Internet governed entirely by government fiat. In particular, the multistakeholder approach has helped keep technical administration of the Internet's functions separate from the regulation of content and applications. That both avoids censorship and promotes expert technical oversight.

The multistakeholder model, as an experiment in global, private, balanced management and oversight of the Internet infrastructure, continues to be our best option today. Indeed, for the IANA functions, including the Domain Name System, there is no viable alternative. With the IANA Transition now accomplished, NTIA and

the full U.S. Government should continue to support the multistakeholder approach as the best environment for the Internet to grow and thrive.

Yet, NTIA has a role to play in making the multistakeholder approach fairer and more balanced, especially as regards the stakeholders who have less resources and who represent civil society, the public interest, and those using the Internet for largely noncommercial purposes.

C. Are the existing accountability structures within multistakeholder internet governance sufficient? If not, why not? What improvements can be made?

Success of the multistakeholder approach, going forward, requires that NTIA, as a GAC leader, take greater responsibility for ensuring balance and accountability among all the stakeholders. ICANN's policymaking processes favor wealthy stakeholders who can send representatives to meetings in far-flung locations several times a year, and participate in ICANN's long and extensive policy-making processes. Meaningful participation in ICANN policymaking often requires significant time commitments, including weekly meetings and review of voluminous written materials. Moreover, well-resourced interests are able to dominate proceedings by

- Outvoting, outspending and outlasting other stakeholders;
- Revising decisions at will when other stakeholders achieve more balanced policies;
- Claiming "consensus" by bringing a majority of the participants to the "multistakeholder table" ("flooding" the process);
- Modifying settled policies at the "implementation" phase;
- Attempting to block the collection of fair and unbiased data.

In particular, we note the overrepresentation of large intellectual property holders (law firms, companies, individuals) who have dominated many of the ICANN consensus policies over the years, particularly in the "gTLDs" (generic top level domains). With their own "constituency" group, and numerous attorneys and policy professionals dedicated to the expansion of trademark rights via the Internet infrastructure, large intellectual property holders have consistently overshadowed the voices of civil society, public interest groups, small business organizations and the Global South.

To be an effective bulwark against capture by repressive governments, or by market oligopolies, multistakeholder governance at ICANN must be truly accessible for participation by all stakeholders, including those whose interests are more diffuse. ICANN must be accountable to a broad public and, as importantly, be perceived as such.

NTIA could exercise leadership by encouraging more balance within ICANN structures for the true multiplicity of stakeholders, and more accountability by ICANN

Staff to the array of stakeholders who work hard to be heard. NTIA should work to ensure that the protection of freedom of expression is a priority for its work in GAC, and within ICANN. NTIA, through its leadership in GAC and the ICANN Community, should work for a fuller commitment to the multistakeholder approach, and the allocation of resources by ICANN and others to support it. NTIA's involvement in this area could go far in ensuring that accountability and transparency mechanisms protect the multistakeholder approach, and eliminate, or at least significantly reduce, its current imbalances.

D. Should the IANA Stewardship Transition be unwound? If yes, why and how? If not, why not?

The IANA Stewardship Transition must not be unwound. The official ending of NTIA's hegemony over the IANA functions in 2016 was the culmination of a two-decade process that began with ICANN's founding. In the years leading up to the transition, NTIA has generally participated as a member of the GAC, with no special prerogatives. It is unlikely that significant action by NTIA to countermand an ICANN decision would have been tolerated by other participants, including governments.

Even attempting to unwind the transition could lead to fragmentation of the Internet. Assertion of paramount authority over the Domain Name System by a single government now, after the transition, would have a very different meaning than before the transition, when NTIA's formal oversight was seen as a historical relic. Re-asserting that role now would be seen as a U.S. Government takeover of a process that has long been run by the multistakeholder community.

We respectfully submit that the Internet is not an asset or resource to be captured by any one government or any one stakeholder. By its nature, it belongs to all. We support the improvement of the multistakeholder model, and its accountability and transparency, but not rolling back to its origins of US control.

E. What should be NTIA's priorities within ICANN and the GAC?

NTIA's priorities within ICANN and the GAC should be support of an effective multistakeholder model, writ large. As discussed in Section I above, NTIA is not perceived as representing the United States' robust tradition of free speech, including guarantees of due process before speech is blocked or removed. NTIA is, unfortunately, seen as representing the voice of the country's largest corporations, its most aggressive intellectual property rights holders, and those in the law enforcement community seeking to bypass traditional checks and balances.

NTIA's priority should be to improve the balance of the multistakeholder model. These efforts within the GAC and throughout ICANN will protect ICANN and the Internet.

III. Privacy and Security

B. Which international venues are the most appropriate to address questions of digital privacy? What privacy issues should NTIA prioritize in those international venues?

As central US negotiators of the EU-US Privacy Shield, DOC and FTC are well aware of the compliance issues surrounding Europe's GDPR, and the importance of creating processes that ensure the compatibility of privacy standards globally, and protect users and ICANN itself from violating established law in differing jurisdictions.

We understand that NTIA is being asked to intervene in attempts by ICANN to comply with data protection standards with regard to its WHOIS database: in particular to press for personal identifying data to remain publicly available with insufficient consent, or for unbounded use—including that of harassment, spam, and fraud. The NTIA should consider the importance of preserving privacy of domain owners, and ensuring compliance with the privacy rights of registrants. Now is not the time to undermine ICANN's work as it proceeds with the Temporary Specification and towards new consensus policies to revise the WHOIS database consistent with the GDPR (and the growing number of countries with comprehensive privacy laws) and the protection of domain name registration data.

On privacy issues, NTIA should prioritize *protection of privacy*, not diminishment of privacy, as its key priority for its work in ICANN.

Respectfully submitted,

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