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In the Matter of)

International Internet Policy Priorities)

Docket No. 180124068-8068-01

Comments of R Street Institute

On behalf of the R Street Institute, we respectfully submit these comments in response to the National Telecommunications and Information Administration (NTIA) Notice of Inquiry (NOI) regarding International Internet Policy Priorities. The R Street Institute is a free-market think tank with a pragmatic approach to public policy challenges.

We thank NTIA for the opportunity to submit comments on this important issue. The internet is a unique network that has developed into an important means of connection and communication for people throughout the world. This success has been enabled largely by its governance structure that has been characterized by multi-stakeholder processes and an emphasis on private, rather than government, control. NTIA should remain dedicated to this model and resist efforts, both at home and abroad, to augment the role of national governments in internet governance.

I. Question II(D)

NTIA asks “Should the IANA Stewardship Transition be unwound? If yes, why and how? If not, why not?” It is concerning that NTIA seeks comment on unwinding the 2016 transition of Internet Assigned Numbers Authority (IANA) stewardship functions to private hands. The IANA transition is complete and NTIA cannot unwind it. Moreover, NTIA should not attempt to unwind the IANA Stewardship Transition for two reasons: First, the transition was (and remains) the correct policy choice because it furthers the cause of an open, privately-run internet. Second, attempting to unwind it would result in consequences that would be detrimental to the interests of the United States, namely emboldening and strengthening authoritarian governments in international internet governance debates.

A. Benefits of the transition

For decades, the United States has rightly pursued the route of minimal government interference with internet governance. This approach has contributed to the success of the internet as an open network that has yielded extensive economic, political, and social benefits around the world. Although the U.S. government formerly played a more direct role in internet governance, it had been progressively privatizing those functions prior to 2016. The IANA Stewardship Transition was the last step in that process. Monitoring changes to the root zone file was not a function that needed U.S. government oversight, and, while stewardship of the root zone file is important, it is certainly no more important than other functions, such as domain name registration, that were long ago transitioned to private hands. In the nearly two years since the IANA transition was completed, the Domain Name System has functioned just as well as it had prior to its completion.

U.S. government oversight of IANA functions was never the last line of defense against an authoritarian takeover of the internet. The nightmare scenarios of some who characterized the transition as an “internet giveaway” have been shown to be vacuous. No reasons to unwind it remain.¹ The IANA transition was the last step in the transition of the internet’s functions from government to private control, and it should be applauded, not sought to be reversed.

Besides the substantive benefits of its completion, the IANA transition also yields diplomatic and rhetorical benefits in international internet governance debates. Prior to the transition, authoritarian governments could use the continuing U.S. involvement with the IANA functions as an excuse to justify their interventionist ambitions and persuade otherwise moderate countries to concede more power over the internet to national governments. Completing the transition undermines this rhetoric and gives the United States a stronger negotiating position from which to argue for a free and open internet that is unfettered by the influence of authoritarian governments to countries who may be on the fence about where they stand on the issue.

B. Diplomatic implications of attempting to unwind the transition

These benefits for the United States on a diplomatic level also serve to highlight the great cost to U.S. interests that would result from any attempt to unwind the transition. With the transition now over a year old, attempts to unwind it can no longer be excused as inertia or maintenance of the status quo; it would instead be a power grab by the U.S. government and would be seen as such by the international community. Even if its

¹ See appendix

intentions for IANA are good, the United States would lose significant credibility to counter more malign interventions in internet governance by other governments. Advocates of a free and open internet, as well as those seeking greater government control, need moderate nations to join their cause to build an effective coalition to advance their views. Seeking to reverse the transition would push these moderate nations away from the American case for internet freedom and, thereby, do a favor to authoritarian adversaries. In short, the poor policy decision of attempting to undo the IANA transition would be accompanied by a diplomatic disaster which would weaken the United States and strengthen its adversaries.

II. Question II(D)

The administration also asks “What should be NTIA’s priorities within ICANN and the GAC?” The lessons from the IANA transition apply in these arenas as well. NTIA should work to reduce the role of governments throughout the international internet governance community. To this end, the United States should work within the Government Advisory Committee (GAC) at the Internet Corporation for Assigned Names and Numbers (ICANN) to minimize the former’s role and ensure that it remains an advisory body, rather than one that can set policy on its own over the objections of other ICANN stakeholders.

Overall, NTIA should recognize that authoritarian governments are actively trying to expand their own control over the internet through bodies such as the GAC and International Telecommunication Union (ITU), and it should be equally active in countering such efforts and working to preserve the internet’s multi-stakeholder governance structure. Doing so will enable the internet to continue to thrive as an open network rather than being stifled, or even splintered, by the influence of nefarious states.

Respectfully submitted,

_____/s/_____

Joe Kane, Technology Policy Fellow

June 27, 2018

III. Appendix

U.S. government should not reverse course on internet governance transition
Joe Kane and Milton Mueller

David Redl's road to becoming the National Telecommunications and Information Administrator (NTIA) was long and bumpy. Documents disclosed in late January suggest that, in order to move his nomination forward, [Redl promised](#) Sen. Ted Cruz (R-Texas) that he would assemble a "panel of experts to investigate options for unwinding" the 2016 Internet Assigned Numbers Authority (IANA) transition. Sen. Cruz had held up Redl's nomination for months because he was [displeased](#) with Redl's answers regarding the transfer of IANA stewardship from the NTIA to the Internet Corporation for Assigned Names and Numbers (ICANN), a non-profit, multi-stakeholder, internet governance organization.

That transition was the [right move](#) at the time and remains so today. Any experts worth their salt would tell Redl that attempting to reverse the transition is as futile as it is unwise. Even if the transition could be undone, doing so would not be in the interests of the U.S.

The IANA functions refer to the ability to coordinate globally-unique top-level domain names (.com, .org, .edu), internet protocol addresses and protocol port numbers. Control of IANA is not synonymous with control of the internet as a whole. Though a poorly-run or politically-manipulated IANA could cause the internet a lot of trouble, the IANA functions are primarily a matter of technical coordination. These facts, however, have not stopped Sen. Cruz and others from referring to the transition of IANA stewardship to a private organization as an "[internet giveaway](#)" to countries like Russia and China and trying to discredit the process. Now, with the transition already completed, Redl's promise to Sen. Cruz is the latest attempt to turn back the clock.

Litigation attempting to halt the transition was resolved more than a year ago. In 2016, four states sued the NTIA, saying they would be harmed if the transition proceeded as planned. The court [dismissed the case](#) and held that "statements of what 'might' or 'could' happen are insufficient to support the extraordinary relief sought in this case." It further noted that the states' claims of ICANN's past bad behavior "happened under the

exact regulatory and oversight scheme that the [s]tates now seek to preserve.” In other words, reversing the transition would not have addressed the states’ concerns.

ICANN is an [imperfect organization](#) with politics and problems of its own. But the transition led to dramatic improvements in ICANN’s accountability and corporate governance. The relevant alternatives at this point are leaving IANA stewardship in the hands of ICANN or, if legally possible, transferring it back to the U.S. government. There are no perfect solutions here, only tradeoffs. Accepting stewardship by ICANN is still preferable to reverting to the NTIA, which would bring injurious consequences for global internet freedom. For those who value global internet freedom, the former is the only option.

The internet protocols are used globally, rendering internet governance a matter of global concern. A free and open internet run by the private sector and relatively free of geopolitics was the reason for delegating authority over IANA to ICANN in the first place.

As global commerce and civil society become increasingly reliant on the internet, committing to private governance, rather than government or intergovernmental control, is more critical than ever. If the U.S. wants to be a legitimate force in combating authoritarian regimes who seek greater control over the internet, it must hold fast to its principle of multi-stakeholder governance by non-state actors, and it must be able to keep moderate countries from abandoning the ICANN regime and embracing governmental control. Reversing the IANA transition would tell the world that we want governments to be in charge of the internet—and China and Russia would not hesitate to assert their respective claims.

The issue here is as much about rhetoric as it is about substance. The IANA functions themselves do not directly impinge on whether authoritarian governments gain more influence over the internet, but how the United States reacts to the transition will nudge diplomatic debates one way or another. If the U.S. government is seen to be grasping at more control over the internet, countries that would otherwise be on the fence might support a greater role for intergovernmental bodies in internet governance.

On the other hand, going through with the transition has improved the United States’ negotiating position. By committing to private governance of the internet, it has been and will be able to augment its credibility in arguing against more government control. Attempting to reverse the transition would undermine whatever influence the U.S. has gained since it took place.

This problem is now especially acute because of this November’s [Plenipotentiary Conference](#) of the UN’s International Telecommunication Union, a body that has notoriously sought to establish intergovernmental control over the internet [in the past](#). Authoritarian governments want nothing more than to paint the U.S. as a hypocrite that touts internet freedom while secretly grabbing the controls. How far they seek to go at this year’s conference will partly depend on how far the U.S. goes in attempting to reverse the IANA transition and how many moderate-country votes they can swing to their side.

Of course, it might be that Redl’s promised “panel of experts” was a political ploy. It may never materialize or, if it does, it may return a verdict consistent with his original answer at the confirmation hearing, that “it’s very difficult to put the genie back in the bottle.” Either way, both Redl and Cruz should look ahead to address real internet governance threats from authoritarian governments, like an [expanded role for the ITU](#) and ICANN’s Government Advisory Committee, rather than trying to undo the privatization of the IANA functions.

We have been living in a post-transition world for over a year now, and nightmare scenarios of Russia and China somehow being empowered by this change have yet to materialize. Trying to undo the transition only makes these harmful outcomes more likely.

<https://www.brookings.edu/blog/techtank/2018/02/07/u-s-government-should-not-reverse-course-on-internet-governance-transition/>