



Hearing on

Stakeholder Perspectives on ICANN: The .Sucks Domain and
Essential Steps to Guarantee Trust and Accountability in the Internet's Operation

Before the

Subcommittee on Courts, Intellectual Property, and the Internet
Committee on the Judiciary
United States House of Representatives

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Testimony of

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Thank you, Chairman Issa and Ranking Member Nadler. My name is Paul Misener, and I am Amazon's Vice President for Global Public Policy. Amazon strongly supports the US Government's policy of maintaining Internet stability, security, and freedom from government control. But NTIA's planned transition of core Internet governance functions to an ICANN-led global multistakeholder process carries significant risk. As I will describe today, Amazon's recent experience in ICANN provides a warning that seriously calls into question ICANN's ability or willingness to uphold the multistakeholder model. The international community simply has not yet demonstrated its commitment to ICANN's multistakeholder process, free from government interference, and NTIA's planned transition should not occur unless and until independent review and other robust accountability mechanisms are established for ICANN. Thank you for your attention to this important topic; for calling this hearing; and for inviting me to testify.

I. The Substantive Policy of the United States is Correct.

Concurrent resolutions in 2012 affirmed House and Senate opposition to attempts by foreign governments and intergovernmental organizations to assume control over the Internet and said that, “given the importance of the Internet to the global economy, it is essential that the Internet remain stable, secure, and free from government control.” These characteristics have been hallmarks of the Internet throughout its history, and are each crucial for maintaining the Internet’s importance, including as a medium for global commerce. The US Government is right to focus on protecting these characteristics of the Internet, including while considering the plans of the US National Telecommunications and Information Administration (NTIA) to transfer key remaining elements of its Internet governance responsibilities to a global multistakeholder process led by the International Corporation for Assigned Names and Numbers (ICANN).

In contrast to the substantive goals of maintaining Internet stability, security, and freedom from government control, the global multistakeholder model of Internet governance itself is primarily a means to these ends, not a similar goal. Citizen-consumers in America and around the world will not know or care *how* the Internet is kept stable, secure, and free from government control – only *whether* it is kept so. Nonetheless, it is widely believed that the multistakeholder model is the best means for maintaining these ends, and we agree it certainly is better than creating an inter-governmental organization or mechanism, such as under the UN’s International Telecommunication Union.

II. NTIA’s Plans for ICANN are Risky, so is ICANN’s Multistakeholder Process Working?

Although the US Government’s substantive policy goals are excellent, NTIA’s planned transfer of remaining Internet governance functions to ICANN carries significant risk. In particular, there is a serious risk that, despite NTIA’s intentions, ICANN’s multistakeholder process could be dominated, co-

opted, or undermined by national governments, ultimately jeopardizing the substantive policy goals of Internet stability, security, and freedom from government control. Ideally, this risk would be addressable through a transparent, rules-based, accountable multistakeholder process. But as highlighted by the example of the .SUCKS situation, this process is not fully working. Well over a year ago, members of the multistakeholder community, particularly brand owners, warned ICANN about reports that the .SUCKS operator intended to charge trademark owners \$25,000 per domain name to protect their brands. Despite these warnings, ICANN was not appropriately responsive in investigating the community's concerns about violations of policy.

So a very important question for Congress to ask is whether the current ICANN multistakeholder process actually is working, free from government interference. From Amazon's experience, it is not.

III. Amazon's gTLD Experience Provides a Warning about Government Control of ICANN.

Amazon's familiarity with the multistakeholder process at ICANN comes from our application for several so-called "generic Top-Level Domains," or "gTLDs." These are the characters with and following the last "dot" of an Internet address, the most common being ".COM," ".ORG," and ".GOV," and ICANN is issuing new gTLDs to various applicants. Amazon believes the new gTLD program will provide a great opportunity for innovation and competition on the Internet, and we are thrilled to be part of it.

But our experience in the program raises serious concerns. In sum, the ICANN multistakeholder community worked more than three years to develop rules for gTLD applicants, only to have ICANN ignore these rules under pressure from a handful of national governments. Other national governments around the world also quickly caved to the pressure and, eventually, so did the United States. This willingness of ICANN, other governments, and even the United States to abandon the rules developed in a multistakeholder process, after facing but modest pressure from a few national governments, provides

a warning that seriously calls into question the commitment of the international community to ICANN's multistakeholder process, free from government control.

Here's how it happened. From 2007 through 2011, the ICANN multistakeholder community, along with the ICANN Board and Governmental Advisory Committee (GAC), which is open to all national governments, negotiated rules to govern how entities like Amazon could apply for new gTLDs. As with any multistakeholder deliberation, no party got all that it sought, yet all parties accepted the consensus result. On January 11, 2012, these rules were published in an "Applicant Guidebook," which includes a section on Geographic Names Review that forbids approval of gTLDs that appear on any of several lists (*e.g.*, from ISO and UNESCO) referenced in that section. These lists include names such as "Brazil," "South America," and "Americas," but none includes "Amazon." This section of the Applicant Guidebook also specifies that all gTLDs applied for "will be reviewed according to the requirements of this section, regardless of whether the application indicates it is for a geographic name."

Three months later, and pursuant to the Applicant Guidebook rules, Amazon filed 12 gTLD applications covering Amazon brands (*e.g.*, for the gTLDs ".AMAZON" and ".KINDLE"). On November 12, 2012, the GAC first indicated that Brazil and Peru had raised concerns about Amazon's applications for ".AMAZON" and its Chinese and Japanese character translations. This was despite the fact that, again, these were not among the restricted geographic names referenced in the Applicant Guidebook. Moreover, we held registered Amazon trademarks in both Brazil and Peru and, in those countries the term for the river and region is not "Amazon" but, rather, "Amazonas," "Amazonia," or "Amazonica."

Amazon immediately initiated a dialogue with the governments of Brazil and Peru that lasted for months. We engaged in good faith negotiations, including offering to help these governments reserve other domain names, such as ".AMAZONAS," or to provide special access to certain geographic and cultural terms within the .AMAZON space, but our proposals were flatly rejected on multiple occasions.

On April 6, 2013, NTIA confirmed to Amazon that there was nothing in the ICANN Applicant Guidebook that would block our applications, and told us that NTIA would support us in challenges from Brazil and Peru. NTIA did so at ICANN's April 2013 meeting in Beijing, preventing ICANN's Governmental Advisory Committee from issuing advice to block our applications. By July 12, 2013, our applications for .AMAZON and its Chinese and Japanese character translations had passed ICANN's evaluation process, which included findings by ICANN's Geographic Names Panel that the ".AMAZON" gTLD (and its Chinese and Japanese character translations) "does not fall within the criteria for a geographic name."

So it was very disappointing when, only days later, on July 17, 2013, ICANN and participating national governments, facilitated by the abstention of the United States Government, caved to the political pressure and abandoned the rules developed in ICANN's multistakeholder process. At the behest of Brazil and Peru, ICANN's Governmental Advisory Committee reopened discussion of .AMAZON and then advised the ICANN Board to reject our Amazon applications, even though there was absolutely no legal basis for doing so, and even though the GAC objection period had ended three months earlier.

Remarkably, the United States did not take the opportunity to protest this exertion of government control over ICANN's multistakeholder process. And even more disconcerting was ICANN's inability or unwillingness to stand up to national governments who were using ICANN to impose rights that do not exist under their own national laws or through any international treaties. Rather, ICANN decided to violate its rules and capitulate to government interference. Our subsequent appeals to ICANN have to date been denied.

The implications of this flawed treatment of Amazon stretch well beyond unfairness to a single company. This wasn't just a matter of ICANN and national governments, including the US Government, failing to defend an American company, the treatment of which had no basis under national or international law. More importantly, these governments also failed to defend the ICANN

multistakeholder process to which they supposedly were committed, or to demand ICANN accountability. And if ICANN feels empowered to disregard its rules and procedures, as well as snub the United States, *before* the NTIA-planned transition, one can only imagine what ICANN would feel emboldened to do after a transition were consummated.

From a US perspective, the point is not only that my company's legally-protected interests were sacrificed to geopolitics, it's that the *way* they were sacrificed undermines the whole ICANN multistakeholder model and sets a precedent for ICANN – and the United States – to quickly cave to future pressure from foreign governments. We understand, of course, that US relations with South American countries are important economically, politically, and militarily. But this is no reason for the international community, including the US Government, to abandon rules developed in an ICANN multistakeholder process. And it doesn't take much to imagine which countries' relations might someday be considered even more important economically, politically, or militarily. Perhaps ICANN intended to demonstrate that it would not play favorites with American interests. If so, it went way too far and, instead of treating US interests no differently than those of other countries, it consciously broke its own rules and harmed an American company.

IV. ICANN's Current Multistakeholder Process is not free from Government Control.

The mishandling of Amazon's gTLD applications is a blemish on ICANN's record and, because of how the rules developed in an ICANN multistakeholder process were quickly abandoned in the face of modest governmental pressure, this blemish is disqualifying, at least until cleared. Reinstating and granting Amazon's applications would be a first step, but this incident is only part of a broader question of whether ICANN and the international community are truly committed to the multistakeholder model, free from government control. If the commitment is only superficial, the United States should recognize

and address it now, and NTIA's planned transition should not occur unless and until independent review and other robust accountability mechanisms are established for ICANN. The Internet's stability, security, and freedom from government control are at stake.

Thank you again for your attention to this important topic. I look forward to your questions.

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