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Testimony of

**Bill Woodcock**  
**Executive Director**  
**Packet Clearing House**

before the U.S. House of Representatives Judiciary Committee,  
Subcommittee on Courts, Intellectual Property, and the Internet

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

May 13, 2015





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Executive Summary  
of the Testimony of

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Steps to Guarantee Trust and Accountability in the Internet's Operation

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It is in the interest of both the U.S. Government and US-based Internet stakeholders for the IANA oversight transition to occur on schedule and with undiminished strength of accountability.

The IANA function comprises three independent and separable activities: Protocols, Numbers, and Names. Protocols and Numbers are ready for transition now. Names involves more complex issues, and more time is needed to plan an orderly and responsible transition for it.

Proceeding with the Protocols and Numbers transitions on schedule will show that the US Government is a good-faith participant in the multistakeholder process that it advocates. It will also deny others leverage in their quests to abolish the current multistakeholder system of Internet governance or relocate the site of governance to a jurisdiction with fewer legal protections for stakeholder interests. At the same time, allowing Names the additional time needed to achieve a good result will demonstrate that the US Government is respectful of the expertise and needs of the stakeholder community, not dogmatic in pursuit of a deadline at the expense of a mature and responsible outcome.

ICANN's performance as the IANA function operator is currently incentivized by normal US Government procurement contracting terms. Those include the right to terminate a contract for uncured deficiencies of performance, the right to seek superior offerings through periodic recompetition, and the right to separate the functions. Those contractual protections have successfully ensured good performance on ICANN's part, and diminishing them would raise difficult questions about how to obtain the same incentives.

In addition, the jurisdiction and legal venue of performance of the IANA function are of concern, since rule of law based on an independent judicial system tends to protect the interests of stakeholders. The Internet stakeholder community has shown a very strong preference for US law as the governing law of Internet contracts, and these stakeholders must be given a mechanism to ensure that the IANA function is not moved to a jurisdiction that affords lesser protections. At the same time, any US legal mandate to ensure ICANN always will be domiciled in the US would be resented by others.

Congress can ensure that the IANA transition goes smoothly by holding the NTIA to its announced timeline with respect to Protocols and Numbers and by ensuring that the contractual remedies that currently incentivize good performance by the IANA function operator remain in place after the transition.

Chairman, Ranking Member, and Members of the Committee: Good morning and thank you for the opportunity to testify.

My name is Bill Woodcock.<sup>1</sup> I'm the Executive Director of Packet Clearing House (PCH), the international nongovernmental organization that builds and supports critical Internet infrastructure, including Internet exchange points and the core of the domain name system.<sup>2</sup> I've served on the Board of Trustees of the American Registry for Internet Numbers (ARIN), for the past fourteen years.<sup>3</sup> I have been an active contributor to the the Internet Engineering Task Force (IETF), and in 1998 and 2001 placed protocols into the registry that the Internet Assigned Numbers Authority (IANA) maintains on the IETF's behalf. I have been continuously involved with the IANA processes since the mid-1980s, some fifteen years before the formation of the Internet Corporation for Assigned Names and Numbers (ICANN). Most relevant to the proceeding at hand, I am one of the two North American representatives to the Consolidated RIR IANA Stewardship Proposal Team, the CRISP Team.<sup>4</sup> CRISP is the process through which the Internet Numbers community has developed its IANA oversight transition proposal.<sup>5</sup>

I'm here today to explain why it's in the interest of both the US Government and Internet stakeholders to ensure that the IANA oversight transition occurs on schedule and with undiminished strength of accountability.

The IANA function comprises three discrete activities, serving three different communities: the domain name community, from which you've heard much today; the Internet protocols community, consisting primarily of the IETF, which sets Internet standards; and the Internet numbers community, which manages the Internet addresses that allow our devices to communicate. Although these three functions are similar, inasmuch as they all deal with unique identifiers underpinning the Internet, they're also completely independent of—and separable from—each other. Two of the three communities, Protocols and Numbers, produced the requested transition plans on schedule, in January. These transition plans are a testament to the success of multistakeholder governance. Broad and inclusive participation has produced a qualitatively better result than would have come from a few people hashing out a deal behind closed doors.

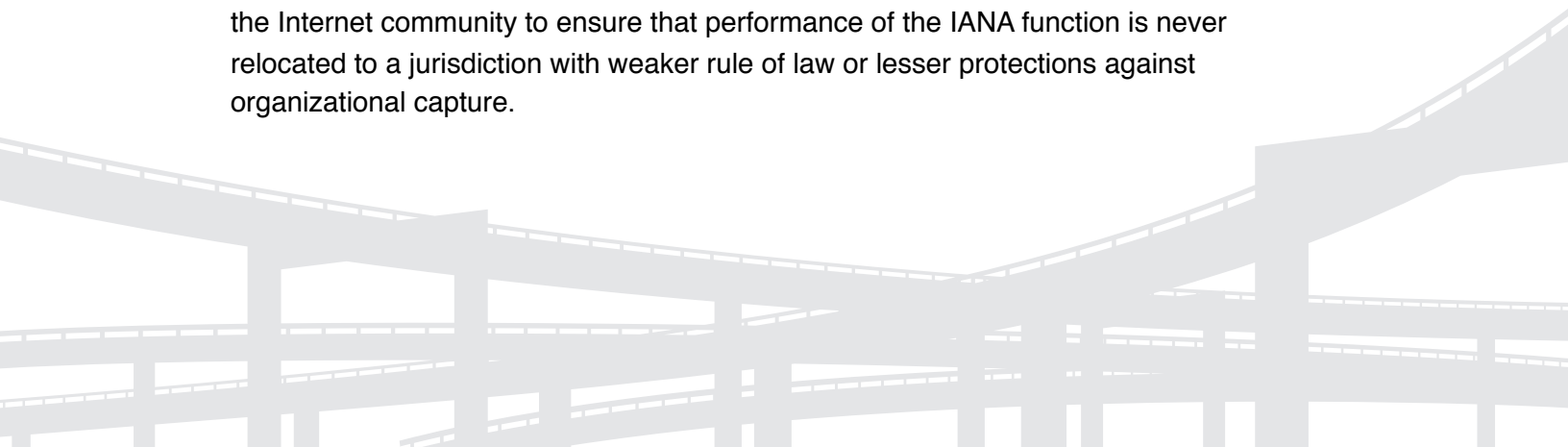
Although the Protocols and Numbers transition proposals are complete, the Names proposal is still a work in progress. The Protocols and Numbers communities have finished because the IANA functions that serve these two communities are very simple. The IANA function that serves Names is, as you've been hearing, substantially more complex and is surrounded by a degree of debate that does not exist in the other two communities.

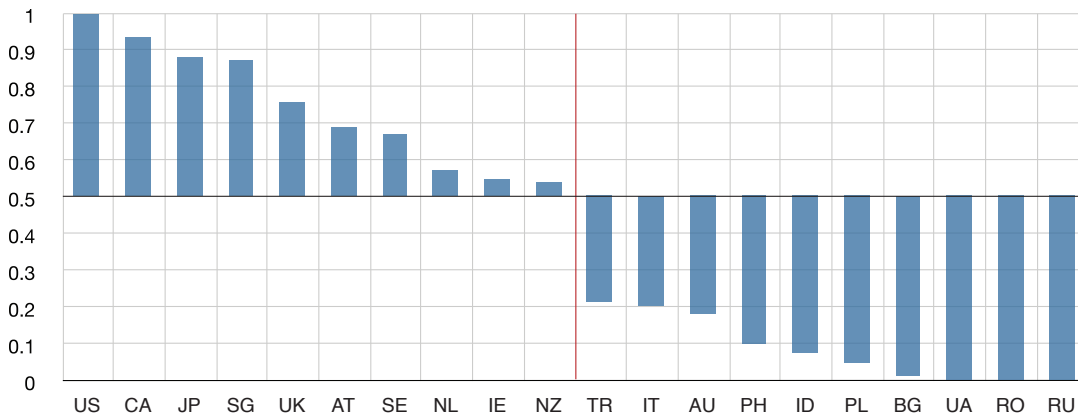
It seems clear that the Names community will not reach consensus on a proposal in sufficient time to achieve a September 30 transition of the Names function. The Numbers and Protocols transitions are, however, ready to be implemented. Moving these forward on the announced schedule is critical. It would show good faith on the part of the US Government and assure the world that it is a productive participant in the multistakeholder process, rather than an obstacle. At the same time, allowing the Names community the further time it needs would show that the US Government is neither throwing caution to the wind nor abandoning its responsibilities before ICANN accountability can be firmly established.

If NTIA delays the Protocols and Numbers transitions beyond its stated September 30 deadline, when they are already ready to go, it will goad to further action the many nations that are already displeased with the exceptional nature of the US Government's role in IANA oversight. A shift in the balance of Internet governance from the multistakeholder model advocated by the US Government and the Internet community to the intergovernmental model advocated by China and the ITU—in which only national governments have a voice in decisions—would be detrimental to us all. Conversely, a timely transition to strong stakeholder oversight of the IANA function would achieve the goals of both the US Government and the global Internet community: responsible administration of a critical resource with strong contractual accountability to stakeholders, enforced within a jurisdiction that ensures that accountability is guaranteed by the rule of law and does not merely rely on ICANN's whim.

It's worthy of note that, for better or worse, ICANN is under considerable pressure from foreign governments to internationalize and it has, over the past five years, gone from being solely a US operation to one with offices and staff in Beijing, Geneva, Istanbul, Brussels, Montevideo, Seoul, and Singapore. One can take this as evidence of the power of national governments to influence ICANN—influence that will only grow stronger with time. And any US legal mandate to domicile ICANN permanently in the US would further inflame opposition from other governments.

In my written testimony, I have cited the clear and incontrovertible data that demonstrate that the United States is the legal venue of choice of the international Internet community whenever it is an available option—not just some of the time but 100% of the time, across a sample of more than 142,000 Internet contractual agreements.<sup>6</sup> Strongly accountable contractual oversight of the IANA function allows the Internet community to ensure that performance of the IANA function is never relocated to a jurisdiction with weaker rule of law or lesser protections against organizational capture.





*Probability of selection as a country of governing law, ten most-likely and ten least-likely countries*  
 Source: <https://www-04.pch.net/resources/papers/peering-survey/PCH-Peering-Survey-2011.pdf>

To date, ICANN has performed the IANA function well *because* it's been disciplined by the standard mechanisms of US Government procurement: the right to remedy uncured defects with mechanisms up to and including contract termination and the right to seek superior performers in the marketplace through periodic recompetition. The Numbers community believes it essential that we retain these same strong accountability mechanisms after the transition, to ensure responsible performance of the IANA function.<sup>7</sup> These are the safety valves that will protect the Internet in the event that, for example, ICANN becomes a captured organization or reincorporates in a jurisdiction less hospitable to the Internet.

In February, a month after the Protocols and Numbers communities produced their transition plans, Chairmen Goodlatte and Grassley wisely called for an “outcome emanating from a true bottom-up multistakeholder process, neither imposed on nor unduly influenced by ICANN’s leaders, staff, or members of its board.” It is tremendously encouraging that Congress is embracing and upholding the essential values of multistakeholderism. I cannot emphasize strongly enough the necessity for resolute and steadfast adherence to the principles of transparency and openness in guaranteeing a positive, productive outcome to the transition.

No good can come from delaying the transition of the Protocols and Numbers functions. At the same time, no good can come from hurrying the Names community, with their much more complicated situation, into a hasty or incompletely considered compromise. Their issues are real ones that require thorough consideration and carefully crafted solutions involving significant ICANN accountability reforms. Those policy-level reforms are simply irrelevant and orthogonal to the very simple mechanical tasks the IANA performs on behalf of the Protocols and Numbers communities.

Congress is uniquely able to ensure that the US Government's commitment to a successful IANA transition is realized and to act as the guarantor of the success of the multistakeholder governance model. The interests of the US Government and of the global Internet stakeholder community are both served by a transition of the IANA Protocols and Numbers functions on time, on September 30 of this year, as long as those communities are contractually empowered to enforce the accountability of the IANA function operator in the same manner that the US Government has successfully done for the past sixteen years. I ask you to use Congress' unique power of oversight over NTIA to ensure that our commitments are met and the transition of the Numbers and Names functions occurs as scheduled.

Thank you for your time.

<sup>1</sup> <https://www.linkedin.com/profile/view?id=2680>

<sup>2</sup> <https://pch.net/about/people.php>

<sup>3</sup> [https://arin.net/about\\_us/bot.html#Woodcock](https://arin.net/about_us/bot.html#Woodcock)

<sup>4</sup> <https://www.nro.net/nro-and-internet-governance/iana-oversight/consolidated-rir-iana-stewardship-proposal-team-crisp-team>

<sup>5</sup> <https://www.nro.net/wp-content/uploads/ICG-RFP-Number-Resource-Proposal.html>

<sup>6</sup> <https://www.pch.net/resources/papers/peering-survey/PCH-Peering-Survey-2011.pdf> pp.3 and figure 2

<sup>7</sup> See, for example, point 4 of <http://www.afrinic.net/en/library/news/1361-board-statement-on-iana-transition>