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1 {York Stenographic Services, Inc.}

2 HIF155.160

3 HEARING ON OVERSIGHT OF THE INTERNET CORPORATION FOR ASSIGNED

4 NAMES AND NUMBERS (ICANN)

5 THURSDAY, JUNE 4, 2009

6 House of Representatives,

7 Subcommittee on Communications, Technology and the Internet

8 Committee on Energy and Commerce

9 Washington, D.C.

10 The subcommittee met, pursuant to call, at 10:07 a.m.,
11 in Room 2123 of the Rayburn House Office Building, Hon. Rick
12 Boucher (chairman of the subcommittee) presiding.

13 Present: Representatives Boucher, Eshoo, Doyle, Inslee,
14 Matsui, Christensen, Castor, Space, McNerney, Dingell,
15 Weiner, Stearns, Upton, Shimkus, Shadegg, Terry, and
16 Blackburn.

17 Staff Present: Amy Levine, Subcommittee Counsel; Roger
18 Sherman, Chief Counsel; Shawn Chang, Counsel; Tim Powderly,

19 Counsel; Greg Guice, Counsel; Sarah Fisher, Special
20 Assistant; Liz Eralzer, Intern; Pat Delgado, Chief of Staff,
21 Mr. Waxman; Amy Bender, Minority Counsel; Neil Fried,
22 Minority Counsel; and Garrett Golding, Minority Legislative
23 Analyst.

|
24 Mr. {Boucher.} The subcommittee will come to order.

25 Our discussion this morning focuses on the activities of
26 the Internet Corporation for Assigned Names and Numbers,
27 commonly referred to as ICANN.

28 Since 1998, ICANN has managed the designation and
29 allocation of Internet domain names and addresses under
30 various contractual arrangements with the United States
31 Department of Commerce. The original Memorandum of
32 Understanding that was signed in November of 1998 has been
33 renewed on several occasions, most recently as a Joint
34 Project Agreement, which is now scheduled to expire on
35 September 30 this year.

36 One matter upon which we will focus this morning is
37 whether Department of Commerce oversight should be retained
38 through renewal of that agreement or, in the alternative,
39 whether the time has come for that oversight to be
40 relinquished, and for ICANN to operate, after September 30,
41 without supervision, with respect to the allocation and
42 designation of Internet domain names and addresses and
43 associated functions. It should be noted that, under a
44 separate contract, which is not scheduled to expire, the
45 Department of Commerce has conferred upon ICANN the
46 management of the master files of the domain name system,

47 generally known as the root zone files. Under that non-
48 expiring contract, ICANN also manages and coordinates the
49 allocation of IP addresses.

50 In considering whether the expiring contract should be
51 renewed or should expire without renewal, key questions are
52 whether ICANN's decision-making is sufficiently transparent,
53 or whether improvements are needed, and whether, under its
54 existing structure and practices, ICANN is sufficiently
55 accountable to Internet stakeholders and the global community
56 of Internet users. I am sure that today's witnesses and
57 members of this panel will have a number of views to express,
58 and the members will have questions about those key matters.

59 A second focus of today's hearing is on ICANN's proposal
60 to introduce new generic top-level domains, which could
61 involve descriptions of various types of activities,
62 locations, brands, or trademarked names. It is suggested
63 that the creation of new top-level domains would promote
64 competition among registry operators of the TLDs, and would
65 enhance consumer choice.

66 Among the concerns that have been raised about a
67 proliferation of new TLDs is the cost to companies associated
68 with protecting their brands, if they have to purchase
69 additional second level domain registrations under the new
70 top-level domains. Not only do they purchase their exact

71 brand names as a common practice under the various TLDs, but
72 they generally also purchase common misspellings of their
73 brand names in order to protect the brand name itself, so a
74 buffer area, in effect, is acquired around the brand name,
75 through the second level TLDs. So, as the number of top
76 level TLDs grows, the cost to companies to protect their
77 brand names grows exponentially. Does the added competition
78 and consumer choice that would arise from the new TLDs offset
79 that cost, as a matter of public policy, a key question for
80 us to consider.

81 Other questions relate to ICANN's capacity to manage all
82 of the new top-level domains and assure the overall stability
83 and security of the domain name system, and whether ICANN can
84 assure that an adequate amount of competition would, in fact,
85 arise in the bidding process for new TLDs.

86 We will welcome our testimony this morning. We thank
87 our witnesses for being with us, and sharing their views on
88 these very important subjects, with regard to the future of
89 Internet management and governance.

90 [The prepared statement of Mr. Boucher follows:]

91 ***** COMMITTEE INSERT *****

|
92 Mr. {Boucher.} And at this time, I am pleased to
93 recognize the ranking Republican on our subcommittee, the
94 gentleman from Florida, Mr. Stearns.

95 Mr. {Stearns.} Good morning, and thank you, Mr.
96 Chairman. For more than a decade, ICANN has played a vital
97 role in maintaining a stable and reliable Internet, and I
98 think that is a very high achievement.

99 ICANN has the critically important responsibility for
100 managing the domain name system, the hierarchy of IP
101 addresses and associated domain names that enable Internet
102 users around the globe to communicate with each other. ICANN
103 has succeeded, both because it has been a private sector led
104 effort, not controlled, for example, by the United Nations,
105 or any other government, and thanks to the advice, guidance,
106 and engagement of the United States through a series of
107 arrangements, including the Joint Projects Agreement.

108 The key question before this committee is will the
109 expiration of the JPA in September put the stability and
110 security of the Internet at risk. I have some concerns, and
111 want to hear from the panel on this matter.

112 The JPA with the Department of Commerce has played an
113 important role in ensuring that ICANN is accountable for its
114 decisions, and conducts its mission in a manner that provides

115 for stakeholders' participation. The JPA should be extended,
116 and the NTIA is in the process of seeking public comment on
117 this issue.

118 One major question for this hearing is whether there is
119 a need to renew the JPA when it expires, and what the nature
120 of U.S. engagement with ICANN would be in its absence. While
121 it can never please all its stakeholders all the time, it
122 needs appropriate governance mechanisms that will ensure its
123 openness and accountability. Apart from ICANN's agreement
124 with the Department of Commerce, what other external
125 mechanisms are in place today to simply safeguard that
126 accountability? If there are none, or if there are
127 insufficient controls, perhaps ICANN's ongoing relationship
128 with the Department of Commerce should then continue.

129 Ultimately, though, through the global Internet
130 community will need to develop an appropriate governance
131 structure to ensure its accountability. One of its functions
132 is to create generic top-level domains, or GTLDs, which is a
133 unit of letters or words beyond the rightmost dot, such as
134 .com or .gov or .net. Over the time, the number of GTLDs has
135 expanded to 21.

136 Last June, ICANN proposed to further expand the number
137 of GTLDs. Under the proposal, which was put out for public
138 comment, and must be finalized and approved by the Board of

139 Directors, new GTLDs could include the names of
140 organizations, companies, locations, or additional generic
141 words. However, before ICANN expands this list, it should
142 address concerns about the proposed expansion, and provide
143 further opportunity for comments by all the stakeholders.

144 In a letter to ICANN last December, NTIA raised a number
145 of questions regarding the way in which it was proposed to
146 administer the rollouts of these new GTLDs. Specifically,
147 NTIA wondered whether it is prepared to implement measures to
148 promote competition on registry prices, terms, and
149 conditions, ensure the application process will respect, with
150 respect to national and international laws, including
151 intellectual property rights, enforce contract compliance,
152 and design a rational fee structure. NTIA recommended that
153 ICANN can resolve a number of these issues before expanding
154 the GTLDs.

155 My colleagues' trade holders are concerned that without
156 sufficient protection for intellectual property rights, they
157 will have to engage in costly defensive registration of
158 domains that are identical or similar to their trademarks
159 across GTLDs to prevent others from registering them, or
160 pursue costly and time-consuming administrative or legal
161 processes against cybersquatters. I hope our witnesses will
162 address these legitimate concerns also.

163 Another and final point, that since ICANN is considered
164 a not for profit organization, does a transparent mechanism
165 exist to address any excess revenues. According to data from
166 the Technology Policy Institute, its revenues have increased
167 from \$5 million in 2000 to over \$60 million in 2009, while
168 expenses have increased from under \$3 million in 2000 to over
169 \$54 million in 2009. Thus, it will have a surplus of close
170 to \$7 million from Financial Year 2009.

171 ICANN's largest expense is personnel, accounting for
172 close to \$20 million of the \$54 million. According to its
173 annual report, it employees 100 staff members. Although
174 salary information and administrative costs were not
175 available, I hope the witnesses today will address these
176 issues on finance.

177 Thank you, Mr. Chairman, for holding this hearing.

178 [The prepared statement of Mr. Stearns follows:]

179 ***** COMMITTEE INSERT *****

|
180 Mr. {Boucher.} Thank you very much, Mr. Stearns. The
181 gentleman from Pennsylvania, Mr. Doyle, is recognized for two
182 minutes.

183 Mr. {Doyle.} Thank you, Mr. Chairman, and I want to
184 thank you for holding this important hearing.

185 I own a few domains, and I have benefited from the
186 competition among domains in who I can buy them from. I
187 believe that because the Internet is truly global,
188 significant input from around the world is important to its
189 governance, which is why it pains me to say that I hope that
190 the Department of Commerce continues the JPA with ICANN, and
191 not relinquish control at this time.

192 I am afraid ICANN seems better at furthering its own
193 interests than those of the millions of Internet users that
194 it is supposed to look out for. My constituents are still
195 receiving misleading solicitations that look like invoices
196 from a registrar, despite a court injunction and despite FTC
197 intervention. Why does ICANN allow them to continue to sell
198 domain names? This is domain slamming and it continues
199 today. When ICANN attempted to curb the abuse of domain
200 tasting, the five day window when purchased domains were able
201 to be returned and refunded, their solution was to make their
202 fee nonrefundable. Well, that helped curb the abuse, but the

203 money didn't go for consumer protection or coordination
204 towards IPv6, it went to the general budget, executive
205 compensation, and cushioning ICANN's \$4.6 million stock
206 market loss last year. If they can afford to lose that much
207 money in the market, why are they collecting the fees from us
208 in the first place?

209 I am glad to see witnesses talking about the GTLD issue
210 today, which I have grave reservations. I fear that the
211 primary beneficiary is not the consumer, who might suffer
212 from increased confusion, or the businesses who would need to
213 register new domains to defend their trademark across a near
214 infinite number of top-level domains. On the other hand, it
215 might act as a needed market-based solution to ensure that
216 rates and fees for .com are kept low in this economic
217 downturn.

218 Small domain users like me and companies that need and
219 use thousands of domain names to run their businesses, and
220 the tens of millions of Internet users who place their trust
221 in the Internet today, need assurance that someone is looking
222 out for them. I don't see it from ICANN.

223 Thank you, Mr. Chairman.

224 [The prepared statement of Mr. Doyle follows:]

225 ***** COMMITTEE INSERT *****

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226 Mr. {Boucher.} Thank you very much, Mr. Doyle. The
227 gentleman from Illinois, Mr. Shimkus, is recognized for two
228 minutes.

229 Mr. {Shimkus.} Thank you, Mr. Chairman.

230 We have a new Administration, everyone knows. We have a
231 new individual getting close to being confirmed in NTIA. We
232 have a change in the administration at the ICANN. This is
233 now not a time to make changes. I would be supportive of
234 extending the Joint Project Agreement.

235 I look forward to the hearing, and I yield back my time.

236 [The prepared statement of Mr. Shimkus follows:]

237 ***** COMMITTEE INSERT *****

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238 Mr. {Boucher.} Thank you very much, Mr. Shimkus. The
239 gentlelady from the Virgin Islands, Ms. Christensen, is
240 recognized for two minutes.

241 Ms. {Christensen.} Thank you Mr. Chairman and the
242 ranking member for this hearing, and for giving me yet
243 another list of new acronyms to add to others that I still
244 haven't committed to memory, but I am beginning to understand
245 the concepts, and that is more important.

246 We are here to review the progress ICANN has made, and
247 whether it is ready for the Joint Project Agreement to expire
248 on 9/30/09, and for the management of the DNS to transfer
249 from the MOU with the U.S. Government to the global
250 community. Whether it is fully able to meet its mandates and
251 the goals of stability, competition, bottom-up coordination,
252 security, and broad representation, as well as transparency.
253 There seem to be many concerns that it is not ready, and we
254 need to determine if this is just a fear of the risks that
255 any change would bring, whether they are legitimate concerns
256 that still need to be addressed first, as some panelists will
257 suggest.

258 I am particularly interested in the bottom-up
259 coordination and, of course, security, as well as
260 understanding whether the projected plans ICANN has are not

261 only realistic, but responsible, and whether or not they
262 jeopardize stability and security.

263 I want to applaud our chair and ranking member once
264 again for the excellent oversight on yet another pressing
265 issue, and look forward to the testimony that will be
266 presented.

267 Thank you, everyone, for being here and sharing your
268 views with us on this issue.

269 [The prepared statement of Ms. Christensen follows:]

270 ***** COMMITTEE INSERT *****

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271 Mr. {Boucher.} Thank you, Ms. Christensen. The
272 gentlelady from Tennessee, Ms. Blackburn, is recognized for
273 two minutes. She was here a moment ago. All right, we will
274 await her arrival at a later time. The gentleman from
275 Nebraska, Mr. Terry, is recognized for two minutes.

276 Mr. {Terry.} Thank you, Mr. Chairman, and appreciate
277 you holding this hearing on what I believe could actually be
278 a matter of national security.

279 ICANN serves a very important role in being responsible
280 for managing the domain name system which, as you know, is
281 the hierarchy of IP addresses and associated domain names
282 that enable Internet users around the globe to communicate
283 with each other.

284 This interconnectedness that allows us to communicate
285 with one another is the reason that ICANN should renew the
286 Joint Project Agreement, or sign a similar agreement when the
287 current agreement expires later this year. The goals of the
288 JPA should continue to work towards increasing ICANN's
289 transparency, accountability, and openness, while developing
290 mechanisms and procedures to transition the domain name
291 system functions to the private sector, in a manner that
292 promotes stability, security, competition, bottom-up
293 coordination, and representation.

294 Should a rogue nation get the chance to control the DNS,
295 it is a definite possibility that they could use it to harm
296 the U.S., or to dismantle and interfere with our ability to
297 communicate globally through the Internet. I would hope that
298 my colleagues would join me in saying that, quite simply put,
299 the United States Government created the Internet, and it
300 needs to be in charge, as it could very well be vital to our
301 Nation's security.

302 Thank you, Mr. Chairman, and I yield back my time.

303 [The prepared statement of Mr. Terry follows:]

304 ***** COMMITTEE INSERT *****

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305 Mr. {Boucher.} Thank you very much, Mr. Terry. The
306 gentlelady from Florida, Ms. Castor, is recognized for two
307 minutes.

308 Ms. {Castor.} Well, thank you, Mr. Chairman, very much
309 for calling this interesting hearing on the Internet
310 Corporation for Assigned Names and Numbers.

311 I appreciate the witnesses' willingness to be here today
312 to discuss these important business issues and consumer
313 issues, and how we continue to modernize the Internet. I
314 yield back the rest of my time.

315 [The prepared statement of Ms. Castor follows:]

316 ***** COMMITTEE INSERT *****

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317 Mr. {Boucher.} Thank you very much, Ms. Castor. The
318 gentleman from Michigan, Mr. Upton, is recognized for two
319 minutes.

320 Mr. {Upton.} Thank you, Mr. Chairman. I would just
321 like to say that I, too, join many of my colleagues, hoping
322 that the JPA can be extended in a timely fashion, and I look
323 forward to being a partner in that, and I believe that it
324 will be certainly a bipartisan one as well.

325 Since we have Ms. Alexander here, we have a pretty big
326 date coming up, on a little bit more than a week away here,
327 and you may expect to have some questions on the transition
328 to digital, just to see where we are. I know a lot of
329 Americans are concerned about that, and don't have quite the
330 publicity we had back in February, but we all hope that it
331 will be a pretty smooth transition, and we look forward to
332 your thoughts about that as well.

333 Mr. Chairman, I yield back.

334 [The prepared statement of Mr. Upton follows:]

335 ***** COMMITTEE INSERT *****

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336 Mr. {Boucher.} Thank you very much, Mr. Upton. The
337 gentlelady from California, Ms. Matsui, is recognized for two
338 minutes.

339 Ms. {Matsui.} Thank you, Mr. Chairman. Thank you for
340 calling today's hearing. I applaud your leadership in
341 addressing this important issue. I would also like to thank
342 our panelists for being with us here this morning.

343 As we all know, ICANN was created in 1998 to govern the
344 allocation and designation of Internet domain names and
345 addresses. Although certain responsibilities for the domain
346 name system were transferred from the Department of Commerce
347 to ICANN, Department of Commerce continues to exercise
348 limited oversight of ICANN, through the Joint Project
349 Agreement. Under this Agreement, the Department of Commerce
350 affirmed its policy goals of preserving the security and
351 stability of the Internet domain name system. This agreement
352 is now set to expire on September 30 of this year.

353 While I understand some of the reasons that ICANN does
354 not want to extend the JPA agreement, such as how the U.S.
355 role is viewed abroad, now may not be the time to say that
356 ICANN should be on its own. Just last year, NTIA initiated a
357 review of the agreement, and found that although ICANN has
358 made progress in key areas concerning security and stability

359 of the domain name system, important work still remains. We
360 must ensure the Internet domain system is transparent,
361 accountable, and has a strong governance structure. Moving
362 forward, I urge the Administration to carefully consider its
363 agreement and partnership with ICANN.

364 I thank you, Mr. Chairman, for holding this important
365 hearing today, and I yield back the balance of my time.

366 [The prepared statement of Ms. Matsui follows:]

367 ***** COMMITTEE INSERT *****

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368 Mr. {Boucher.} Thank you very much, Ms. Matsui. Ms.
369 Blackburn hasn't returned. The gentleman from the State of
370 Washington, Mr. Inslee, is recognized for two minutes.

371 Mr. {Inslee.} Thank you. I will reserve. Thank you,
372 Mr. Chair.

373 [The prepared statement of Mr. Inslee follows:]

374 ***** COMMITTEE INSERT *****

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375 Mr. {Boucher.} Thank you, Mr. Inslee. You will have
376 two minutes of time added to your questioning period.

377 The gentleman from California, Mr. McNerney, is
378 recognized for two minutes.

379 Mr. {McNerney.} Thank you, Mr. Chairman.

380 This is an interesting and important hearing, so I am
381 looking forward to it. It is important that we work
382 together, to ensure that we have a fair and transparent
383 system, maintaining and improving the Internet, in order to
384 avoid potential difficulties. It is essential that we keep
385 the Internet accessible and easily navigated to all, and I
386 look forward to the testimony this morning.

387 Thank you.

388 [The prepared statement of Mr. McNerney follows:]

389 ***** COMMITTEE INSERT *****

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390 Mr. {Boucher.} Thank you, Mr. McNerney. The gentlelady
391 from California, Ms. Eshoo, is recognized for two minutes.

392 Ms. {Eshoo.} Thank you, Mr. Chairman, and good morning
393 to all of the witnesses.

394 Like any new organization, ICANN has gone through its
395 share of growing pains, and since it was created 11 years
396 ago, it has been a target for criticism among the global
397 Internet community.

398 I will have some questions today about the operation,
399 and where you are right now, but I do think that progress has
400 been made, and on the other hand, that many of the concerns,
401 I think, have been appropriate, and ICANN continues to
402 develop itself, and to do the thorough oversight over the
403 technical and administrative functions under its
404 jurisdiction, and that is a plus.

405 I think that you have been successful in introducing
406 competition to both the retail and the wholesale domain name
407 business, added a whole new host of Internet domains, and
408 stepped in to ensure that the country code top-level domains
409 are properly designated.

410 I think the most important and heavily trafficked
411 domains, .com and .net, are operated by VeriSign, a company
412 headquartered in my district in Mountain View, California,

413 and I know that Mr. Silva is here today, and I welcome him.
414 VeriSign has maintained a 100 percent uptime for .com. It
415 has never failed. That is something in and of itself, so to
416 be congratulated for that.

417 It is important to remember that ICANN was founded in a
418 response to growing concerns about U.S. domination of the
419 Internet, and today, I think many countries believe the U.S.
420 continues to exert undue influence over ICANN and the
421 administrative functions of the Internet, and we can talk
422 about that.

423 But I understand the concerns about this whole issue of
424 excessive U.S. control over Internet governance, but the
425 alternative right now, I think is clearly unacceptable.
426 ICANN doesn't have the independent authority and the
427 governance structure to prevent other governments from using
428 power over the DNS to interfere with innovation, competition,
429 and freedom of expression.

430 So, I look forward to the discussion and the questions
431 that I will ask, as well as my colleagues, and welcome all of
432 you here, and I thank the chairman for having you here today,
433 because I think it is important that you are.

434 Yield back.

435 [The prepared statement of Ms. Eshoo follows:]

436 ***** COMMITTEE INSERT *****

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437 Mr. {Boucher.} Thank you very much, Ms. Eshoo. The
438 gentlelady from Tennessee, Ms. Blackburn, is recognized for
439 two minutes.

440 Ms. {Blackburn.} Thank you, Mr. Chairman. I do thank
441 you for the hearing today, and for our witnesses, welcome.
442 We are delighted that you are here with us, as we do have
443 multiple hearings going on this morning. So, we are going to
444 be jumping up and down and in and out, but please excuse us
445 for that.

446 Few international organizations quietly wield the power
447 in the global community that ICANN currently wields. While
448 most Americans have probably never heard of ICANN, it is this
449 California-based organization, which is a nonprofit, and that
450 is responsible for the management and the assignment of
451 virtually IP address and domain name worldwide. Wow. That
452 is the growing side of things. It is an enormous
453 responsibility to be overseen by a nongovernmental
454 organization. That reason alone necessitates this
455 committee's time and attention to provide proper oversight,
456 notwithstanding the fact that our government's only
457 functional tool for overseeing ICANN activities stems from
458 the JPA. And that does expire on September 30, which brings
459 us to today.

460 Now, there is a letter from Chairman Thrush, the January
461 25 letter, in which he states that ICANN does not believe it
462 should answer directly to the U.S. Government, and that the
463 Memorandum of Understanding it signed in November '08 is no
464 longer necessary, and I am quoting from that letter.

465 Now, many disagree, and believe that additional
466 oversight, not less, is necessary to provide a check and
467 balance regarding decisions made by an international
468 organization comprised of unelected officials. The Internet,
469 and this is what is so interesting to me, and I think it is
470 really exciting, when you look at commerce and the growth of,
471 especially small business commerce. The Internet consists of
472 174 million websites, 570 million computers, and more than
473 1.5 billion users. Coordination of this intricate web
474 necessitates transparent decision-making, technical
475 expertise, and evenhanded governance. Only U.S. sponsored
476 oversight for a body tasked with overseeing the domain name
477 and IP address system, for which ICANN is responsible, can
478 ensure the Internet's continued viability and fairness, as
479 Twenty First Century Internet architecture evolves.

480 It is, therefore, imperative for the U.S. Government to
481 remain integrally linked to the organization, thereby
482 securing the historic role, American role in the development
483 and commercial governance of the Internet architecture.

484 So, we are looking forward to hearing from you, and
485 working with you, and Mr. Chairman, I yield back.

486 [The prepared statement of Ms. Blackburn follows:]

487 ***** COMMITTEE INSERT *****

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488 Mr. {Boucher.} Thank you very much, Ms. Blackburn. The
489 gentleman from Michigan, Mr. Dingell, Chairman Emeritus of
490 the full committee, is recognized for five minutes.

491 Mr. {Dingell.} Mr. Chairman, I thank you for your
492 courtesy. I comment your for this hearing. It is very much
493 needed. It is not a new issue.

494 At issue today are a number of matters related to
495 oversight of the Internet Corporation for Assigned Names and
496 Numbers, ICANN. In particular, we will examine the pending
497 expiration of the Joint Project Agreement, JPA, between
498 National Telecommunications and Information Agency, NTIA, and
499 ICANN, ICANN's proposed plans to expand the number of
500 available generic top-level domains, GTLDs, and the future of
501 ICANN's contract with VeriSign for registration of the .com
502 top-level domain.

503 Each of these interesting issues requires a number of
504 careful considerations and ample participations by all
505 affected stakeholders, before any change in policy is either
506 ratified or understood. I am not satisfied that this has
507 been the case with the matters I have just mentioned, and
508 this committee has had troubles with these matters before.
509 And I intend to ask such questions of our witnesses as will
510 enable us to get very frank answers about all of them, and I

511 urge my colleagues to do like.

512 Before, however, engaging in a substantive dialog with
513 the witnesses today, I would like to note the following.
514 First, with regard to the expiration of the JPA between NTIA
515 and ICANN, I wish to reiterate my insistence that ICANN
516 remains far from a model of effective and sustainable self-
517 governance, and I hope they are listening to that comment.

518 Legitimate concerns about the lack of fairness,
519 transparency, and accountability in ICANN's functionings
520 continue to be raised by stakeholders and the Internet
521 community. Particularly, in a time of increased cyberattacks
522 on the U.S. Government and domestic businesses, I find it
523 wholly unwise to reduce further the participation of the
524 Federal Government in determining the course of the
525 Internet's future development.

526 Similarly, and limited through the oversight NTIA
527 exercises over ICANN may be, given the recent observable
528 effects of deregulation and inadequate oversight on the
529 economy, I believe that here, we have an analogy. The JPA
530 between NTIA and ICANN should be extended.

531 Second, concerning GTLDs. I consider ICANN's attention
532 to the effect of dramatically increasing the number of
533 available GTLDs on competition, pricing, and consumer choice
534 clearly inadequate. Moreover, I have suspicions that

535 expanding the number of top-level domains could, in fact,
536 give rise to increased instances of fraud perpetrated on
537 consumers, and the practice of cybersquatting, an unhealthy
538 and dangerous situation.

539 Finally, I continue to maintain that ICANN's contract
540 with VeriSign for the registry of the ``.com'' domain is
541 characterized by a deplorable lack of transparency. If this
542 is not going to be a government undertaking, and is not going
543 to be adequately regulated, it has to be transparent, which
544 it clearly is not.

545 In brief, I have grave misgivings about the wisdom of
546 extending this contract after it expires in 2012, and I will
547 expect this hearing to produce some answers as to whether or
548 not that should be extended, and whether or not it needs to
549 have additional safeguards to assure that it is properly
550 extended, with proper transparency or, in the alternative,
551 more regulation.

552 Thank you for your courtesy, Mr. Chairman. I look
553 forward to a constructive discussion with our witnesses
554 today, and in answer to the questions which this committee
555 has to ask.

556 Thank you.

557 [The prepared statement of Mr. Dingell follows:]

558 ***** COMMITTEE INSERT *****

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559 Mr. {Boucher.} Thank you very much, Mr. Dingell. The
560 gentleman from Arizona, Mr. Shadegg, is recognized for two
561 minutes.

562 Mr. {Shadegg.} Thank you, Mr. Chairman, and thank you
563 for holding this hearing today.

564 I want to welcome all of our witnesses, but I
565 particularly want to welcome to Washington the Go Daddy
566 Group, and its representative, Christine Jones, whom I have
567 known and worked with for many years. The Go Daddy Group
568 plays an important role in the economy of Arizona. They are
569 a key component of our business community, and they have, I
570 think, great insight and perspective in this particular
571 topic, about which we are discussing today. I welcome Ms.
572 Jones, and look forward to her testimony, along with that of
573 the other witnesses.

574 ICANN has played a vital role in the development of the
575 Internet, and has carried a huge burden, but as has been
576 adequately expressed here, and I will be brief in my remarks,
577 there are certainly problems, and it is apparent that a great
578 deal of work needs to be done.

579 With the looming expiration of the Joint Project
580 Agreement, it is clear that a plan must be put in place to
581 ensure the security, stability, and viability of the Internet

582 remains intact. I applaud the work of ICANN to date, but I
583 believe there are areas, indeed, significant areas, for
584 improvement.

585 Again, Mr. Chairman, I thank you for this hearing. I
586 believe it is important that we learn more about how ICANN
587 affects all of us, and both the keys player in the Internet
588 world, but all Americans, all people around the world who use
589 the Internet, and I am interested in hearing how it affects
590 the organizations that are represented here today.

591 Again, I thank the witnesses, and I look forward to your
592 testimony.

593 [The prepared statement of Mr. Shadegg follows:]

594 ***** COMMITTEE INSERT *****

|
595 Mr. {Boucher.} Thank you very much, Mr. Shadegg. The
596 gentleman from New York, Mr. Weiner, is recognized for two
597 minutes.

598 Mr. {Weiner.} Mr. Chairman, in the interests of hearing
599 from the panel, I will relinquish my time for opening
600 statement.

601 [The prepared statement of Mr. Weiner follows:]

602 ***** COMMITTEE INSERT *****

|
603 Mr. {Boucher.} Thank you very much, Mr. Weiner.

604 We now turn to our panel of witnesses, and we welcome
605 each of them to the subcommittee this morning. I will just
606 say a brief word of introduction with respect to each.

607 Ms. Fiona Alexander is Associate Administrator in the
608 Office of International Affairs at the National
609 Telecommunications and Information Administration. In that
610 position, she is the primary liaison between the Department
611 and ICANN.

612 Dr. Paul Twomey is President and Chief Executive Officer
613 of ICANN.

614 Mr. Kenneth Silva is Senior Vice President and Chief
615 Technology Officer for VeriSign, the registry for the .com
616 top-level domain.

617 Ms. Christine Jones is the General Counsel and Corporate
618 Secretary for Go Daddy.

619 Ms. Sarah Deutsch is Vice President and Associate
620 General Counsel for Verizon Communications.

621 And Dr. Thomas Lenard is President and Senior Fellow of
622 the Technology Policy Institute.

623 We welcome each of our witnesses, and without objection,
624 your prepared written statement will be made a part of the
625 record. We will welcome your oral summaries, and we would

626 ask that, in the interest of time and giving us plenty of
627 opportunity to question you, that you keep those oral
628 summaries to approximately five minutes.

629 Ms. Alexander, we will be pleased to begin with you.

|
630 ^STATEMENTS OF FIONA ALEXANDER, ASSOCIATE ADMINISTRATOR,
631 OFFICE OF INTERNATIONAL AFFAIRS, NATIONAL TELECOMMUNICATIONS
632 AND INFORMATION ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE;
633 PAUL TWOMEY, PRESIDENT AND CEO, ICANN; KENNETH J. SILVA,
634 SENIOR VICE PRESIDENT AND CHIEF TECHNOLOGY OFFICER, VERISIGN;
635 CHRISTINE N. JONES, GENERAL COUNSEL AND CORPORATE SECRETARY,
636 THE GO DADDY GROUP, INC.; SARAH DEUTSCH, VICE PRESIDENT AND
637 ASSOCIATE GENERAL COUNSEL, VERIZON COMMUNICATIONS; AND THOMAS
638 M. LENARD, PH.D., PRESIDENT AND SENIOR FELLOW, TECHNOLOGY
639 POLICY INSTITUTE

|
640 ^STATEMENT OF FIONA ALEXANDER

641 } Ms. {Alexander.} Chairman Boucher, Ranking Member
642 Stearns, and members of the committee, thank you for this
643 opportunity to testify on behalf of the National--

644 Mr. {Boucher.} Ms. Alexander, if you could pull that
645 microphone slightly closer, and we can hear you better.

646 Ms. {Alexander.} Better?

647 Mr. {Boucher.} That is better, thank you.

648 Ms. {Alexander.} Chairman Boucher, Ranking Member
649 Stearns, and members of the subcommittee, thank you for this
650 opportunity to testify on behalf of the National

651 Telecommunications and Information Administration on issues
652 related to the Internet's domain name and addressing system.

653 The Internet has become a significant and important
654 medium for conducting research, communicating with others,
655 and conducting business. Given the Internet's importance in
656 all of these facets of daily life and the country's general
657 economic wellbeing, it is essential that the Internet and its
658 underlying infrastructure remain stable and secure.

659 Consequently, the Department of Commerce takes very seriously
660 its responsibilities with respect to the Internet DNS,
661 including the Joint Project Agreement between the Department
662 and ICANN.

663 ICANN was created out of an effort to bring more
664 coordination and sustainability to the management of the
665 Internet DNS, as the Internet grew into a large scale global
666 network. A 1997 Executive Memorandum directed the Secretary
667 of Commerce to privatize Internet DNS in a manner that
668 increases competition and facilitates international
669 participation in its management.

670 In June 1998, the Department issued a statement of
671 policy on the privatization of the Internet DNS that
672 concluded that the core functions should be primarily
673 performed through private sector management. ICANN was
674 formed by private sector interests for this purpose, and in

675 the fall of 1998, the Department of Commerce entered into the
676 Memorandum of Understanding, or MoU, with ICANN.

677 The MoU did not simply turn over management of the DNS
678 to ICANN. Rather, the purpose of this agreement was to
679 design, develop, and test mechanisms, methods, and procedures
680 to ensure that the private sector has the capability and the
681 resources to assume important responsibilities related to the
682 technical coordination and management of the DNS. This
683 Agreement does not give the Department of Commerce the
684 ability to exercise oversight in the traditional context of
685 regulation, and we play no role in the internal governance or
686 day to day operations of ICANN.

687 Since 1998, the MoU has evolved through several
688 iterations and revisions, as ICANN tested these principles,
689 learned valuable lessons, and matured as an organization. In
690 2006, NTIA and ICANN signed a Joint Project Agreement
691 extending the current MoU for three more years, until
692 September 30 of this year. In anticipation of the September
693 30 expiration of the JPA, NTIA released a Notice of Inquiry
694 on April 24, seeking comments regarding the progress of the
695 transition, as well as a model of private sector leadership
696 and bottom-up policy development which ICANN represents. The
697 comment process for this docket closes on Monday, June 8.

698 The Department's commitment to preserving the security

699 and stability of the Internet DNS, and the public record
700 developed as a result of this comment process, will inform
701 any decision about the JPA's future. It is important to
702 note, however, that regardless of whether the JPA is
703 terminated, modified, or extended, the Department, through
704 NTIA, will continue to be an active participant in ICANN, by
705 representing the United States Government in ICANN's
706 Governmental Advisory Committee, and by filing comments as
707 appropriate in ICANN's various public consultation processes.

708 In addition, the Department's relationship with ICANN
709 will continue, as ICANN currently performs the Internet
710 Assigned Numbers Authority functions under contract to the
711 Department.

712 In addition to important institutional confidence issues
713 associated with the JPA, the Department is actively engaged
714 in discussion with stakeholders related to the introduction
715 of new generic top-level domain names, or GTLDs. The
716 Department acknowledges that the introduction of new GTLDs
717 has been a longstanding goal of the JPA relationship, and
718 that, subject to ongoing public consultation process at
719 ICANN. The Department, in coordination with an interagency
720 group has, in fact, filed public comments in this
721 consultation, asking the threshold question of whether the
722 potential consumer benefits outweigh the potential costs as a

723 result of this exercise, and have been adequately addressed
724 and determined, and recommending further economic study of
725 the issue is called for by the ICANN Board.

726 The Department also identified a series of initial items
727 that needed to be resolved prior to moving forward, including
728 expanding the marketplace before effective and meaningful
729 tools are in place to protect consumers and brand owners, as
730 well as the need to preserve the security and stability of
731 the DNS.

732 The Department believes it is critical to keep in mind
733 the core principle, as articulated in the very first MoU, of
734 the need to manage the Internet DNS in a manner that permits
735 market mechanisms to support competition and consumer choice,
736 so that lower costs are realized, innovation is promoted, and
737 user choice and satisfaction are enhanced.

738 Lastly, I would like this opportunity to update the
739 committee on our efforts to improve the security of the DNS.
740 I am happy to report that NTIA and its roots and management
741 partners, ICANN and VeriSign, recently reached agreement to
742 move forward with an interim approach to the deployment of
743 the security technology known as Domain Name System Security
744 Extensions, or DNSSEC, at the root zone level. This action
745 is an important step toward protecting the integrity of DNS
746 data, and mitigating attacks such as cache poisoning or other

747 data modification threats.

748 Given the importance of the Internet as a global medium
749 to support economic growth and innovation, continuing to
750 preserve the security and stability of the Internet DNS will
751 guide any decisions that the Department of Commerce makes
752 with respect to its future relationship with ICANN.

753 NTIA looks forward to working with you, members of the
754 committee, and the Congress on this important issue, as the
755 September 30, 2009 JPA expiration date approaches.

756 Thank you again, Mr. Chairman, for this opportunity to
757 testify this morning, and I will be happy to answer your
758 questions.

759 [The prepared statement of Ms. Alexander follows:]

760 ***** INSERT 1 *****

761 | Mr. {Boucher.} Thank you, Ms. Alexander. Dr. Twomey.

|
762 ^STATEMENT OF PAUL TWOMEY

763 } Mr. {Twomey.} Thank you, Chairman Boucher, Ranking
764 Member Stearns, and esteemed members of the committee. Thank
765 you for this opportunity to appear before you today, and to
766 speak about the Joint Project Agreement conclusion and new
767 generic top-level domains.

768 The Joint Project Agreement, Memorandum of Understanding
769 process has helped to grow ICANN to be a remarkable success
770 story. The unique U.S. Government/ICANN relationship has
771 been, is, and will continue to be critically important to
772 ICANN's success. The original Memorandum of Understanding
773 used the word ``test'' when it was commenced almost 11 years
774 ago.

775 It was a test of whether a multi-stakeholder, private
776 sector-led, California-based not for profit corporation could
777 perform a narrow but crucial technical coordination function.
778 After those 11 years, ICANN is a success for U.S.-based
779 organization with global support and participation. It has
780 been key to supporting a single, interoperable Internet on
781 which 1.5 billion rely. In simple terms, it works. It has
782 passed the test.

783 Like other organizations, it must continually improve

784 itself, but unlike many, this organization has continual
785 improvement written into its bylaws. It also has an
786 assertive community that keeps driving us to improve, and
787 will never allow us to stop striving for the best that we can
788 be. We are not seeking less accountability to this multi-
789 stakeholder community. We want more.

790 The question at hand is how to ensure that what works is
791 made permanent. One thing the Joint Project Agreement is
792 clearly not is an oversight mechanism. Now, Ms. Alexander
793 has just pointed out again that the Department of Commerce
794 has consistently said that the JPA is not an oversight
795 agreement.

796 Chairman Boucher, you made the point in your
797 introductions about the IANA contract, the procurement
798 contract. This is the key instrument for oversight from the
799 United States Government, and I think you already,
800 potentially, have some misapprehensions about the difference
801 between the Joint Project Agreement and the IANA contract, is
802 something we should explore.

803 What we have been working together on for 11 years, with
804 advice from the United States Government, is a model all
805 about private sector bottom-up partnership with guidance from
806 government. This is the time to have confidence to state
807 this model works. Any new instrument, no matter how

808 temporary, implicitly says that we, the United States
809 Government and ICANN don't have the confidence in that model.
810 That will cause the international community to continue to
811 look for alternatives. Indeed, with the mere speculation as
812 to the possibility of renewal, they already are.

813 If the U.S. does not have the confidence in a private
814 sector-led model, we should not expect other governments to
815 have confidence in the model. If we continue to question the
816 private sector-led community's ability to lead itself through
817 the ICANN model, we should expect ongoing challenges and
818 alternatives from others.

819 A hypothetical eighth temporary agreement would suggest
820 that the basic principles are open to debate. Across the
821 global technical registry and governments community, the
822 question I get posed regularly is does the United States
823 Government agree with and have confidence in the private
824 sector-led model? If the answer is yes, still yes, then let
825 us confirm that and enshrine it.

826 A more permanent approach, that enshrines what is
827 working, is vital. As the JPA concludes, the Department of
828 Commerce and ICANN should use that opportunity to commit
829 ICANN to retain a narrow mission, remain based in the United
830 States, remain a not for profit, remain an independent
831 organization, as it has been for almost 11 years, remain

832 private sector, multi-stakeholder led, with international
833 support, remain committed to continuous improvement,
834 reinforcing that the IANA contract is the source of
835 oversight, where responsibility for the global coordination
836 of the DNS root, IP addressing, and other resources is found.
837 None of these should rely on any temporary agreement, and
838 being a California-based organization ensures ICANN is
839 subject to Congressional oversight and U.S. legal process.

840 Let me speak briefly to the issues of generic top-level
841 domains, that portion of an Internet address that is to right
842 of the dots, such as .com or .org. Currently, there are 21
843 GTLDs. ICANN is currently deciding how to lift that
844 artificial limit. There are crucial concerns about trademark
845 and intellectual property protections, once the expansion of
846 GTLDs begins, if that is decided.

847 We have heard those concerns, and we are acting to fix
848 them. The ICANN Board has invited those who have voiced
849 concern to give us solutions before we open up the
850 application process. We have already received the
851 recommendations. We are focusing on other concerns as well,
852 to do with malicious behavior, security, and demand. And I
853 can assure members of the committee that we will not move
854 forward with any progress in implementation until we have
855 addressed these issues. We will get it right. We will not

856 rush the answer.

857 We are often asked why are we expanding the top-level
858 domain space. First, we were asked to by the community and
859 the United States Government. It was called for in the white
860 paper that foreshadowed ICANN, and it is in the JPA.

861 Second, there is demand. Geographic names like .nyc and
862 .berlin are being proposed, along with others like .sport,
863 .eco, and .green. Finally, billions of non-English speakers
864 want to see top-level domains look like their language. It
865 is not ICANN's role to set artificial and arbitrary limits on
866 innovation and community use of a public resource. Simply,
867 competition in the domain space is embedded in our values and
868 our bylaws.

869 So, in conclusion, it is no surprise that the ICANN
870 model is producing opportunities for choice, commerce, and
871 individual expression, and doing so, while being attentive to
872 our core mission, security, and stability.

873 The United States Government has imbued these values
874 into the ICANN model, and ICANN is made all the stronger for
875 that.

876 Thank you for inviting me, and I would be happy to take
877 any questions.

878 [The prepared statement of Dr. Twomey follows:]

879 ***** INSERT 2 *****

|
880 Mr. {Boucher.} Thank you very much, Dr. Twomey. Mr.
881 Silva.

|
882 ^STATEMENT OF KENNETH J. SILVA

883 } Mr. {Silva.} Good morning, Chairman Boucher, Ranking
884 Member Stearns, and other distinguished members of the
885 subcommittee. My name is Ken Silva, and I serve as the Chief
886 Technology Officer for VeriSign.

887 Thank you for the opportunity to testify today.
888 VeriSign operates digital infrastructure that enables and
889 protects billions of interactions every day across the
890 world's voice and data networks. The company is
891 headquartered in Mountain View, California. We have
892 additional offices in Virginia, Delaware, and Massachusetts.
893 Because our responsibility is global, we are also in 30
894 different countries.

895 At a time of economic challenges and uncertainty, it
896 would be easy to focus on the many pressing near-term issues
897 that affect our Nation, but it is critical that we also focus
898 on the Internet, because the infrastructure is not only
899 integral to the economic recovery of our country, but our
900 national security as well.

901 As the operator of the .com and .net domain registries,
902 as well as the steward for 2 of the 13 root servers that
903 serve as the nerve center of the Internet, VeriSign

904 understands what it is at stake. Over the last 10 years,
905 VeriSign has operated its infrastructure with 100 percent
906 uptime. In other words, the systems that ensure the Internet
907 is functional have never gone down. But the Internet is not
908 a static system. It is a dynamic network of networks that
909 continues to change.

910 It is growing dramatically overseas, raising questions
911 about its future governance, and the role of nations who do
912 not share our values about freedom of expression, content,
913 and commerce. It is increasingly relied upon by citizens,
914 businesses, organizations, and governments, raising questions
915 about whether it can continue to scale to meet the needs of
916 over 2 billion users in the future.

917 It is a target of attacks that expand exponentially in
918 volume, scope, and sophistication, raising questions about
919 whether enough is being done to protect those critical
920 networks that serve as the lifeline for commerce and
921 communications. Recent incidents in China, India, Pakistan,
922 and Estonia underscore that importance.

923 I would like to address three challenges in my
924 testimony: Internet governance, scaling of the Internet,
925 securing the Internet.

926 With respect to Internet governance, when it became
927 clear that the Internet would have a profound impact on every

928 facet of society, the Clinton Administration took the lead in
929 establishing ICANN to serve as the technical coordinating
930 body. The Department of Commerce was given the task of
931 helping guide ICANN and provide a governmental backstop. We
932 must consider how to ensure that the Internet and the
933 community that guides it are insulated as much as possible
934 from domestic political pressures, or the goals of those in
935 the world who want to restrict what has made the Internet so
936 dynamic, namely, its innovative force and capacity to create
937 businesses and jobs.

938 With that, we look forward to the outcome of the
939 discussions between ICANN and the Department of Commerce over
940 the JPA, particularly as it relates to its impact on the
941 security and stability of the Internet and its responsible
942 stewardship.

943 From our point of view, while ICANN has continued to
944 make progress in certain areas, the basic circumstances
945 giving rise to widespread community concerns over an
946 expiration of the JPA remain largely unanswered. The overall
947 goal in this process must be the strengthening of the
948 security and stability of the Internet.

949 With respect to scaling the Internet, because .com and
950 .net never go down, users and even some companies who rely on
951 it for their business model take it for granted, but

952 VeriSign, other private sector players, and government
953 cannot. We must continually invest and work to improve in
954 its capacity. To keep up with the demand, VeriSign systems
955 that manage .com and .net traffic can now handle more than
956 10,000 times the query volume that they could handle in 2000.
957 To put that in perspective, that increase is about 600 times
958 greater than Moore's Law, the theory that computing power
959 doubles every 18 months. VeriSign's systems handle more than
960 50 billion queries a day, and that is a 67 percent increase
961 in just two years. Our investments include increasing
962 capacity to support up to 4 trillion queries per day.

963 We all know that the Internet that we use today is far
964 different than it was 10 years ago, and we know that 10 years
965 from now, it will be dramatically different than it is today.
966 That is why VeriSign is continually investing and looking
967 into strengthening that infrastructure that we all rely upon.

968 With respect to securing the Internet, we are pleased
969 that President Obama's cybersecurity czar will sit at the
970 National Economic Council and the National Security Council,
971 as it underscores the threat that cybersecurity attacks pose
972 to our Nation. As CTO, I have had to identify and manage
973 attacks every day. Cybercriminals cleverly manipulate the
974 Internet's advances, and the increased bandwidth and
975 computing power available to them literally gives hackers

976 more ammunition to utilize against the infrastructure.

977 There are many issues that we must address as an
978 Internet community. We must continue to invest and deploy
979 infrastructure upgrades such as DNSSEC and IP version 6, in a
980 way that is least disruptive to Internet users, developers,
981 businesses, and governments. We must continue to work
982 together to invest and develop in the infrastructure, so that
983 it can continue its role as a platform for commerce and
984 communications.

985 I know that VeriSign, ICANN, and the rest of the
986 Internet community will work diligently to ensure that the
987 infrastructure remains reliable and secure.

988 I thank you very much for your time, Mr. Chairman.

989 [The prepared statement of Mr. Silva follows:]

990 ***** INSERT 3 *****

|
991 Mr. {Boucher.} Thank you very much, Mr. Silva. Ms.
992 Jones.

|
993 ^STATEMENT OF CHRISTINE N. JONES

994 } Ms. {Jones.} Chairman Boucher, Ranking Member Stearns,
995 and members of the committee, I am Christine Jones. I am
996 from Go Daddy.

997 At the outset, I would like to thank you, Chairman
998 Boucher, for all of your work, and the committee's work, and
999 for holding this hearing. We are happy to be here with ICANN
1000 and VeriSign. We are ICANN's largest registrar benefactor
1001 and VeriSign's largest customer, so we are always happy to
1002 participate with them.

1003 As the world's largest registrar, Go Daddy works daily
1004 with ICANN, in its role as the coordinating body for the
1005 Internet. We believe it is essential for world commerce, as
1006 well as the security and the stability of the Internet, that
1007 the relationship between the NTIA and ICANN be continued,
1008 along with appropriate improvements in accountability,
1009 transparency, and democracy in governing principles.

1010 Continuing the JPA between ICANN and the NTIA will not
1011 only provide the framework for ensuring a continued focus on
1012 Internet security and stability issues, but will prevent
1013 ICANN from vulnerability to capture by another government,
1014 international organization, or business that does not have an

1015 open, secure and stable Internet as its top priority.

1016 On the renewal of the JPA, the DNS white paper, first
1017 published back in 1998, articulated that principles of
1018 accountability, competition, private bottom-up coordination
1019 and representation are necessary for guiding the transition
1020 to a private sector management of Internet DNS.

1021 We believe those principles, even 11 years later, remain
1022 relevant. ICANN has made great progress toward achieving
1023 some, but not all, of these goals. Specifically, ICANN has
1024 not yet achieved competition, nor the private bottom-up
1025 coordination and representation called for in the ICANN
1026 bylaws. We believe the renewed JPA must be revised to
1027 include openness and transparency as overall guiding
1028 principles, if we are ever to see an effective transition of
1029 Internet DNS management to the private sector through ICANN.
1030 And of course, we would be happy to be involved in the
1031 process of determining appropriate revisions to the JPA, if
1032 such assistance would be helpful.

1033 I want to talk about the extension of the JPA that you
1034 mentioned, Mr. Chairman, for a minute. I want to reiterate,
1035 we are in favor of renewal of the JPA between ICANN and the
1036 NTIA for a multitude of reasons, not the least of which are a
1037 failure to accomplish its mission and abide by its stated
1038 core values, we believe ICANN will benefit from continued

1039 relationship. But we are aware that both VeriSign's ex parte
1040 letter and the recent letter from Senators Nelson and Snow
1041 mention considering a one year extension of the current JPA.
1042 If that arrangement would provide time to consider new or
1043 additional terms of a renewed JPA, then we would support such
1044 an extension as well.

1045 On the new GTLDs, we are not opposed, Go Daddy is not
1046 opposed to the concept of introducing new GTLDs. In fact, as
1047 Mr. Twomey said, the community has been calling for that for
1048 quite some time, but we have taken exception to the
1049 methodology by which they have been introduced. Loud voices,
1050 from both the intellectual property community and the
1051 registrant community have been virtually ignored in this
1052 process, and ICANN can't seem to establish a guideline by
1053 which the new GTLDs will be chosen.

1054 In the interests of time, I am going to defer the IP
1055 expert on this panel to talk about GTLDs, but I would love to
1056 get back to this, if anybody has questions on it.

1057 I want to focus on security and stability, because like
1058 all of us at this table and in this room, Go Daddy believes
1059 that security and stability of the Internet is vital.
1060 Indeed, we devote a considerable amount of time and resources
1061 to working with law enforcement on preserving the integrity
1062 and safety of the Internet, by quickly closing down websites

1063 and domain names engaged in illegal activities. We work with
1064 law enforcement agencies at all levels, and routinely assist
1065 in a wide variety of criminal and civil investigations and,
1066 like our friends at VeriSign, we respond to and fight
1067 cyberattacks on our hosting, email, and domain name systems
1068 every single day. I personally, and this company in general,
1069 have made it a high priority to use our position as the
1070 world's largest registrar to make the Internet a better and
1071 safer place, and we could not agree more with President
1072 Obama's decision to make cybersecurity and Internet privacy
1073 issues a top priority in his Administration.

1074 As the President said on Friday: ``America's economic
1075 prosperity in the 21st century will depend on cybersecurity.
1076 This is also a matter of public safety and national security.
1077 It is now clear the cyberthreat is one of the most serious
1078 economic and national security challenges we face as a
1079 Nation.'' We wholeheartedly agree.

1080 So, thank you again, Mr. Chairman, for holding this
1081 hearing. We are in support, again, of the extension of the
1082 JPA.

1083 I would be happy to answer any questions for you or
1084 other members of the panel. Thank you.

1085 [The prepared statement of Ms. Jones follows:]

1086 ***** INSERT 4 *****

|

1087 Mr. {Boucher.} Thank you very much, Ms. Jones. Ms.

1088 Deutsch, we will be happy to hear from you.

|
1089 ^STATEMENT OF SARAH DEUTSCH

1090 } Ms. {Deutsch.} Chairman Boucher, Ranking Member
1091 Stearns, and members of the subcommittee. Thanks for the
1092 opportunity to participate in this important hearing
1093 addressing issues related to ICANN.

1094 Verizon supports ICANN. We wish to see it succeed as an
1095 independent and accountable model of private sector
1096 leadership. ICANN must be given the time and support it
1097 needs to make that smooth transition.

1098 My focus today is on ICANN's plans to expand the
1099 existing domain name space. ICANN plans to accept as many as
1100 500 initial applications for new generic top-level domains,
1101 or GTLDs. I will refer to GTLDs simply as names. In the
1102 future, there may be unlimited number of new names. Future
1103 names could include anything one could imagine, from .bank to
1104 .health to .congress. ICANN financially benefits from this
1105 expansion. It will bring in more than \$90 million from the
1106 initial round of applications alone. It will also collect
1107 ongoing fees of \$75,000 per applicant from manual renewals of
1108 each new name, and it collects a \$0.25 transaction fee from
1109 every domain name registered.

1110 As a result, however, businesses and consumers will face

1111 higher costs. This isn't very helpful in the current
1112 economic climate. Hundreds of diverse parties, including
1113 consumer groups, business organizations, trademark owners,
1114 and Internet security experts, have raised concern. ICANN
1115 has acknowledged the many concerns, but it has not adequately
1116 addressed them. Nevertheless, it plans to begin accepting
1117 applications for the new TLDs starting in early 2010.

1118 Verizon believes there are four fundamental concerns
1119 that ICANN needs to address fully before commencing any
1120 introduction of new TLDs. First, ICANN must complete an
1121 impartial and comprehensive economic study of the domain name
1122 marketplace. That study must explore whether there is even a
1123 need for so many new names in the first place. ICANN's Board
1124 supported that study in 2007, yet it was never undertaken.

1125 Second, ICANN must ensure that consumers are adequately
1126 protected from online confusion and fraud. If, as predicted,
1127 there are more than 1,000 new names in the next three years,
1128 consumers will be the victims of more online confusion, more
1129 fraud, and more malicious activity. Consumers already have
1130 difficulty today finding the legitimate websites they want to
1131 reach, so consumers must be confident when they go to
1132 verizon.phone, for example, that they have reached an
1133 authorized Verizon website, versus one set up by a
1134 cybersquatter or an international phishing scam.

1135 Third, ICANN's rapid expansion may be at odds with its
1136 responsibility to increase the long-term safety and stability
1137 of the domain name system. ICANN may not have the ability to
1138 manage such a rapid expansion.

1139 Fourth, trademark and brand protection remain a critical
1140 concern. Trademark protection, of course, is directly tied
1141 to consumer protection. Trademarks help consumers reach the
1142 websites and brands they know and trust. When users go
1143 online, however, they can easily be confused or diverted, and
1144 unfortunately, brands like Verizon, household brands, have
1145 been targets for cybersquatters. Cybersquatters have
1146 registered tens of thousands of variations of our trademarks
1147 over the past few years, and here is a little stack.

1148 You need to know that many of these cybersquatters are
1149 ICANN-accredited registrars. They have set up large scale
1150 operations, earning millions of dollars a year from their
1151 illegal activities. To protect our customers, we have
1152 brought many high profile lawsuits against ICANN registrars
1153 in recent years. ICANN's registrars contractually agree to
1154 comply with all laws, yet we have observed little, if any
1155 enforcement by ICANN against registrars who are found to
1156 violate anti-cybersquatting laws.

1157 We are very pleased that ICANN acknowledge the concerns
1158 raised by trademark owners, by convening a small group of

1159 experts to offer possible solutions to address cybersquatting
1160 in an expanding GTLD space. We urge ICANN to adopt all these
1161 proposals as a package, and continue to work with trademark
1162 owners on improving them. Verizon has specific ideas for
1163 such improvements, as discussed in our written statement.

1164 In sum, any new TLD rollout must be delayed until all
1165 threshold concerns are fully addressed. ICANN should proceed
1166 slowly and cautiously in expanding the domain name space, to
1167 protect the Internet and its users.

1168 Finally, one note on the JPA. Numerous thoughtful
1169 suggestions have been made to improve ICANN processes while
1170 still preserving the model of private sector leadership. It
1171 is important to allow sufficient time to consider and
1172 implement these suggestions as well.

1173 We commend the subcommittee for addressing this
1174 important subject. Thanks again for the opportunity to
1175 testify.

1176 [The prepared statement of Ms. Deutsch follows:]

1177 ***** INSERT 5 *****

|
1178 Mr. {Boucher.} Thank you very much, Ms. Deutsch. Dr.
1179 Lenard.

|
1180 ^STATEMENT OF THOMAS M. LENARD

1181 } Mr. {Lenard.} Thank you, Chairman Boucher, Ranking
1182 Member Stearns.

1183 Mr. {Boucher.} And Dr. Lenard, if you could turn on
1184 your microphone and move it over, that would help us hear
1185 you.

1186 Mr. {Lenard.} Thank you, Chairman Boucher, Ranking
1187 Member Stearns, and members of the subcommittee. My name is
1188 Thomas Lenard, and I am President and Senior Fellow at the
1189 Technology Policy Institute.

1190 TPI is a nonpartisan, nonprofit think tank that focuses
1191 on the economics of innovation, technical change, and related
1192 regulation in the United States and around the world. I
1193 appreciate the opportunity to present my views on ICANN.

1194 The expiration of the JPA this September provides a much
1195 needed opportunity for a thorough evaluation of the
1196 structure, governance, and mission of ICANN, and the
1197 subcommittee's examination of these issues is very important.

1198 One of those issues is ICANN's lack of accountability,
1199 which is a recurring issue, and which is an issue that we
1200 recently addressed in a study that was published by TPI, that
1201 I co-authored with Professor Lawrence White of the NYU Stern

1202 School of Business.

1203 The problem of the lack of accountability is not an
1204 indictment of ICANN's staff or leadership. It is simply a
1205 function of ICANN's institutional design, its non-corporation
1206 status, combined with the way it is funded and governed.
1207 ICANN's customers have nowhere else to go. Its Board members
1208 are not answerable to any shareholders, and its decisions
1209 can't be appealed to any court in the way that regulatory
1210 decisions in the U.S. routinely are. ICANN's funders, the
1211 registries and the registrars, can't stop funding ICANN
1212 without going out of business themselves.

1213 To study ways in which ICANN could become more
1214 accountable, we examined the structures of a number of
1215 organizations that perform similar coordination and standard
1216 setting functions. We learned a couple of things. First,
1217 none of the organizations we considered operates with the
1218 independence that ICANN enjoys, even under the current
1219 nominal oversight by the Department of Commerce.

1220 In addition, virtually all of these other organizations
1221 are governed by their direct users, thereby building
1222 accountability into their structures. We believe this would
1223 be a good model for ICANN as well. The registries and the
1224 registrars have a strong incentive to assure that ICANN
1225 fulfills its responsibilities of managing the domain name

1226 system efficiently, and this is in the interests of the
1227 businesses and the consumers who are the Internet's end
1228 users. We recognize that this proposal may be viewed as
1229 radical, but it has already served to stimulate a discussion
1230 of ICANN governance issues that otherwise might not have
1231 taken place.

1232 Our study also addressed ICANN's mission. ICANN's scope
1233 should be clearly delineated. It should hew closely to the
1234 technical functions in administering the domain name system.
1235 ICANN also, we believe, should have a clear mission of
1236 encouraging competition and a minimal role as a regulator.
1237 This means allowing relatively free entry into the market for
1238 GTLDs, in order to bring the benefits of competition to
1239 consumers and, as we have heard, ICANN is moving in that
1240 direction currently.

1241 But as part of this, and in order for the, and really,
1242 for the free entry of GTLDs to work well, protections for
1243 incumbent domain name holders must be strengthened, so that
1244 they are not subject to nuisance or ransom demands from new
1245 registries. There needs to be a thorough examination of how
1246 this should be done and who should do it. As was alluded to,
1247 ICANN is doing that now, but ICANN is not particularly well
1248 equipped to be a regulator, and probably not particularly
1249 well equipped to be an adjudicator of intellectual property

1250 disputes.

1251 Issues as important and complex as these merit a
1252 thorough evaluation, which probably cannot be completed by
1253 September. Therefore, we believe that the agreement with the
1254 Department of Commerce should be extended in some form beyond
1255 its current expiration, while reforms are being considered
1256 and, hopefully, becoming established.

1257 Reforming ICANN in a way that makes it truly accountable
1258 and clearly defines its scope of operations will ultimately
1259 make it feasible to end the JPA and, more importantly, ensure
1260 a vibrant, innovative, and competitive Internet for the
1261 future.

1262 Thank you very much.

1263 [The prepared statement of Dr. Lenard follows:]

1264 ***** INSERT 6 *****

|
1265 Mr. {Boucher.} Thank you very much, Dr. Lenard. Thanks
1266 to all of the witnesses for your informative comments this
1267 morning.

1268 Dr. Twomey, we are pleased to have you with us today,
1269 and thank you for taking the time to travel to Washington for
1270 purposes of this hearing. I know that many of the members in
1271 their questions are going to focus on the expiration of the
1272 Joint Project Agreement, which occurs this September. So, I
1273 am going to take my question time this morning to focus on
1274 some other matters.

1275 And the first thing I would like to ask you to do is
1276 comment on the concerns that were raised by Ms. Deutsch, when
1277 she talked about the tremendous volume of cybersquatting that
1278 occurring, and mentioned that some of the companies engaged
1279 in cybersquatting are actually accredited registrars, who
1280 have been accredited by you.

1281 And I would like to get your response to the concerns
1282 that she has received, and an indication of what you are
1283 doing to police that practice, and particularly, how you
1284 could propose to engage in effective oversight and policing,
1285 not only with regard to the existing top-level domains, but
1286 with the expanded responsibilities that would come for
1287 oversight and policing if you proliferate the number of TLDs,

1288 because that inevitably is going to mean that companies have
1289 to acquire more second level domains, and that incurs costs
1290 on their part, and the opportunity for cybersquatting simply
1291 increases.

1292 And so, according to Ms. Deutsch, today, cybersquatting
1293 is not effectively being policed, and that leads to an even
1294 heightened level of concern about how you would oversee and
1295 police if the number of TLDs increases.

1296 So, with that general question, we would welcome your
1297 answer.

1298 Mr. {Twomey.} Thank you, Mr. Chairman. We share the
1299 same general concerns Ms. Deutsch outline. There is
1300 validity, we don't dispute the validity of some of these
1301 concerns, but we also think there are mechanisms in place and
1302 mechanisms being discussed to help address these issues.

1303 Let me come, quite specifically to enforcement
1304 mechanisms now. ICANN established and put in place now, I
1305 think eight years ago, nine years ago, a process called the
1306 Uniform Dispute Resolution Process, which is essentially a
1307 fairly cheap online arbitration mechanism to allow contesting
1308 parties to determine who should actually own a particular
1309 domain name.

1310 One of the problems with cybersquatting is one person's
1311 cybersquatter might be somebody else's true trademark, in the

1312 sense that there are 180 something regimes, jurisdictions in
1313 the world. There are some 48 trademark headings. I might be
1314 getting the exact numbers wrong, but the key point is that
1315 people can have multiple trademarks for different sorts of
1316 companies in different parts of the world, who have got a
1317 claim for a particular name. So, it is not ICANN's role to
1318 be an intellectual property arbitrator. But we have actually
1319 put in place a mechanism for that sort of arbitration, the
1320 World Intellectual Property Organization and other entities
1321 offer that arbitration, and I think so far, there has been
1322 some 36,000 decisions made under that regime we have
1323 incorporated to help those issues presently at the second
1324 level.

1325 There is a similar issue applies, then, at top-level
1326 domains, and we have proposed that there would be a similar
1327 arbitration that people could object to when a first
1328 application was made, so that you could say no, I have got a
1329 claim on that name, or that is related to me. And so, there
1330 is an existing mechanism that is put forward for arbitration.

1331 Thirdly, we are very much interested in these proposals
1332 put forward recently by the intellectual property community
1333 at the request of the ICANN Board, for looking at variations
1334 of sunrise periods, single registration periods for companies
1335 who want to be clear their famous names, et cetera. So, we

1336 are actually looking to address this quite detailed. We
1337 would like to hear the response more in the community for the
1338 proposals they have put forward.

1339 When it comes to the issue of enforcement of registrars,
1340 which you have raised, we have significant resources
1341 dedicated to enforcement. We have been, I think, if you look
1342 at the last months, I think nearly every month, we have de-
1343 accredited registrars for various breaches of their
1344 agreements, and this issue of whether a registrar is actually
1345 performing blatant cybersecurity or blatant cybersquatting
1346 activities is a matter of, we would investigate quite
1347 closely.

1348 But I would make the point on some cybersquatting
1349 issues, that it is not our business to an arbitrator or an
1350 intellectual property contention. We actually have that, if
1351 you like, a set of independent arbitrators, for them to give
1352 us that advice.

1353 Mr. {Boucher.} Ms. Deutsch, would you like to respond
1354 to those comments, and I mean, you have heard how Dr. Twomey
1355 would address the issue of cybersquatting, and he has defined
1356 current practice.

1357 To what extent is current practice not adequate?

1358 Ms. {Deutsch.} First of all, we are not saying that it
1359 is ICANN's role to arbitrate the proceedings. On the other

1360 hand, it is its role to enforce against its registrars, and
1361 to my knowledge, they haven't brought any action against a
1362 registrar. These are registrars who have been found by
1363 federal courts, or by this same World Intellectual Property
1364 Organization, sometimes on hundreds of occasions, have been
1365 found to act in bad faith. So, they have taken no action
1366 against them.

1367 Mr. {Boucher.} Well, let me stop you at that point.
1368 Dr. Twomey, what is your reply to that? Have you ever
1369 proceeded against any of these certified registrars, because
1370 of their activities?

1371 Mr. {Twomey.} From my recollection, Chairman, we have
1372 proceeded against registrars for those activities. Often, we
1373 find, with a particular registrar, that if they are in breach
1374 along those lines, they are in breach in other ways. And
1375 sometimes, to move quickly on the de-accreditation process,
1376 we have publicly moved on another breach.

1377 If I can give you just a small example, and an easy
1378 example you would understand, often we find registrars who
1379 might be at the edge of such behavior, for instance, don't
1380 pay their fees. And sometimes, it is easier simply to move
1381 on the failure to pay a fee. We can clearly prove it very
1382 quickly, and move on de-accreditation.

1383 But I can report to you, in the compliance activity,

1384 this particular issue is often examined, and that in a lot of
1385 the conversations, communications with the registrars,
1386 particular issues that is raised.

1387 Mr. {Boucher.} Well, I find the issue of enforcement
1388 against cybersquatting to be particularly troubling, and I
1389 think it might be helpful to the subcommittee, because other
1390 members have raised this concern as well.

1391 If you would supply to us a letter that describes
1392 exactly what you are doing in this area and, perhaps, without
1393 naming particular registrars that you may have proceeded
1394 against, give us at least some quantitative sense of the
1395 extent to which you have addressed this concern. So, actual
1396 number of proceedings, perhaps numbers of registrars that
1397 have been decertified where cybersquatting, in fact, has been
1398 alleged. I think that would be helpful.

1399 My time has expired. We may, depending on how long this
1400 first round takes, have a second round of questions. I do
1401 have some additional ones.

1402 But at this time, I want to recognize the gentleman from
1403 Florida, Mr. Stearns, for five minutes.

1404 Mr. {Stearns.} Thank you, Mr. Chairman.

1405 Mr. Lenard, you had mentioned, in your opening
1406 statement, some fees. I see here that registrars pay an
1407 application fee of \$2,500, annual accreditation fees of

1408 \$4,000. You mentioned some \$75,000 fee, I thought. Did you
1409 mention that in your statement, opening statement? Just put
1410 the mike on, if you would.

1411 Mr. {Lenard.} It is not in the opening statement. It
1412 could be in our report, but I would have to get back to you
1413 on that.

1414 Mr. {Stearns.} Yes, Ms. Deutsch.

1415 Ms. {Deutsch.} I mentioned it, I think.

1416 Mr. {Stearns.} Yes, what was that for?

1417 Ms. {Deutsch.} I think it is an annual renewal fee for
1418 the new TLD applicants, so once they get awarded one of these
1419 names, then every year thereafter, I understand they pay a
1420 \$75,000.

1421 Mr. {Stearns.} That sounds pretty steep to me. Doesn't
1422 it sound to you, Ms. Deutsch?

1423 Now, Mr. Twomey, ICANN had a \$7 million surplus in 2009,
1424 and you added these new TLDs, you could generate another \$90
1425 million. Yet, you are a not for profit organization. Why
1426 don't you take less profit and these fees, bring these fees
1427 down for the registrars and for consumers, and operate as a
1428 not for profit? You are operating a for profit corporation,
1429 and your profits are going to balloon based upon these TLDs.
1430 So, why aren't you folding, I mean, you are not building
1431 automobiles here. You are trying to make it cheaper for

1432 people. Why aren't these fees coming down?

1433 Mr. {Twomey.} Thank you, Mr. Stearns. Perhaps I can
1434 clarify some of the issues raised here.

1435 ICANN is, as you said, a not for profit, and our focus
1436 is to--

1437 Mr. {Stearns.} No, you don't want to tell me that.
1438 Just tell me--

1439 Mr. {Twomey.} Sorry.

1440 Mr. {Stearns.} Why can't you bring your fees down, if
1441 you have got a \$7 million profit?

1442 Mr. {Twomey.} That is fine. Let me just talk to the
1443 point.

1444 We are in the process of, our budgeting process is an
1445 open process. We do it through the community. It is a
1446 bottom-up--

1447 Mr. {Stearns.} What are you going to do with the \$7
1448 million profit?

1449 Mr. {Twomey.} And the \$7 million process is a
1450 contribution to a reserve fund.

1451 Mr. {Stearns.} And why do you need a reserve fund if
1452 you are a not for profit?

1453 Mr. {Twomey.} We have taken advice from, if you look at
1454 most nonprofits, that they have, all have some reserve fund.

1455 Mr. {Stearns.} How big is your reserve fund going to

1456 be? How big is it today?

1457 Mr. {Twomey.} It is about \$34 million.

1458 Mr. {Stearns.} So, you have got \$34 million, and you
1459 are adding another \$7 to it, that would bring it up to \$41.

1460 Mr. {Twomey.} And our aim is to bring it to one year's
1461 operating expenses, and then stop the process of building the
1462 reserve fund. So, we are not, and I can make the further
1463 point that our, we have actually reduced our fees by 25
1464 percent in the last three years, in applications, and the
1465 \$75,000--

1466 Mr. {Stearns.} Ms. Deutsch, do you think their fees
1467 should be brought down?

1468 Ms. {Deutsch.} I do. I think they have--

1469 Mr. {Stearns.} Mr. Lenard, what do you think?

1470 Mr. {Lenard.} Yeah. I mean, I think--

1471 Mr. {Stearns.} Do you think they want to have, they are
1472 now at \$41 million surplus.

1473 Mr. {Lenard.} I think, you know, an organization with
1474 an assured source of income. It is not obvious to me why
1475 they need a full year's--

1476 Mr. {Stearns.} Now, Mr. Twomey, when I look at your
1477 annual report, it looks like your salary is, you don't even
1478 take a salary out of this. You arrange for Argo Pacific to
1479 be a consultant, so that ICANN pays Argo Pacific your salary,

1480 then you collect for them. Why do you do that? Why don't
1481 you collect money like the CFO and everyone else in ICANN
1482 gets directly from ICANN, but you seem to get it from a
1483 consultant. Why is that?

1484 Mr. {Twomey.} Congressman, I am an Australian citizen,
1485 and we have arrangements with various parts of our employees
1486 who have different mechanisms. When I was first asked to be
1487 President and CEO, via decision of the Board, this was all
1488 decided by the Board, not by me, was to contract with a
1489 company--

1490 Mr. {Stearns.} That was their recommendation, then?

1491 Mr. {Twomey.} That is right.

1492 Mr. {Stearns.} And do you live in Marina del Rey?

1493 Mr. {Twomey.} I live, my home is in Sydney, Australia.

1494 Mr. {Stearns.} So, do you ever show up in ICANN's
1495 headquarters?

1496 Mr. {Twomey.} Yes. We have offices--

1497 Mr. {Stearns.} I mean, do you work there 40 hours a
1498 week?

1499 Mr. {Twomey.} I work more than 40 hours a week in
1500 various ICANN offices.

1501 Mr. {Stearns.} In Australia. But I mean, are you
1502 actually--

1503 Mr. {Twomey.} No, I would in Australia less than one

1504 week out of every four.

1505 Mr. {Stearns.} When you do the exchange rate, what is
1506 the total salary, including the health, retirement, saving,
1507 and welfare benefits that you get when you do the exchange
1508 with Australia. What is, in an Australian dollar--

1509 Mr. {Twomey.} In Australian dollars, it is about
1510 \$800,000 total.

1511 Mr. {Stearns.} \$800,000 is what you get. Well, my
1512 concern is, and I don't have a lot of time here, but it seems
1513 to me that if you are operating a not for profit, and you are
1514 paying a CEO, like you, and a subcontractor out of a
1515 corporation, that your job is to bring the cost down for the
1516 consumers and the registrars, and I just, in light of the
1517 fact that Mr. Boucher talked about the four things that Ms.
1518 Deutsch talked about, I don't see you attacking these. You
1519 should take that \$7 million, and make sure these
1520 cybersquatters are gone. And she gives a list there, it
1521 looked like about 10,000 cybersquatters. I mean, why don't
1522 you take some of this surplus that you are getting and do the
1523 job?

1524 I think your job should be not just developing a
1525 surplus, but actually implementing, making it cheaper for
1526 consumers, and actually doing your mission, which is some of
1527 these four things that Verizon has talked about.

1528 Dr. Lenard, anything you would suggest more? I mean,
1529 this idea that he is developing this huge surplus in this not
1530 for profit organization. I mean, that just doesn't seem
1531 appropriate, considering Ms. Deutsch talked about \$75,000 for
1532 a fee.

1533 Mr. {Lenard.} Yeah. I mean, I think it is related to
1534 the general issue of accountability, and the fact that ICANN
1535 is largely accountable to itself.

1536 Mr. {Stearns.} So, it could make the surplus four times
1537 that if it wanted. Yeah, thank you, Mr. Chairman.

1538 Mr. {Boucher.} Thank you very much, Mr. Stearns. The
1539 gentleman from Michigan, Mr. Dingell, is recognized for five
1540 minutes.

1541 Mr. {Dingell.} Mr. Chairman, thank you. This question
1542 to the panel, yes or no answer.

1543 Ladies and gentlemen, the results of the midterm review
1544 of the Joint Project Agreement between NTIA and ICANN,
1545 completed in February '08, indicated that further work was
1546 required to increase institutional confidence in ICANN.
1547 These areas included long-term stability, accountability,
1548 responsiveness, continued private sector leadership,
1549 stakeholder participation, increased contract compliance, and
1550 enhanced competition.

1551 Has ICANN, to date, adequately addressed these concerns?

1552 Starting with Ms. Alexander, yes or no.

1553 Ms. {Alexander.} Thank you very much, Congressman.

1554 Given that we have an open proceeding on this--

1555 Mr. {Dingell.} Just yes or no.

1556 Ms. {Alexander.} --particular issue, I am not in a
1557 position to answer or no with the open proceeding.

1558 Mr. {Dingell.} Next panelist, yes or no.

1559 Mr. {Twomey.} I would say yes, in respect.

1560 Mr. {Dingell.} Next panelist.

1561 Mr. {Silva.} I would say no.

1562 Mr. {Dingell.} Next panelist.

1563 Ms. {Jones.} No, sir, Mr. Chairman.

1564 Mr. {Dingell.} Thank you. Next panelist.

1565 Ms. {Deutsch.} No, sir.

1566 Mr. {Lenard.} No, sir.

1567 Mr. {Dingell.} Ms. Alexander and the other panelists,
1568 again, if the JPA terminates and is not extended, does NTIA,
1569 do you have concerns about the ability of ICANN to ensure
1570 stability and security on the Internet. Yes or no.

1571 Ms. {Alexander.} Yes, thank you very much, Congressman.

1572 Again, given the fact that we have an open proceeding--

1573 Mr. {Dingell.} I am sorry, but my time is limited, and
1574 I have got a pile of questions here.

1575 Ms. {Alexander.} Thank you.

1576 Mr. {Dingell.} Sir. Question.

1577 Mr. {Twomey.} No, I think it has little impact.

1578 Mr. {Dingell.} Next panelist.

1579 Mr. {Silva.} I would say that I have concerns about the
1580 security and stability.

1581 Mr. {Dingell.} Next panelist.

1582 Ms. {Jones.} Yes.

1583 Mr. {Dingell.} Next panelist.

1584 Ms. {Deutsch.} Yes.

1585 Mr. {Dingell.} Next panelist.

1586 Mr. {Lenard.} Yes.

1587 Mr. {Dingell.} Now, recently, in view of reports that
1588 the U.S. Government has been subject to cyberattacks from
1589 abroad, do you believe that upon expiration of the JPA, the
1590 U.S. Government will have adequate input into ICANN's efforts
1591 to ensure the stability and the security of the Internet?
1592 Again, yes or no, if you please.

1593 Ms. {Alexander.} Thank you very much. Security and
1594 stability will guide the Department of Commerce in all of
1595 these areas.

1596 Mr. {Dingell.} Next panelist.

1597 Mr. {Twomey.} Yes, comprehensively, because it is not
1598 covered within the JPA details to start with.

1599 Mr. {Dingell.} Thank you. Next panelist.

1600 Mr. {Silva.} I don't know the answer to that
1601 definitively, but I would share those concerns.

1602 Mr. {Dingell.} Next panelist.

1603 Ms. {Jones.} Yes, we would continue to have concerns
1604 there.

1605 Mr. {Dingell.} Thank you. Next panelist.

1606 Ms. {Deutsch.} We would, as well.

1607 Mr. {Lenard.} I agree. We would have concerns.

1608 Mr. {Dingell.} Now, NTIA, oh. This to Mr. Silva. As
1609 permitted under its contract with ICANN, VeriSign raises
1610 prices that it charged for the .com registry in 2007 and
1611 2008.

1612 For what reason did VeriSign do so?

1613 Mr. {Silva.} Sir, specifically, these fee increases
1614 were used to invest in the infrastructure, and to build that
1615 out. As a matter of fact, we have publicly stated we created
1616 a project called Project Titan, for which we are investing
1617 over \$100 million and fortifying that infrastructure
1618 globally, not just adding dots on a map, if you will, but
1619 also, increasing the capacity to each of those locations.

1620 When you look at some recent events, such as what
1621 happened to Estonia, what has happened recently in China,
1622 specifically, those were, part of those were DNS attacks,
1623 which were designed specifically to take the entire country's

1624 economic system down. We want to make sure that that doesn't
1625 happen to .com.

1626 Mr. {Dingell.} Thank you. Similarly, does VeriSign
1627 plan to raise its prices again in 2009? Yes or no.

1628 Mr. {Silva.} That is, I am not in a position in the
1629 company to answer that question yes or no.

1630 Mr. {Dingell.} You can't.

1631 Mr. {Silva.} That is not my role in the company.

1632 Mr. {Dingell.} All right. Ms. Alexander, allegations
1633 have been made that the six year contracts agreed upon in
1634 2006, between ICANN and VeriSign, for the registry of the
1635 domain .com, suffers from lack of transparency.

1636 Upon review, does the Department of Commerce share this
1637 view? Yes or no.

1638 Ms. {Alexander.} Thank you very much, Mr. Congressman.
1639 The Department did, in fact, approve this agreement in 2006,
1640 after consultation with the Department of Justice and other
1641 national security agencies, and also, registrars, ISPs, and
1642 trade associations.

1643 Based on those consultations, we actually amended our
1644 cooperative agreement with VeriSign, to retain the right to
1645 approve any substantial modifications to those contracts
1646 going forward.

1647 Mr. {Dingell.} All right. Mr. Chairman, I have two

1648 more questions I think are very useful here. Ms. Alexander,
1649 given these allegations, does the Department intend to ratify
1650 another agreement between ICANN and VeriSign on the
1651 expiration of the current agreement? Yes or no.

1652 Ms. {Alexander.} The agreement expires in 2012, and at
1653 that time, when the information is furnished to the
1654 Department, we will again, once again, conduct a fulsome
1655 review of that, discussing it with the Department of Justice,
1656 other stakeholders, and figuring out the best way forward.

1657 Mr. {Dingell.} Thank you. Now, other panelists, if you
1658 please. Let us return to the earlier question. Allegations
1659 have been made that the six year contract agreed upon between
1660 ICANN and VeriSign in 2006 lacks transparency.

1661 Do you agree with that statement? Yes or no.

1662 Mr. {Twomey.} The contract is on public record, so I
1663 don't agree with it.

1664 Mr. {Silva.} I don't agree with that statement.

1665 Ms. {Jones.} We agree that the manner in which the
1666 contract was negotiated lacks transparency, but inasmuch as
1667 the contract has now been published and we know what it says,
1668 I guess it is transparent now. We don't necessarily agree
1669 with the outcome.

1670 Mr. {Dingell.} But it wasn't transparent earlier.

1671 Ms. {Jones.} I am sorry.

1672 Mr. {Dingell.} It wasn't transparent earlier.

1673 Ms. {Jones.} That is correct.

1674 Mr. {Dingell.} Next panelist.

1675 Ms. {Deutsch.} I am unfortunately not an expert on that
1676 particular question, so I don't know the answer.

1677 Mr. {Dingell.} Next panelist, please.

1678 Mr. {Lenard.} I am not an expert on that contract,
1679 either, so--

1680 Mr. {Dingell.} Mr. Chairman, I ask unanimous consent
1681 that I be permitted to write a letter to the panelists,
1682 making further inquiries, and that the record remain open, so
1683 that both that letter and their response can be included in
1684 the record of the day.

1685 Mr. {Boucher.} Without objection.

1686 Mr. {Dingell.} Thank you.

1687 Mr. {Boucher.} And other members, I am sure, are going
1688 to want to propound questions to you, as well. So, as you
1689 receive those inquiries, making a prompt reply would be very
1690 helpful to us.

1691 And without objection, the record shall remain open
1692 until replies are received.

1693 The gentleman from Arizona, Mr. Shadegg, is recognized
1694 for five minutes.

1695 Mr. {Shadegg.} Thank you, Mr. Chairman.

1696 Ms. Jones, I would like to begin with you. I believe
1697 you testified that Go Daddy would like ICANN to operate in a
1698 more transparent and accountable manner. How would you like
1699 to see that happen, and do you believe the JPA can be
1700 strengthened to achieve that goal?

1701 Ms. {Jones.} I will answer your second question first.
1702 Yes.

1703 Mr. {Shadegg.} Okay.

1704 Ms. {Jones.} There are a multitude of ways in which we
1705 think accountability can be improved. I will give you an
1706 example. ICANN holds three open board meetings a year. The
1707 rest of their meetings of the Board are done in private.

1708 We have repeatedly asked for those meetings to produce
1709 transcripts. It is a very simple, black and white request.
1710 We can't get it. A couple of days after they happen, we can
1711 get an agenda, and a couple of days after that, we can get
1712 minutes, but we would actually like to know what is going on
1713 in those meetings. That would be an example.

1714 The way they negotiate contracts with registries. We
1715 would love to know what is going on in those meetings. Let
1716 us make them accountable for the decisions they make,
1717 particularly as they relate to the questions that Mr. Stearns
1718 asked about prices, what they are doing with their money,
1719 line items in their budget. I mean, we make requests for

1720 information, we basically get stonewalled.

1721 I could go on and on, but there are some basic,
1722 fundamental things that we would like to see. All of that
1723 can be and will be, if we have any input, written into the
1724 JPA in its new version.

1725 Mr. {Shadegg.} Does ICANN set the standards by which
1726 you operate when you issue a name?

1727 Ms. {Jones.} Generally. We are accredited by ICANN and
1728 then, we operate with a contract with, for example, VeriSign,
1729 on a .com. And ICANN, I think its mission is to be a
1730 coordinating body. We don't expect them to issue rules, for
1731 example, about what we would do with Internet content or
1732 domain name disputes, because we don't decide the outcome of
1733 those disputes, but we operate at their luxury. So, inasmuch
1734 as they are our accrediting body, yes. They make the rules
1735 for us.

1736 Mr. {Shadegg.} Dr. Twomey, can you tell me what steps
1737 ICANN has taken to address the concerns raised during the JPA
1738 midterm review that further work was needed to increase
1739 institutional confidence in ICANN?

1740 Mr. {Twomey.} Thank you, Congressman, and I appreciate
1741 your question.

1742 I have to say, in response to the last answer you heard,
1743 I have got to be quite clear. It was just wrong. ICANN

1744 publishes its agendas for all meetings, seven days before the
1745 meetings. The Board meetings, their decisions are released
1746 within three days, and within a couple of days after that, a
1747 full transcript of the Board is released.

1748 Mr. {Shadegg.} A full transcript of the Board meeting?

1749 Mr. {Twomey.} A full transcript of the Board
1750 discussions. Transcript of how, full details of the Board
1751 discussion.

1752 Mr. {Shadegg.} Well, wait, wait. There is a difference
1753 details and transcript. Is it a transcript, taken like a
1754 court report, the gentleman here is taking right now, or is
1755 it a--

1756 Mr. {Twomey.} It is a comprehensive set of minutes.

1757 Mr. {Shadegg.} It is a set of minutes.

1758 Mr. {Twomey.} It is a comprehensive set of minutes.

1759 Mr. {Shadegg.} But it is not a transcript.

1760 Mr. {Twomey.} But it is not this decision and that
1761 decision. It is a full description of the--

1762 Mr. {Shadegg.} I think we are familiar--

1763 Mr. {Twomey.} --of each Board member, so--

1764 Mr. {Shadegg.} I think we are familiar with Board
1765 minutes versus a transcript.

1766 Mr. {Twomey.} No, I think--

1767 Mr. {Shadegg.} And what Ms. Jones said was they would

1768 like a transcript of the discussions that occurred, and the
1769 reasoning that occurred, Board minutes summarize that, rather
1770 than produce it in a word for word discussion.

1771 Mr. {Twomey.} Congressman, I will be happy to share
1772 with you examples, and I will send them to you for you to
1773 make that judgment.

1774 In terms of transparency, we have three minutes a year.
1775 We have public meetings. We have the fully minute and posted
1776 Board meetings. We translate all our documentation into the
1777 five of the UN languages. We transcribe discussions at our
1778 meetings, full transcripts at the meetings. We have 53
1779 public consultations in 2008. We had one every week.

1780 We have an independent ombudsman. We have corporate
1781 blogs. We have full public comment, to come to your question
1782 of transparency. I think it is--

1783 Mr. {Shadegg.} I think you are still trying to respond
1784 to my question to Ms. Jones, and I asked you if ICANN had
1785 taken work, or taken steps to increase confidence in,
1786 institutional confidence in ICANN. I was asking you what
1787 steps you have taken, and I don't believe--well, are these
1788 all steps you have taken since that midterm review?

1789 Mr. {Twomey.} Well, no, they are not. Many of these we
1790 had in place, but we have taken more steps on transparency.
1791 We have taken, we have produced in more detail our

1792 accountability, a full description of our accountability
1793 processes. We have improved, extensively, the participation,
1794 openness and participation in meetings, to full online
1795 participation in all meetings. We have, in, we have proposed
1796 now to amend our bylaws to further expand our Internet,
1797 independent review mechanisms, including basically setting
1798 up, expanding our Review Panel processes.

1799 So, there has been a series of steps. Again, I, they
1800 are actually quite comprehensive, so I would be happy to
1801 respond to those more in detail with you in writing.

1802 Mr. {Shadegg.} Mr. Chairman, my time has expired, but I
1803 would like to hear, I would like to allow the other panelists
1804 to comment on the steps that ICANN has taken since the
1805 midterm review. If there is anyone on the panel that would
1806 like to comment on those steps.

1807 Ms. {Jones.} I will comment.

1808 So, again, we commend the progress that they have made.
1809 We don't disagree that he is sitting on top of a numerous
1810 page document that describes their accountability functions.
1811 That they publish minutes, detailed minutes from their Board
1812 meetings. I think I said that in my answer before, but we
1813 still think, and we know from the current version of the JPA,
1814 that there are goals articulated in that document that they
1815 have yet to fulfill.

1816 Has progress been made in the last 18 months? Is there
1817 more room for progress to be made in the next 18 months?
1818 Absolutely. And that is why we feel like an extension today
1819 and a renewed version in the future will help define the
1820 progress that is yet to be made in the future.

1821 Mr. {Shadegg.} Anybody else like to comment? Yes,
1822 Doctor.

1823 Mr. {Lenard.} The only thing I would observe is that I
1824 think, although they get conflated in this discussion, I
1825 think there is a big difference between transparency and
1826 accountability. You can be very transparent and be totally
1827 unaccountable, and--

1828 Mr. {Shadegg.} Excellent point.

1829 Mr. {Lenard.} The way we have viewed accountability in
1830 the work we have done is basically accountability to some
1831 external party, which you can be very transparent, and still
1832 not have that, so--

1833 Mr. {Shadegg.} Thank you very much.

1834 Mr. {Boucher.} Thank you very much, Mr. Shadegg.

1835 Mr. {Shadegg.} Thank you, Mr. Chairman.

1836 Mr. {Boucher.} The gentlelady from the Virgin Islands,
1837 Ms. Christensen, is recognized for five minutes.

1838 Ms. {Christensen.} Thank you, Mr. Chairman.

1839 My first question would be to you, Ms. Alexander. Do

1840 you, on the fees, in 2000, GAO conducted a review on the
1841 Department of Commerce's relationship with ICANN, and noted
1842 that, as a project partner with the Department under the
1843 Memorandum of Understanding, ICANN is allowed to collect
1844 fees, but is limited to recovering only the actual cost.

1845 Does NTIA believe that the fees being charged by ICANN
1846 are consistent with the Department's policy to allow project
1847 partners to cover only actual project costs, and are you
1848 concerned that the potential revenue to be generated by
1849 ICANN's proposal, which may exceed \$100 million, do you
1850 believe that those fees should be limited to the actual costs
1851 of managing the new GTLDs?

1852 Ms. {Alexander.} Thank you very much, Congresswoman,
1853 for the question.

1854 There are a variety of different fees that ICANN
1855 charges, and it is very difficult, in the panel discussions,
1856 everyone is talking about different fees. But to the extent
1857 the question you are raising, yes. The Department still
1858 believes that ICANN, as a nonprofit, should be charging fees
1859 that are consistent with what their costs are.

1860 And in our letter that we filed last year, in the GTLD
1861 public consultation process, we actually raised the issue,
1862 with the actual better explanation of the fee structure and
1863 disposition of excess revenues, if there were to be any.

1864 Ms. {Christensen.} Thank you. Mr. Twomey, Dr. Twomey,
1865 on the accountability issue.

1866 You mentioned that just recently, ICANN released
1867 proposals to establish a new independent review tribunal, to
1868 review ICANN's Board decisions. And one, I am wondering why
1869 it took so long to recognize that need, but doesn't ICANN
1870 also, don't your bylaws already provide an independent review
1871 mechanism to review ICANN's Board action, and has it ever
1872 been used?

1873 Mr. {Twomey.} Thank you, Congresswoman. And you are
1874 quite right. We actually have a series of existing
1875 mechanisms for, multiple series of accountabilities. On the
1876 particular one about appeals, we have an independent
1877 ombudsman. We have a Board review process. We have an
1878 Independent Review Panel, which is an independent arbitration
1879 mechanism, that is presently being utilized by one particular
1880 party. So we are actually presently, that is presently being
1881 utilized by one party.

1882 I should reinforce for all the members, we are under
1883 U.S. law, and we have been accountable before the U.S. courts
1884 on many occasions. So, we get sued under U.S. courts. The
1885 provisions I have pointed to were further consultations with
1886 our community since the midterm review, with some further
1887 things we were putting into the accountability process.

1888 But I would also recommend to you and other members of
1889 the panel, to the committee, that as being a not for profit
1890 under the Californian law, we are also accountable to the
1891 California Attorney General. So, we have multiple legal
1892 accountabilities already under the California Code, as well
1893 as under courts. So, there is a range of those ways of being
1894 accountable.

1895 Ms. {Christensen.} Ms. Jones, how would you respond to
1896 ICANN's argument that as a California-based not for profit,
1897 it is bound by state and federal laws concerning contract,
1898 tort, and antitrust?

1899 Ms. {Jones.} Well, I think every organization that is
1900 organized in any state is accountable to its state's attorney
1901 general. I don't think that is the point we are making here.

1902 And by the way, if I could respond to your earlier point
1903 about the Independent Review Board.

1904 Ms. {Christensen.} The tribunal, sure.

1905 Ms. {Jones.} Just, we could throw in another acronym,
1906 but I will try to forego that for your purposes.

1907 Ms. {Christensen.} Okay.

1908 Ms. {Jones.} If the ICANN Board appoints the members of
1909 the Review Board, it is, by definition, not independent, and
1910 therefore, not accountable. All of the review mechanisms we
1911 have in place right now, the ombudsman, the re-review, they

1912 are all reviewing ICANN. What we are saying is we want them
1913 to be accountable to the community. If we are going to have
1914 a community-based Review Board, that is an actual
1915 international organization that can say, the ICANN Board made
1916 a decision, and we are going to take a look at it, and
1917 determine if it was appropriate or not. That is
1918 accountability, right?

1919 We shouldn't have to have somebody go to the Attorney
1920 General and make a complaint. They shouldn't have to go to
1921 the court and file a lawsuit. Why do we have to go there?
1922 Why do we have to have Verizon spending millions upon
1923 millions of dollars in litigation every year? It is not
1924 necessary.

1925 That Board should be independent. It should be
1926 appointed by independent constituents, and review the
1927 decisions without input from the Board itself.

1928 Ms. {Christensen.} I tend to agree, but Dr. Twomey, do
1929 you think it is independent? I see you shaking your head. I
1930 will give you a chance to respond.

1931 Mr. {Twomey.} Well, I just want to, again, one of the
1932 statements is just wrong. The Independent Review Panel is
1933 not set by the ICANN Board. The Independent Review Panel's
1934 members are drawn by the International Center for Dispute
1935 Resolution, an international arbitration body, and we follow

1936 traditional international arbitration mechanisms, so that we
1937 don't set the panel members whatsoever. The independent
1938 review arbitration body is the one who puts forward panel
1939 members. We don't.

1940 Ms. {Christensen.} Go ahead.

1941 Ms. {Jones.} I just wonder if he can give us an example
1942 of one that has been used. And I know I am not allowed to
1943 ask questions.

1944 Ms. {Christensen.} Well, I think at the end of one of
1945 my questions, I asked that the Independent Review Board that
1946 already exists has ever been utilized, and that will be my
1947 last question.

1948 Mr. {Twomey.} Thank you, Congresswoman.

1949 As I said before, it is actually being utilized at the
1950 moment. We are actually actively in an arbitration in that
1951 Review Panel at the moment.

1952 Mr. {Boucher.} Thank you very much, Ms. Christensen.

1953 The gentlelady from California, Ms. Matsui, is recognized for
1954 five minutes.

1955 Ms. {Matsui.} Thank you, Mr. Chairman.

1956 Under the Joint Partnership Agreement, the U.S.
1957 Government affirmed its goals of preserving the security and
1958 stability of the Internet domain system. I want to focus on
1959 cyberattacks, mostly initiated abroad. They continue to pose

1960 a threat to consumers, businesses, and to government.

1961 Mr. Silva, in your oral testimony, you mentioned that a
1962 number of cyberattacks are initiated by individuals or groups
1963 in foreign countries, like Estonia and Russia. Given the
1964 increase we are witnessing in cyberattacks globally and, I
1965 guess, the United States, critical infrastructure, it seems
1966 to me, that many of our cybersecurity efforts tend to be more
1967 reactive and not proactive enough.

1968 The President's announcement this week of a newly
1969 created National Cybersecurity Advisor will certainly bring
1970 renewed focus and coordination on this issue. Is there
1971 anything the government can be doing, as well as consumers,
1972 to stay ahead of the latest techniques used by today's
1973 organized and sophisticated cybercriminals?

1974 Mr. {Silva.} Thank you. I believe that in concert with
1975 the announcement that the President made was also a report
1976 that was published, which was the result of a 60 day review
1977 by Dr. Hathaway and her term.

1978 I believe that that outlined some very positive steps
1979 that the government can take, and there were some good
1980 recommendations, which I certainly support in that document.
1981 As for consumers, I believe that consumers first need to be
1982 educated on the issue.

1983 Unfortunately, cybercrime is something that always seems

1984 to happen to someone else until it happens to them. And it
1985 is unfortunate, because they have probably already been a
1986 victim of it and don't even know it. In the confiscated
1987 machines of the attackers who have conducted phishing
1988 attacks, or attacks where they have attempted to steal credit
1989 cards, the contents of those machines don't have tens of
1990 thousands of numbers. They have millions of numbers.

1991 Ms. {Matsui.} Okay.

1992 Mr. {Silva.} So, as far as consumers go, and what they
1993 can do better, I think that will be the result, the outcome
1994 of that will be the result of a broader educational campaign,
1995 either through public awareness or through our education
1996 system.

1997 Ms. {Matsui.} Okay. Ms. Jones, in your testimony, you
1998 state that one of your major concerns is that ICANN is not
1999 adequately prepared to defend itself against cyberattack.
2000 What are some of your specific concerns about this?

2001 Ms. {Jones.} The type of attack that we are talking
2002 about is the entire organization being taken over by another
2003 entity, and that could come in the form of an international
2004 organization, another government, some kind of other
2005 business, and that is not to say that they can't ever build a
2006 protection against being taken over, but we are just
2007 concerned that today, and I think even Dr. Twomey said this

2008 in his testimony, they need to establish a permanent, long
2009 lasting set of principles upon which we can prevent them from
2010 being taken over.

2011 Now, I can tell you, if you take a look at the record
2012 from the WSNS round of talks, conversations about the UN or
2013 the ITU taking over ICANN, there are plenty of countries that
2014 aren't necessarily friendly to the open exchange of ideas,
2015 shall we say, to put it delicately, that would be very happy
2016 to take over this function.

2017 Ms. {Matsui.} Then let me follow up here. Dr. Twomey,
2018 what assurances could you provide us that the United States
2019 will always play a critical role with the organization, let
2020 us say, if the JPA is allowed to expire in September?

2021 Mr. {Twomey.} Excellent question. First and foremost,
2022 and very importantly, is the IANA contract. The procurement
2023 contract is at the core of the link with the United States
2024 Government with ICANN. Because the actual operation of IANA
2025 functions is at the core of what ICANN does. So, that is the
2026 first and foremost instrument.

2027 Secondly, as I said before, we are based in the United
2028 States, covered by United States law, covered by the purview
2029 of people like this committee, as well. Thirdly, is that we
2030 have quite comprehensive interactions with the United States
2031 Government as part of its leading place in the ICANN

2032 Government Committee, and fourthly, because like any leading
2033 government, we need to be closely engaged. We have been
2034 heavily engaged, for instance, on cybersecurity issues, but
2035 also, on other issues, competition, choice, and whatever.

2036 So, there is multiple layers of that engagement. I have
2037 to say, that is one of the reasons why I actually make the
2038 point about the Joint Project Agreement, which I think is a
2039 very different type of instrument, that if the Joint Project
2040 Agreement expires, nothing changes. I think that is the key
2041 point we are trying to make, and I am concerned by some of
2042 the statements made today, is that if the Joint Project
2043 Agreement expires, nothing changes in the way in which ICANN
2044 interacts and continues its role, or the importance of the
2045 link with the United States Government.

2046 Ms. {Matsui.} Okay. I see my time has expired. I
2047 probably have some other questions in the second round.
2048 Thank you very much, Mr. Chairman.

2049 Mr. {Boucher.} Thank you very much, Ms. Matsui. We
2050 have a series of three recorded votes pending on the floor of
2051 the House, and additional members who have questions they
2052 want to propound to you.

2053 We also probably will find the need to engage in a
2054 second round of questions propounded by the members who are
2055 here. And so, pending all of that, we are going to recess,

2056 while these recorded votes are completed. We will ask for
2057 your patience. Please remain in the room or nearby, and the
2058 subcommittee will reconvene shortly.

2059 [Recess.]

2060 Mr. {Boucher.} The subcommittee will reconvene, and at
2061 this time, I am pleased to recognize the gentlelady from
2062 California, Ms. Eshoo, for her questions, and she is
2063 recognized for five minutes.

2064 Ms. {Eshoo.} Thank you, Mr. Chairman, for continuing
2065 this important hearing, and I do support having more on this,
2066 because I think there is work for the committee to do.

2067 I want to thank the witnesses for your testimony today,
2068 and first, I want to start out with a few observations, and
2069 then ask a couple of questions. I will go as quickly as
2070 possible, because we only have five minutes.

2071 In my opening statement, I thought it was important to
2072 acknowledge that ICANN, as an organization, has had several
2073 noteworthy accomplishments, and I mentioned some of those.
2074 And so, I want to be fair in acknowledging that. That is one
2075 side of the ledger, and it is an important side, and I salute
2076 you for the accomplishments that you have achieved.

2077 On the other side of the page, I think that there is
2078 some work to be done. I think that to allow the spinning off
2079 of ICANN at the end of this timeframe is not the right way to

2080 go, and I just don't. I hope that the committee comes to the
2081 same conclusion. What is troubling to me are the following
2082 things.

2083 First of all, it is with much curiosity to me that, as
2084 the United States of America is the mother, the father of the
2085 Internet, and that its ultimate trademark, so to speak,
2086 imprimatur, is that it is open. And we have had many
2087 debates, many fights, to define what is open, how to keep it
2088 open, because it is democratizing. It is all of these things
2089 and so much more.

2090 And yet, it seems to me, from some of the testimony
2091 today, that the way ICANN operates does not match that. And
2092 I don't think that is healthy. And I don't think it really
2093 promotes what the Internet is about. If ICANN were spun off,
2094 how do we guarantee an open future, relative to the Internet?
2095 Who would? Who would they be accountable to? How do we have
2096 any kind of say-so in this?

2097 I know that Iran, Cuba, China, are interested. They
2098 would love to take it over. And hey, God bless them. They
2099 have got good taste. They know something good when they see
2100 it. But I am troubled by the lack of accountability. I
2101 believe that we need to be thinking about a new set of rules,
2102 that would be part of the Agreement in the JPA.

2103 It is my understanding, Mr. Twomey, that in 2003, that

2104 there were public members, and they were voted off the Board.

2105 Is that correct, or is it incorrect?

2106 Mr. {Twomey.} There was a round of Board members who
2107 were elected worldwide. It was much earlier than that. It
2108 was in 1999 and 2000.

2109 Ms. {Eshoo.} I don't know what you are saying. Were
2110 they public members, or just regular members, and then, they
2111 rotated off the Board?

2112 Mr. {Twomey.} These were Board members. Some--the
2113 Board--

2114 Ms. {Eshoo.} Are there any public members?

2115 Mr. {Twomey.} There is--members--even you mean
2116 consumers, representing consumers, yes, there are.

2117 Ms. {Eshoo.} And who are they? And how many are there?

2118 Mr. {Twomey.} There is one member on the Board now,
2119 Wendy Seltzer, and she is a member of the Board, and we are
2120 looking at, potentially looking at increasing those numbers.

2121 Ms. {Eshoo.} Looking at increasing. So, one out of how
2122 many?

2123 Mr. {Twomey.} Well, that is out of 21.

2124 Ms. {Eshoo.} That is a pretty lousy ratio, if I might
2125 say so myself.

2126 Mr. {Twomey.} But I would say that the same group
2127 helped select nearly half of the Board members in terms of

2128 our nominating committee, so the same group of people, the
2129 same consumer voices involved in that--

2130 Ms. {Eshoo.} Well, I think I have gotten my answer. It
2131 is not very good.

2132 Let me ask you this, Dr. Twomey. What are the specific
2133 problems that you are trying to address, by seeking complete
2134 independence from the Commerce Department? In other words,
2135 what breakdowns have occurred? Why do you want to break?
2136 What are you going to go off and do? It seems to me that the
2137 Commerce Department and NTIA have a very loose affiliation
2138 with you. I mean, this is not a heavy hand, and I am not
2139 suggesting it should be. But what do you want to accomplish
2140 by spinning off? What is in your way now? What is in the
2141 way?

2142 Mr. {Twomey.} Congresswoman, let me be very clear. We
2143 are not looking for independence. I mean, there is--

2144 Ms. {Eshoo.} What are you looking for, then?

2145 Mr. {Twomey.} We are looking for the continuation of
2146 the model.

2147 Ms. {Eshoo.} Do you want the JPA? You want to continue
2148 in it?

2149 Mr. {Twomey.} We think the JPA should come to its
2150 conclusion, because it has completed its task.

2151 Ms. {Eshoo.} What does that mean? You want it to come

2152 to a conclusion? What does that mean, it comes to an end,
2153 and there isn't any JPA anymore?

2154 Mr. {Twomey.} Well, what we think is we should move
2155 away from temporary, these sort of temporary documents. The
2156 JPA, at the moment, is a two page document, two pages.

2157 Ms. {Eshoo.} Well, why is it so menacing to you, then,
2158 if it is only two pages.

2159 Mr. {Twomey.} And so, what we are suggesting is, what
2160 we are actually suggesting is that we should actually put in
2161 place some of the principles that the members of the
2162 committee think are important, we should put them into a more
2163 permanent statement at the end of the JPA process.

2164 Ms. {Eshoo.} You know what I think this is, and I hope
2165 I am wrong, but this is the impression that I am getting, is
2166 that there is disdain for any U.S. authority in this. And
2167 while we have to have very strong partners throughout the
2168 world, our role, you know, can't be and should not be, in my
2169 view, leapfrogged over. Is that--

2170 Mr. {Twomey.} That is not the intention at all.

2171 Ms. {Eshoo.} That is not the intention.

2172 Mr. {Twomey.} Not at all.

2173 Ms. {Eshoo.} Is there any sensibility around that, or
2174 is it totally false?

2175 Mr. {Twomey.} There is a balance, right, in this broad

2176 debate, of how to have an organization that is accountable to
2177 the United States, in the way you are putting forward, and at
2178 the same time, engages all of the country code operators of
2179 the world, all of the governments who are in our Government
2180 Committee, all of the people who make the system work.

2181 And so, we are not looking to--

2182 Ms. {Eshoo.} Well, I don't know whether you have told
2183 us what the problem with the JPA arrangement is, which is a
2184 mystery to me that you want out of it, but it seems to me,
2185 Mr. Twomey, that you have been saying to us that stakeholders
2186 want to be independent, and we have stakeholders that are
2187 testifying, that are saying absolutely not.

2188 So, there is a division of approach here, and that is
2189 why I think we have some more work to do on it, and I hope
2190 that what we can count on, when we get to a rewrite or an
2191 extension of the JPA, is that we get some very good ideas
2192 from stakeholders' suggestions about some of the rules of the
2193 road.

2194 I don't pretend to know what all of them might be, but
2195 it seems to me that we have got some experts here today, and
2196 plenty of others, but I really do not believe that this thing
2197 should just be spun off. I don't think A, it is necessary,
2198 B, putting on my hat, and I know I am going over time, but I
2199 think I am the only other one here, as a member of the House

2200 Intelligence Committee, how important the Internet is to our
2201 country, in our national security, in the role that it plays.

2202 And so, I think just allowing ICANN to go off, to spin
2203 off, to become I don't know what, is deeply concerning to me,
2204 when I put that hat on.

2205 So, I want to thank all of you, and I look forward to
2206 working some more on this, Mr. Chairman, and I appreciate the
2207 extra time and your patience.

2208 Mr. {Boucher.} Thank you very much, Ms. Eshoo.

2209 I am going to ask unanimous consent, at this point, to
2210 insert three statements in the record that have been
2211 submitted to the subcommittee, commenting on the general
2212 subject matter before us today. These have been reviewed by
2213 the minority. Without objection, these will be inserted in
2214 the record.

2215 [The information follows:]

2216 ***** INSERTS 7A, 7B, 7C *****

|
2217 Mr. {Boucher.} Mr. Stearns and I both have some
2218 additional questions we would like to propound, and so, we
2219 are going to open a second round of questioning for such
2220 members of the subcommittee as desire to propound additional
2221 questions.

2222 And Mr. Twomey, let me continue the questioning of you,
2223 and return to the subject of the proposal that you have to
2224 issue additional top-level domains.

2225 What assurance do you have, and can we take, that if
2226 additional top-level domains are authorized, that real
2227 competition will emerge in the bidding for these domains?
2228 Have you taken any kind of survey of potential bidders?

2229 As a related question, will you have any kind of bar on
2230 existing registrars being able to bid for these domains? In
2231 other words, registrars who currently administer other top-
2232 level domains?

2233 And what other assurances can you put in place that
2234 there will be real competition, in the event that new top-
2235 levels are authorized?

2236 Mr. {Twomey.} Well, thank you, Chairman. From all of
2237 the feedback we have received in the process, which has been
2238 going, this discussion of new GTLDs has been going for ten
2239 years. The policy process took five years, with all of the

2240 stakeholders involved. We are now going through this how do
2241 you implement 18 month discussion.

2242 In that process, it has been clear to us that there is a
2243 range of people who are very interested in applying. Some
2244 are in pretty general terms, they are looking for general
2245 terms in English, .shops and .webs, that sort of thing.
2246 Quite a lot of people interested in geographic terms. As I
2247 mentioned before, some of those cities, Berlin, New York
2248 City, Paris.

2249 Interest from indigenous communities. There is some
2250 talk about potentially a .maori or a .sami, so people are
2251 looking to represent that. There is clearly interest from
2252 some companies for brand names, and you wouldn't be
2253 surprised, Chairman, to know that companies are not
2254 monolithic. So, not only will be hear from intellectual
2255 property lawyers from inside the company that is concerned.
2256 We also hear from their marketing departments and the product
2257 development departments that they are really interested in
2258 having a top-level domain. So, we are hearing that
2259 difference. And I think the--

2260 Mr. {Boucher.} Well, you have talked about areas where
2261 you might have one bidder. If it is an indigenous tribe, for
2262 example, potentially, you would have that tribe bidding to
2263 operate, or someone associated with it, I don't know. But do

2264 you think you would have real competition in the bidding for
2265 such a top-level domain? Would you have a variety of bidders
2266 seeking--

2267 Mr. {Twomey.} The process would be fully open, so if
2268 other bidders wished to bid--

2269 Mr. {Boucher.} Well, I understand the process would be
2270 open, but to what extent do you have confidence that there
2271 would be real competition in the bidding, through that open
2272 process?

2273 Mr. {Twomey.} We are trying to make the process as
2274 open, as transparent, and as--

2275 Mr. {Boucher.} Well, you are answering my question with
2276 a process answer, and I am really asking a more fundamental
2277 question. It is almost an empirical question. Have you
2278 actually done a survey, and identified, within these various
2279 TLDs that you might issue, more than one bidder, or any
2280 bidders for some of them?

2281 Mr. {Twomey.} We are expecting, for some of them, there
2282 will be multiple bidders. It has been quite clear, some of
2283 the people have made clear that there would be multiple
2284 bidders, and we see--

2285 Mr. {Boucher.} Would you demand that assurance, that
2286 there will be multiple bidders, before you would authorize a
2287 particular new top-level domain?

2288 Mr. {Twomey.} The policy process to date is not
2289 prescriptive on that, because we would think there would be
2290 instances where people would like to have a top-level domain,
2291 for instance, if it was a company brand name, where that
2292 company itself would want to have the brand, and not want to
2293 have to bid to another person. I mean, that would go to the
2294 very heart of the issue we said before about cybersquatting.

2295 Mr. {Boucher.} Well, fair enough, but if your top-level
2296 domain is more generic. In other words, if it is .phone, you
2297 would certainly want more than one bidder. You would
2298 anticipate multiple bidders for such a top-level domain,
2299 would you not?

2300 And my question is, would you conduct some sort of
2301 empirical survey in advance, just to be sure that there
2302 actually would be a sufficient level of competition in the
2303 bidding for administering that TLD?

2304 Mr. {Twomey.} One of the things we are putting forward
2305 is to have an extensive, is to have an extensive promotion of
2306 the process, before it would open. So that people were aware
2307 the process was available.

2308 To come to the specific question you are asking, we are
2309 not putting forward that we choose the string, and then say,
2310 who wants to bid for this. We are actually saying it is not
2311 appropriate for us to decide what string people should bid

2312 for, but the process should be open and flat, and that it is
2313 up to people who think there is an opportunity to put forward
2314 a string.

2315 Mr. {Boucher.} Well, the reason I am pursuing this at
2316 some length is because the public policy justification for
2317 putting companies to the additional costs associated with
2318 protecting their brand, that will come from them having to
2319 acquire buffers around that brand, not under just the
2320 existing TLDs, but potentially, multiple new TLDs as well, is
2321 the new competition that comes, and the choice that comes
2322 from that.

2323 And if you really don't get a level of competition in
2324 the bidding for those TLDs, then that public policy
2325 justification seems to me to be diminished substantially.
2326 So, I think it is a legitimate are.

2327 Let me ask if anyone else on the panel wants to comment
2328 on that question. Ms. Deutsch.

2329 Ms. {Deutsch.} Yes, I would just raise, I guess three
2330 points. First of all, I don't think you got a clear answer,
2331 but to our knowledge, there has never been that empirical
2332 study on the need for new TLDs.

2333 Second, we already think, you know, there are 21 GTLDs
2334 today. We think there is sufficient competition in the
2335 market today. Maybe there, you know, could be a few more

2336 slowly released, or the international domain names might be
2337 something to think about, but 88 percent of all Internet
2338 traffic goes to .com. That is still the premier piece of
2339 real estate, so there is nothing to say that the addition of
2340 all these new ones still won't leave .com in that dominant
2341 space. And third, we think, you know, there is not that
2342 bidding process. It is more like speculating. People can
2343 bid, but you are not going to know who else is bidding for
2344 what names. If you happen to bid for the same name, maybe
2345 there will be some competition.

2346 Mr. {Boucher.} Okay. Mr. Stearns.

2347 Mr. {Stearns.} Thank you, Mr. Chairman.

2348 Mr. Twomey, I think you mentioned to the gentlelady from
2349 California that you have 21 Board members. How many of those
2350 are U.S. citizens? I was told by staff that two thirds are
2351 not.

2352 Mr. {Twomey.} Board members are required to come from
2353 one of five regions in the world.

2354 Mr. {Stearns.} Okay.

2355 Mr. {Twomey.} And North America is one of those
2356 regions.

2357 Mr. {Stearns.} Right.

2358 Mr. {Twomey.} And each region has to be represented on
2359 the Board.

2360 Mr. {Stearns.} Yeah.

2361 Mr. {Twomey.} As it does on each of the Councils of our
2362 supporting organizations. The present number, I think, is
2363 seven or eight. I will have to check the specific--

2364 Mr. {Stearns.} Okay. But roughly, I'm right. Two
2365 thirds are from other countries, which--and of the 100
2366 employees you have, how many are from the United States? Is
2367 it the same ratio? About two thirds are from other
2368 countries?

2369 Mr. {Twomey.} No, it is much more from the United
2370 States.

2371 Mr. {Stearns.} Okay, 50/50, you think?

2372 Mr. {Twomey.} It is well over 50 percent. It is over
2373 50 percent.

2374 Mr. {Stearns.} So, 50 percent are from other countries.
2375 Yeah. In looking through your P&L statement, just going back
2376 to this net cash reserve, you are up to about \$46 million,
2377 425, and you indicated that if you go ahead with these TLDs,
2378 it could generate another \$90 million.

2379 So, does that mean if you were at \$150 million in
2380 revenue, that you would try to get this cash reserve up to
2381 \$150 million? Was that your statement?

2382 Mr. {Twomey.} No, that is not the statement.

2383 Mr. {Stearns.} Okay.

2384 Mr. {Twomey.} And if I can be quite clear on the
2385 budget. The reason the budget has increased is because the
2386 very things that some of the members, the committee have
2387 raised, or those concerns we have, about 20 percent of our
2388 budget is dedicated to security and stability issues.

2389 We have increased quite significantly our allocations to
2390 compliance work, and we are now looking at allocating more
2391 money to the compliance work. The issues with GTLD funding
2392 is that we are required by the community to be cost recovery
2393 only for that, that there be no cross-subsidy for anybody who
2394 is applying for a new GTLD.

2395 We expect that the fees you are referring are one-off
2396 application fees to be dealt with only in that year, and that
2397 the actual revenues would come down.

2398 Mr. {Stearns.} But you still indicated you, earlier,
2399 that you want to have a reserve fund equal to your revenues.

2400 Mr. {Twomey.} I am on public record of saying that they
2401 should be equal to about one year of the present operational
2402 basis.

2403 Mr. {Stearns.} Yeah, so, if you are doing \$61 million,
2404 you want to do \$61 million in reserve.

2405 Mr. {Twomey.} It is around--I am on public record as
2406 saying I think the number should be around \$50 million.

2407 Mr. {Stearns.} So, it is not what you said earlier,

2408 that it will be equivalent to one year's revenue.

2409 Mr. {Twomey.} That was the advice we had received, but
2410 I think it should be--about the one. I have to reinforce why
2411 that is important. It is important for security and
2412 stability. In the early days of ICANN, we received multiple
2413 lawsuits, which we defended quite correctly.

2414 Mr. {Stearns.} Don't you have insurance to cover a lot
2415 of those multiple lawsuits?

2416 Mr. {Twomey.} We had some insurance, but we have no
2417 confidence that would cover all the process.

2418 Mr. {Stearns.} Yeah. Okay, I understand that.

2419 Ms. Alexander, I mean frankly, they are an international
2420 organization. They don't necessarily want to be in the
2421 United States. I mean, maybe Mr. Twomey wants to take them
2422 to Australia. I mean, if they wanted to leave, what could we
2423 do to stop them, after the contract expires in September?
2424 What could we, what legal things could we do?

2425 You might not be able to answer this, because you are
2426 not, I don't know. What legal things could we do?

2427 Ms. {Alexander.} Thank you very much, Mr. Stearns.

2428 I think, with respect to JPA, I am not in a position to
2429 answer those questions. But to the extent that ICANN remains
2430 the IANA functions contractor, that needs to be located in
2431 the United States.

2432 Mr. {Stearns.} There is a legal contract, a need to be
2433 in the United States.

2434 Ms. {Alexander.} Yes, sir.

2435 Mr. {Stearns.} Okay. Now, Mr. Twomey, let us say, you
2436 know, you wanted to be free from the contract with the
2437 Commerce Department, and you wanted to be separate and
2438 independent, and that is what you and the people would do.

2439 Would you be willing to have competition, have some,
2440 another agency set up and compete with you?

2441 Mr. {Twomey.} The functions that are being, well, there
2442 is a couple of propositions there. We are not looking to be
2443 more independent than we are now. So, I want to keep
2444 reinforcing that. We are an independent organization under
2445 the law.

2446 Mr. {Stearns.} No, I understand.

2447 Mr. {Twomey.} But the actual functions are, in the
2448 original design work, functions that needed to be essentially
2449 coordinated across the global Internet. This is the
2450 allocation of this coordination of domain names and IP
2451 addressing.

2452 And in the original analysis, which was done back in the
2453 1990s, as to how to bring that forward. It was seen that
2454 they were functions that were unique, that needed to be
2455 coordinated at one place. That is why the original white

2456 paper called for such an organization, and the Internet
2457 community responded to it.

2458 I think the analysis at the technical level remains that
2459 is the case. So, we are very carefully structured to try to
2460 deal with many antitrust issues, and have, the antitrust
2461 issues inside ICANN have been tested and tried several times
2462 in U.S. courts, which have confirmed the model.

2463 If the technical analysis were to say that you could
2464 have multiple mechanisms of doing that coordination, then
2465 potentially, you know, we wouldn't stand against it, but the
2466 technical analysis does not support it.

2467 Mr. {Stearns.} Ms. Alexander, this is my last question.
2468 This is changing the subject totally here. I am going back
2469 to the DTV transition.

2470 About 725,000 more households have to prepare themselves
2471 for the DTV transition, using the stimulus money. Based upon
2472 the Nielsen Rating data, and information from the NTIA
2473 itself, at that pace, about 900,000 will have used the money
2474 to prepare by June 12. That means we will have spent more
2475 than \$700 per household for a \$50 device. Does that make
2476 sense? Assuming my mathematics is correct.

2477 Ms. {Alexander.} Thank you very much, Congressman. I
2478 just want to reassure you that the DTV transition is a high
2479 priority for the Secretary of Commerce.

2480 Mr. {Stearns.} I notice you are reading that, so that
2481 is what they told you to tell me.

2482 Ms. {Alexander.} And acting Assistant Secretary Anna
2483 Gomez. I am not the subject matter expert on this area. We
2484 would be happy to provide further answers to these questions,
2485 for the committee.

2486 Mr. {Stearns.} Yeah. All right. Thank you, Mr.
2487 Chairman.

2488 Mr. {Boucher.} Thank you very much, Mr. Stearns.

2489 The thanks of the subcommittee to our panel of
2490 witnesses. You have been here for a long time. This has
2491 been, I think, a very interesting and informative discussion,
2492 and we appreciate your contributions to it.

2493 I am sure that members of the subcommittee are going to
2494 have additional questions, and some members who were not able
2495 to attend the hearing today, because of conflicts will also
2496 have questions.

2497 Those will be propounded to you, over a period of the
2498 coming weeks, and when you receive those inquiries, to the
2499 extent that you can make rapid replies, that will be helpful
2500 to us.

2501 We are going to keep the record open from this hearing
2502 to receive those replies for a period of about one month, so
2503 please be prompt in getting those responses back.

2504 We appreciate very much your attendance this morning,
2505 and your informative presentations, and this hearing stands
2506 adjourned.

2507 [Whereupon, at 1:00 p.m., the subcommittee was
2508 adjourned.]