

STATEMENT

Of

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Protecting Internet Freedom: Implications of Ending U.S. Oversight of the Internet

Introduction

Chairman Cruz, Ranking Member Coons, and Members of the Subcommittee, I thank you for your invitation to appear today and present testimony on the pending IANA Stewardship Transition.

My name is Paul Rosenzweig and I am the principal and founder of a small consulting company, Red Branch Consulting, PLLC, which specializes in, among other things, internet and cybersecurity policy and legal advice. I am also a senior advisor to The Chertoff Group and a professorial lecturer in law at George Washington University where I teach a course on cybersecurity law and policy. I also serve as a visiting fellow in the Douglas and Sarah Allison Center for Foreign Policy Studies at The Heritage Foundation. From 2005 to 2009 I served as the deputy assistant secretary for policy in the Department of Homeland Security.

Needless to say, my testimony today is in my individual capacity and does not reflect the views of any institution with which I am affiliated or any of my various clients. Indeed, to be clear, I work extensively in the cybersecurity and tech space and many of my clients are following this debate with great interest. That having been said, today I am testifying as an individual discussing my own independent research. The views expressed are my own.

My testimony today is the product of more than two years of working within ICANN on the proposed IANA transition. I (along with many others, including my Heritage colleague Brett Schaefer) participated extensively in this process through testimony, research and publications, (a list of these is set forth in

the margin),¹ submissions to ICANN's public comment process, involvement in and attendance at CCWG-Accountability meetings and remote discussions, and membership in the Non-Commercial Users Constituency and the Non-Commercial Stakeholder Group. I have commented on and debated various proposed changes in those forums and some of my suggestions have been incorporated into the final CCWG-Accountability proposal and the revised bylaws.

In my testimony today, I want to address five key issues that I think warrant substantial caution:

- The IANA transition is a leap in the dark. Nobody can reasonably tell you that there is certainty about how it will work out. Yet the safe and secure functioning of the network is vital to economic and political freedom around the globe. It would be prudent to develop experience with the new governance model during a trial period before the transition is made irrevocable.
- ICANN is incorporated in California. Yet some around the globe question that decision and are working, as part of follow on work, to see ICANN moved to another jurisdiction. Assuredly, the American role in overseeing ICANN's operations should not be terminated until that issue is resolved.
- The US government is delegated as the operator of the .Gov and .Mil top level domains. Rather than guaranteeing the permanent continuation of that role by way of contract, the NTIA and ICANN have chosen to exchange letters which, in the end, promise the US that ICANN will follow its policy and notify the government before any re-delegation is made. Thus, continued

¹ Indeed, much of my testimony today is directly derived from my previous work and I acknowledge that much of it has been greatly improved by the contributions of my various colleagues. **Testimony:** The Proposed Transfer of the IANA Function to ICANN, United States House of Representatives, Committee on the Judiciary, Subcommittee on Courts, Intellectual Property and the Internet, April 10, 2014, <https://judiciary.house.gov/wp-content/uploads/2016/02/041014-ICANN-Rosenzweig.pdf>; Privatizing the Internet Assigned Number Authority, United States House of Representatives, Committee on Energy and Commerce, Subcommittee on Communications and Technology, March 17, 2016 [Statement for the Record] [co-authored with Brett D. Schaefer]. **Publications:** ICANN Transition is Premature: Unanswered Questions Require an Extension, TechFreedom (September 2016) [co-authored with Berin Szoka and Brett D. Schaefer], <https://techpolicycorner.org/icann-transition-is-premature-c65f638d5fbc#.i9vffaul1>; ICANN Transition Proposal: The U.S. Should Proceed With Caution, The Heritage Foundation, Backgrounder No. 3110 (April 2016) [co-authored with Brett D. Schaefer], <http://www.heritage.org/research/reports/2016/04/icann-transition-proposal-the-us-should-proceed-with-caution>; Protecting Internet Freedom and American Interests: Required Reforms and Standards for ICANN Transition, The Heritage Foundation, Backgrounder No. 2922 (June 2014) [co-authored with Brett D. Schaefer, James L. Gattuso, and David Inserra], <http://www.heritage.org/research/reports/2014/06/protecting-internet-freedom-and-american-interests-required-reforms-and-standards-for-icann-transition>; Governing a Distributed Network: Common Goods and Emergence, The Hague Institute for Global Justice (2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2429885. In addition, I am a regular contributor to *Lawfare* (www.lawfareblog.com) where a number of my blog posts have addressed the IANA Stewardship Transition.

American control of .Gov and .Mil (which are essential to the continued stable operations of American government IT systems) is not assured by any enforceable mechanism.

- In the new ICANN, other governments will indisputably have increased influence over the corporation. But “if the premise of our decision to give up NTIA control of the IANA function is that governmental management is suspect, then that should be equally true of a governmental role (even a broader based one) in the new IANA management structure. My recommendation would be that the governmental role in any new structure be limited to an advisory one – with no formal, or informal right of control over the process.”²
- And, finally, there is reason to think that the newly Empowered Community will not be well-situated to exercise realistic oversight of ICANN and its staff. There are too many barriers to effective exercise of the EC’s new powers and too many practical and cultural reasons why the EC will not serve as an effective check on ICANN. Without that check, ICANN risks becoming an unregulated monopoly with no effective outside oversight and control.

I will address each of these in turn.

The Need For A Trial Period

I have great respect for the work and time that the members and participants of these groups have invested. The transition includes a number of positive elements that, if they operate as envisioned, would create mechanisms for the ICANN community to hold the board and staff accountable and reverse imprudent decisions. This is a most welcome development as is the Board’s promise to implement these accountability measures even if the transition is delayed.³ (I note, however, that the Bylaws implementing these changes were made contingent on the termination of the NTIA-ICANN

² See Rosenzweig Judiciary Testimony, *supra* n.1 at 10.

³ At the March 2015 ICANN meeting, a member of the Commercial Stakeholder Group asked the board to confirm that “Even in the event that there were some political problem with the transition, it is your intention that we will have implemented the bylaws changes. That the accountability reforms are done and that we will have implemented the other aspects and that political impediment to the transition will not prevent the implementation of those bylaws reforms.” ICANN board member Bruce Tonkin answered on behalf of the board: “So the only caveat in that case...is if the NTIA wished to continue its agreement, we would just need to make sure that any changes were not in conflict with that agreement, which really doesn’t involve much in the way of any of the accountability work that you’ve been involved in.” ICANN board member Cherine Chalaby added: “So I’d like to add to what Bruce is saying. Basically on the accountability reforms, I think the train has left the station and the reasons for that is the community has come to an agreement. I mean, if the community did not come to an agreement, it would be a different thing. So I think they are good accountability measures and we’re committed to go forward with it, even if there are political positions and such. So subject to some of the caveats that Bruce has done, we’re all in support of that.” Video and initial transcript available at ICANN Public Meetings, “Joint Meeting of the ICANN Board & the Commercial Stakeholders | Adobe Connect: Full [EN],” March 8, 2016, <https://meetings.icann.org/en/marrakech55/schedule/tue-board-csg/ac-board-csg-08mar16-en>.

contract. Since the Bylaws changes do not seem to be contingent on the contract's continuation, this may reflect a change in Board policy.)⁴

As you know, that transition is scheduled to occur on September 30, 2016. For a number of reasons (not limited to those I address in this testimony) I have suggested that the formal transition proceed with a two-year trial period. I continue to believe that a change this momentous ought to be fully tested and vetted before it is irrevocably implemented and, with all due respect to the many friends and colleagues who have labored to create the transition, I do not think that the transition we expect next month meets the test of stability and security.

I am not the first to suggest a "trial period" for the IANA transition. Indeed, in discussing proposal in the first CCWG report, the ICANN Board suggested just such an approach:

We believe the Sole Membership Model as proposed has the potential for changes in the balance of powers between stakeholder groups in ICANN's multistakeholder model. At any time, the balance of power and influence among any of the "groups" within ICANN can change based upon the willingness or ability to participate in the Sole Member, changing for example the balance between governments and the private sector and civil society. We believe that if the Sole Membership Model is the only proposed path forward, it may be prudent to delay the transition until the Sole Membership Model is in place and ICANN has demonstrated its experience operating the model and ensuring that the model works in a stable manner.⁵

Everything the Board said about the need for experience and a demonstration of stability about the "Sole Member Model" (which has since been rejected) is equally true of the new "Empowered Community" model that has been adopted. The transition will bring radical changes in ICANN governance and shifts in the balance of power and influence among groups within ICANN. A soft extension of the current contract for a reasonable period of time would allow the community and ICANN to take the new mechanisms for a sustained test drive to verify to the Internet community that relies on ICANN that they are working as envisioned.

It would therefore be prudent to maintain U.S. oversight, or at least a means for reasserting NTIA oversight, for the next two years until the new structure proves itself and the details of Work Stream 2 are fully developed and their implications understood.

⁴ Approval of New ICANN Bylaws for IANA Stewardship Transition, <https://features.icann.org/approval-new-icann-bylaws-iana-stewardship-transition>.

⁵ ICANN board, "ICANN Board submission of supplementary and final comments to the CCWG-Accountability 2nd Draft Proposal Public Comment forum: Summary of Board Input," September 11, 2015, <http://forum.icann.org/lists/comments-ccwg-accountability-03aug15/pdfjl8SFyc7XR.pdf>.

Jurisdiction

ICANN is a non-profit corporation incorporated in California. Some say that this is a check on ICANN's activities, since it would be subject to suit in America's impartial, professional court system. Indeed, in July, Assistant Secretary Strickling confidently declared "ICANN is a California corporation and will remain so," noting that a three-quarters vote of the Board would be required to change this requirement of ICANN's Article of Incorporation, or to amend the "fundamental" bylaw requiring ICANN to maintain its primary place of business in California.⁶

I wish I were as confident as Assistant Secretary Strickling. Certainly, he (and others) should at least acknowledge that ICANN has launched a study of its jurisdiction of incorporation as part of Work Stream 2 – the follow on work on further post-transition accountability reforms:

To be sure, ICANN said that this study "refers primarily to the process for the settlement of disputes within ICANN, involving the choice of jurisdiction and of the applicable laws, but not necessarily the location where ICANN is incorporated."⁷ But I am a member of the WS2 Jurisdiction sub-group, and I can report to you that as recently this past week, representatives of a number of nations were arguing that the use of "primarily" and "not necessarily" was an express authorization to consider a new jurisdiction of incorporation.

The idea that ICANN would pack up and move has been contemplated by ICANN's leadership. Back in June 2014, ICANN CEO Fadi Chehade announced, in testimony to the French Senate, that the Board had authorized him to begin, as one of five major initiatives, the creation of a "parallel legal, international structure (maybe in Switzerland) for ICANN."⁸ In July, the French Senate published a lengthy report (in French), building upon Chehade's testimony.⁹ The report proposed the "Swiss Model" that would,

⁶ Lawrence Strickling, Assistant Secretary for Communications and Information, National Telecommunications and Information Administration, U.S. Department of Commerce, Remarks at The Internet Governance Forum USA (July 14, 2016), <https://www.ntia.doc.gov/speechtestimony/2016/remarks-assistant-secretary-strickling-internet-governance-forum-usa>.

⁷ Press Release, ICANN, Launching Work Stream 2 in Helsinki, (June 23, 2016), <https://www.icann.org/news/blog/launching-work-stream-2-in-helsinki>.

⁸ Fadi Chehade, CEO of ICANN, Testimony before the Sénat (French Senate): *Will ICANN Move to Switzerland*, (May 4, 2014), <http://www.domainmondo.com/2014/05/fadi-chehade-will-icann-move-to.html>.

⁹ Catherine Morin-Desailly, Report, Rapport d'information n° 696 (2013-2014) L'Europe au secours de l'Internet : démocratiser la gouvernance de l'Internet en s'appuyant sur une ambition politique et industrielle européenne (July 8, 2014), http://www.senat.fr/rap/r13-696-1/r13-696-1_mono.html (English: Europe to the Rescue of the Internet: Democratizing Internet Governance, Based on a European Political & Industrial Ambition ..."), available at https://www.senat.fr/fileadmin/Fichiers/Images/commission/MCI_nouvelle_gouvernance_de_l_internet/EUROPE_TO_THE_RESCUE_OF_THE_INTERNET_english_summary.pdf.

instead of transferring Internet governance to a one-country, one-vote system like the ITU, have ICANN assume international legal personality as a “World ICANN” in the model of the Red Cross.

Will ICANN change its jurisdiction? It’s hard to say. But to argue that concerns regarding the transition are ameliorated by ICANN’s continued presences in the US is to ignore the fact that a move away from California is under consideration by a working group charged with further review of the issue.

GAC Influence

Since the March 2014 NTIA announcement, I have repeatedly cautioned against providing enhanced authority for governments in a post-transition ICANN in papers, articles, congressional testimony, and public comments submitted to ICANN on the various CCWG proposals.¹⁰ Indeed, that was one of the topics I addressed in my testimony to the House Judiciary Committee more than two years ago. There I said: “if the premise of our decision to give up NTIA control of the IANA function is that governmental management is suspect, then that should be equally true of a governmental role (even a broader based one) in the new IANA management structure. My recommendation would be that the governmental role in any new structure be limited to an advisory one – with no formal, or informal right of control over the process.”¹¹

Sadly my counsel was not taken and it is one principal reasons I think this proposed transition is flawed. It is in my view **indisputable** that under the current proposal, governments would significantly increase their power in ICANN versus the status quo. As it now stands, governments are represented in ICANN through the Government Advisory Committee (GAC), an advisory body that is unable to appoint board directors. The GAC has a power that other advisory bodies do not—an ability to convey advice to the board that the board must implement unless opposed by majority vote—and even if this advice is rejected, the board is obligated to try to find a mutually acceptable solution with the GAC. This special advisory role has frustrated the community because it allows the GAC to intervene at late hours and upend community-led policy development processes.

Under new IANA Stewardship Transition, the GAC would retain this special advisory power, but with slightly different details. The threshold for board rejection of GAC advice actually increases from 50 percent to 60 percent. But the proposal also clarifies that only GAC advice that is truly adopted by consensus (without any formal objection) can trigger the board’s obligation to find a mutually

¹⁰ In addition to the publications noted, *supra* n.1, see Brett D. Schaefer and Paul Rosenzweig, “Comment of the Heritage Foundation on the Cross Community Working Group on Enhancing ICANN Accountability 2nd Draft Report (Work Stream 1),” August 20, 2015, <http://forum.icann.org/lists/comments-ccwg-accountability-03aug15/msg00005.html>; and Brett D. Schaefer and Paul Rosenzweig, “Comment on the CCWG-Accountability Draft Proposal on Work Stream 1 Recommendations,” December 16, 2015, <http://forum.icann.org/lists/comments-draft-ccwg-accountability-proposal-30nov15/msg00020.html>.

¹¹ See Rosenzweig Judiciary Testimony, *supra* n.1 at 10.

acceptable solution – and we can hope that American diplomats will exercise that veto power in our national interest. While the definition of consensus is welcome, the higher threshold for board rejection of GAC consensus advice is a real increase in GAC authority.

In addition to retaining its privileged advisory power, the GAC also would be a decisional participant in the Empowered Community (the EC) with a direct say in the exercise of all community powers including, for example, board dismissal and bylaw changes. Here, however, the consensus requirement doesn't exist – GAC participation in the EC is pursuant to its operating principles, which can be changed by a majority of the GAC. Hence, there is no US veto of GAC work in the EC. The only exception to this new enhanced decisional role is the so-called "GAC carve-out," which just says that the GAC can't judge its own case – it can't use its EC power to review how the Board treats its own recommendations.

Indisputably, the CCWG-Accountability proposal would grant the GAC powers that it did not previously have and increase government authority in ICANN versus the status quo. These changes were recommended even though some Members of Congress have explicitly opposed this outcome. Specifically, a 2014 letter from Senators John Thune (R–SD) and Marco Rubio (R–FL) made clear that from their perspective, government influence should not be expanded in the transition:

First, ICANN must prevent governments from exercising undue influence over Internet governance. In April we led 33 Senators in a letter to NTIA regarding the IANA transition. We wrote that "[r]eplacing NTIA's role with another governmental organization would be disastrous and we would vigorously oppose such a plan. ICANN should reduce the chances of governments inappropriately inserting themselves into apolitical governance matters. Some ideas to accomplish this include: not permitting representatives of governments to sit on ICANN's Board, limiting government participation to advisory roles, such as through the Government Advisory Committee, and amending ICANN's bylaws to only allow receipt of GAC advice if that advice is proffered by consensus. *The IANA transition should not provide an opportunity for governments to increase their influence.*¹²

A number of CCWG members and participants shared this concern about government increasing its power in ICANN post-transition, as did some representatives from ICANN stakeholder and constituency groups.¹³ Yet this is precisely what will occur if transition goes forward as planned.

¹²Emphasis added. Senator John Thune and Senator Marco Rubio, letter to Dr. Stephen Crocker, Chairman, ICANN board of Directors, July 31, 2014, <https://www.icann.org/en/system/files/correspondence/thune-rubio-to-crocker-31jul14-en.pdf>.

¹³See comments of Non-Commercial Stakeholders Group (NCSG) and Intellectual Property Constituency (IPC) councillors in ICANN | GNSO, "Transmittal of results of GNSO Council consideration of CCWG-Accountability Supplemental Final Proposal," pp. 5–10.

.Gov and .Mil

Today, the United States has exclusive use of the .mil and .gov domains. Allowing other governments or the private sector to use these gTLDs poses security risks. In a July 8th 2015 hearing held by the House Energy and Commerce Committee's Subcommittee on Communications and Technology, when pressed about formalizing the informal agreement about .mil and .gov, Assistant Strickling stated,

There is nothing in the transition of our stewardship which actually implicates .mil or .gov, and also .us, which we administer at the Department of Commerce. But we understand this is an issue of concern and so we will do whatever is appropriate, in consultation with the Department of Defense and GSA and the other agencies that have equities in this, to make sure that these names are protected going forward. We understand the importance of it.

Today, they are not under any particular contract. These are legacy names that go back to the very beginning of the Internet. I think .mil was delegated back in 1984. That shows you how old it is. So there is no contract today, but there is a whole structure of these informal regulations within the Internet model that govern ...

There is no reason why they should change, but we are not going to rest there. We are going to take a look at them and make sure that if there is a way we can strengthen the U.S. Government's rights to those names, we will do so.¹⁴

As the transition now looms, it is appropriate to look at the solution that the NTIA has adopted. For something this critical I might have supposed that the US government would insist on an enforceable contract or some other evidence of obligation. Instead according to NTIA,

[P]er the policies, procedures, and practices in place, .mil and .gov cannot be transferred without explicit agreement first from the current administrators of those domains – namely, the U.S. government. However to address concerns that have been raised, NTIA and ICANN have formally reaffirmed that the U.S. government is the administrator of .mil and .gov and that any changes made to .mil or .gov can only be made with the express approval of the U.S. government.¹⁵

¹⁴ House of Representatives, Subcommittee on Communications and Technology, Committee on Energy and Commerce, "Internet Governance After ICANN 53," July 8, 2015, pp. 52-53, <http://docs.house.gov/meetings/IF/IF16/20150708/103711/HHRG-114-IF16-20150708-SD006.pdf>.

¹⁵ NTIA, Q and A on IANA Stewardship Transition, (Aug. 16, 2016), <https://www.ntia.doc.gov/other-publication/2016/q-and-iana-stewardship-transition-0>

This reaffirmation was made through an exchange of letters.¹⁶ Not only are the letters non-legally binding, they actually acknowledge the possibility that at some point a separation of the IANA function from ICANN might threaten the stability and security of the US government's top level domains.

I can't speak for other observers, but for me, as a lawyer, an exchange of letters is a way of avoiding a contractually enforceable obligation. I know why ICANN would prefer that course of action – I have no idea why the NTIA would accept it on behalf of the US government.

Institutional Immaturity

Finally, I am concerned that, notwithstanding their good intentions, the members of the multi-stakeholder community, now given oversight of ICANN through the Empowered Community (or EC) simply lack the institutional capacity to serve as an effective check on the Board.

I reach that conclusion reluctantly, but with ample evidence from the CCWG-Accountability process to support the claim. Time and again in the process the Board of ICANN interfered in the development of accountability measures, routinely diluting them to limit and reduce community influence. If the community was unable to assert itself during the accountability development process (when it had the greatest leverage) how much less effective will it be after the transition has occurred.

For example, back in early 2015, when asked, former ICANN Chief Executive Officer Fadi Chehade assured Congress that the board would allow the multi-stakeholder community to develop the accountability plan independently and would transfer it forward to the NTIA even if it contained provisions that the board opposed.¹⁷ The board, however, did not adhere to this promise and instead intervened to shape the proposal in fundamental ways and block provisions that it opposed.

Most notable was the board's opposition to the Cross Community Working Group on Enhancing ICANN Accountability Second Draft Report (Work Stream 1) because it recommended making ICANN into a member-based nonprofit corporation with the SO/ACs jointly comprising a single member called the "Sole Member Model."¹⁸ Under California law, which is the relevant law because ICANN is incorporated

¹⁶ NTIA, Exchange of Letters - U.S. Government Administered TLDs, June 2016, <https://www.ntia.doc.gov/page/exchange-letters-us-government-administered-tlds>.

¹⁷ICANN CEO Fadi Chehade promised the Senate that "if the stakeholders present [ICANN] with [such] a proposal [w]e will give it to NTIA, and we committed already that we will not change the proposal." Hearing, *Preserving the Multistakeholder Model of Internet Governance*, Committee on Commerce, Science and Transportation, U.S. Senate, February 25, 2015, <http://www.commerce.senate.gov/public/index.cfm/2015/2/preserving-the-multistakeholder-model-of-internet-governance>.

¹⁸ICANN, "Cross Community Working Group on Enhancing ICANN Accountability 2nd Draft Report (Work Stream 1)," Public Comment, August 3, 2015, <https://www.icann.org/public-comments/ccwg-accountability-2015-08-03-en>.

in California, this model would have given the community significant authority over the board in much the same way that shareholders have control of for-profit corporations.

The board objected to membership for several reasons that it thought could be potentially destabilizing. Prominent among them was the board's concern that the "Sole Member Model would bring with it statutory rights that could impact ICANN and its operations, without any fiduciary duty to ICANN."¹⁹ In other words, the board objected to membership even though it was a standard California method of governance in nonprofit organizations because, in its view, the model gave the membership too much power over ICANN's operations.

In the face of the board's opposition, the CCWG-Accountability backed down and did not insist that the board transfer the proposal to the NTIA as promised to Congress. Instead, the CCWG-Accountability dramatically altered the proposal, wasting weeks and perhaps months of work.

This reluctance to confront the Board and Staff is the product of cultural views, I think. It is compounded, however, by the impracticality of the community every uniting in an effective way to limit ICANN's activity. The EC is, I fear, a paper tiger. Indeed, there is a real prospect that the Empowered Community—which is at the core of fundamental accountability for ICANN—may be hamstrung by unanticipated and unintended consequences of the current structural proposals.

I have a grave fundamental concern about whether the community can be decisive and united enough to utilize the accountability measures provided to the EC. The entire premise of the transition is that the multi-stakeholder ICANN community has sufficient maturity and cohesiveness to serve as a counterweight to the board and the enhanced influence of the GAC. The CCWG-Accountability development process engenders real doubts about the foundational suitability of the community as bedrock for accountability. The most powerful accountability measures are exercised only by the Empowered Community and are premised on it's being able to act in a decisive and dependable manner. Regrettably, the practical challenges of exercising its powers raise questions about the community's ability or willingness to fulfill such a role.

In short, I foresee a Board and Staff that are, in practice, unencumbered by effective restraint from the members of the multi-stakeholder community. Other international institutions that lack such restraints often spiral into self-dealing and mismanagement. We stand on the precipice of a new age and we can only hope that years from now we don't look back at ICANN and the transition and say it was a FIFA in the making.

¹⁹Quoted from ICANN board, "Frequently Asked Questions Regarding Approach for Community Enforceability," September 11, 2015, <http://forum.icann.org/lists/comments-ccwg-accountability-03aug15/msg00045.html>. For the entire comment, see ICANN board, "ICANN Board Submission of Supplementary and Final Comments to the CCWG-Accountability 2nd Draft Proposal Public Comment Forum," September 11, 2015, <http://forum.icann.org/lists/comments-ccwg-accountability-03aug15/msg00045.html>.

Conclusion

Despite the fact that the NTIA and ICANN repeatedly assured Congress that it was more important to get this transition right than to get it done on time, the rush to this proposal was deemed necessary because of a perceived need to meet political deadlines. The NTIA has the ability to extend the U.S. oversight role through September 2019, but there is a keen desire in ICANN, the NTIA, and among many in the community to get the transition done before the 2016 U.S. presidential election out of concern that a new Administration might not support the timeline.

It is uncertain whether the proposed transition contains unknown or unnoticed problems or oversights that could impair ICANN operations or governance, but if they do surface after the transition occurs, this politically driven haste would be partially to blame for the failure to vet this proposal diligently. More to the point, it is 100% certain that the proposed transition is incomplete, with many critical issues (jurisdiction, transparency, staff accountability, and human rights, among others) put off for decision after the transition when no check on how they are resolved can be exercised.

In sum, I think that going forward with this transition now under these terms is a mistake. We are unleashing a flawed experiment in the laboratory of the real world and a trial period is essential. I hope that history will prove me wrong. But there should be no parties or celebrations if this transition is completed in its current form because it represents a triumph of hope over experience.