

FIRST SEMIANNUAL REPORT ON NTIA’S ICANN ACTIVITIES (FY2018)

Senate Report 115-139, which accompanied the Consolidated Appropriations Act, 2018, Public L. No. 115–141, directs the National Telecommunications and Information Administration (NTIA) to report semiannually to Congress on “adopted ICANN policies, including whether or not NTIA supported any changes, and to report on any changes that affect the .gov, .mil, .edu, and .us domains.” This report covers all NTIA activities from April 1, 2018, through September 30, 2018. NTIA will continue to update this report on a semiannual basis.

I. Adopted ICANN Policies

Over the last six months, NTIA has engaged in a number of policy areas, both existing and currently under development by the global multistakeholder community, at the Internet Corporation for Assigned Names and Numbers (ICANN). The following outlines NTIA’s activities by policy area.

WHOIS¹/GDPR: The European General Data Protection Regulation (GDPR) went into effect in May 2018, affecting the public availability of important domain name registration information (WHOIS information) used for a range of legitimate and lawful purposes including law enforcement, cybersecurity, and intellectual property protection. In order to comply with GDPR, ICANN developed and implemented a Temporary Specification for generic top level domain (gTLD) Registration Data that attempted to preserve WHOIS to the greatest extent possible. NTIA, engaging directly with ICANN as well as through the Governmental Advisory Committee (GAC), aggressively worked to maintain the ability for law enforcement, cybersecurity practitioners, intellectual property rights holders, and other users to access WHOIS information in a timely manner. This is to a certain extent reflected in the Temporary Specification, which maintains the requirement for registries and registrars to continue collecting WHOIS information as well as make access to now redacted information “reasonably” available. NTIA supported ICANN taking action to keep the WHOIS service working, but has made clear in remarks within the GAC that while the Temporary Specification is necessary, it is not sufficient, as it does not clearly articulate how WHOIS users are to be allowed access to this data in a predictable fashion.

The Temporary Specification, per ICANN’s Bylaws, can only be in effect for up to twelve months. An Expedited Policy Development Process (EPDP) has been initiated to develop a permanent specification that addresses WHOIS and GDPR compliance. NTIA volunteered to be one of three GAC representatives to the EPDP and is working over 30 hours a week to ensure that the future specification balances data protection with the needs to access WHOIS information for legitimate and lawful purposes. The EPDP is expected to conduct its work up to May 25, 2019 (exactly one year after the temporary specification went into effect). As a part of

¹ WHOIS data are the contact details associated with the individual, group, or company that registers a particular domain name and includes other technical attributes relating to such domain name. Internet Domain Name Service Registrars and Registries accredited by ICANN are involved in the collection and provision of WHOIS data.

this and past efforts, NTIA is regularly engaging with other U.S. Government agencies to ensure their needs and perspectives are reflected in the process and ultimately the permanent specification.²

In addition to the EPDP, NTIA is also pursuing avenues for specifically addressing the development and implementation of a unified access mechanism to permit access to non-public WHOIS information rather than solely through an undefined requirement for registries and registrars to provide “reasonable access.” Such a unified access mechanism would permit a range of users, based on legitimate purposes, to access non-public WHOIS information through a process of accreditation and credentialing. NTIA is consulting with stakeholders (including U.S. Government agencies) on how best to advance and further develop this effort. NTIA was among the drafters of GAC comments on an ICANN proposed Unified Access Model. The access model is expected to be further developed in advance of and during the ICANN 63 meeting in Barcelona this coming October.

ICANN Accountability/Reviews: Ensuring and enhancing ICANN accountability is a long-standing policy goal of NTIA, particularly in the post-IANA stewardship transition environment. NTIA continues to monitor the ongoing ICANN Cross Community Working Group (CCWG) Accountability Work Stream 2 (WS2) efforts to ensure any outcomes are consistent with U.S. Government policy positions and goals. The CCWG WS2 issued its final report for endorsement consideration on June 24, 2018.³ The GAC, as a chartered member of the CCWG, is expected to consider endorsement at ICANN 63 in Barcelona this October.

On a separate matter, ICANN put out for public comment a proposal to alter the timeline for conducting the third Accountability and Transparency Review (ATRT3) in an effort to release pressure on the community to participate in such activities in light of all the concurrent efforts underway including the CCWG-Accountability WS2. NTIA submitted comments on this proposal on July 31, 2018.⁴ In its comments, NTIA recognized the constraints on the community, but also NTIA’s expectation that ATRT3 will begin its work in earnest, having had its initial meeting no later than June 2019. NTIA further noted that consistent with the ICANN Bylaws Section 4.6(b)(v), ATRT3 should issue its final report within one year of convening its first meeting. In a post-IANA stewardship transition environment, these community reviews are critical. It is imperative that ICANN’s processes be trustworthy and effective because the community has complex issues to solve. NTIA will continue to insist on ICANN standing by its accountability requirements and to make improvements where necessary and possible.

² NTIA is coordinating its positions and activities with the Security and Exchange Commission, Federal Trade Commission, U.S. Patent and Trademark Office, Department of Justice, Federal Bureau of Investigations, Department of Defense, Department of Homeland Security, Department of the Treasury, U.S. Food and Drug Administration, U.S. Secret Service, and Department of State.

³ See: CCWG-Accountability WS2 – Final Report, 24 June 2018, at: <https://community.icann.org/display/WEIA?preview=/59640761/88575033/FULL%20WS2%20REPORT%20WITH%20ANNEXES.pdf>.

⁴ See: [Comments-specific-reviews-short-term-timeline-14may18] U.S. Comments, at <https://mm.icann.org/pipermail/comments-specific-reviews-short-term-timeline-14may18/2018q3/000004.html>.

II. U.S. Government Top-level Domains

There have been no Board Resolutions or other ICANN policy changes that have affected the .gov, .mil, .edu, or .us domains. That being said, NTIA continues to monitor root zone management related activities. The Customer Standing Committee (CNC), the ICANN body charged with ensuring satisfactory performance of the IANA naming function, publishes monthly reports on the performance of the naming function. In the latest report, published June 2018, the CNC found that performance of the naming function was satisfactory.⁵ There have been no serious performance issues with the IANA naming function following the IANA stewardship transition, but NTIA will continue to monitor performance.

III. Conclusion

NTIA appreciates the opportunity to update Congress on the important work the agency is performing at ICANN. NTIA will continue to actively engage in ICANN to ensure that U.S. interests are met. We look forward to preparing our next biannual report and invites Congress to follow up if there are any questions or concerns.

⁵ CSC Findings of PTI Performance Report for the Month of June 2018 (20 July 2018): <https://www.icann.org/en/system/files/files/csc-findings-pti-performance-20jul18-en.pdf>.