

NISKANEN C E N T E R

Public Interest Comment

Submitted to the National Telecommunications Information Administration in the Matter of:

Input on Proposals and Positions for the 2016 World Telecommunication Standardization Assembly

Ryan Hagemann

Technology and Civil Liberties Policy Analyst
The Niskanen Center

Shane Tews

Visiting Fellow
American Enterprise Institute

Submitted: June 16, 2016
Docket #160509408-6408-01

Executive Summary

The ongoing transition of the Internet Corporation for Assigned Names and Numbers (ICANN) and Internet Assigned Numbers Authority (IANA) is an important development in the global governance of the Internet. As the United States government continues reviewing and analyzing the final proposal, it is clear we stand on the precipice of major changes to the global Internet governance landscape. Now, more than ever, it is important for the United States to ensure the ongoing global multistakeholder process that has served this transition so well is not imperiled by the potential for involving intergovernmental bureaucracies like the International Telecommunications Union (ITU) in the process. In response to the National Telecommunications Information Administration's (NTIA) request for comments, we contend that the ITU does not "provide any unique value" to this process.

Introduction

Over the past quarter century, the growth and development of the Internet has been an explosive phenomenon. Much of that growth and proliferation has been the result of a keenly-tailored decentralization of the governing mechanisms and technical standards underlying the Internet's operational functions.

The Clinton Administration recognized the need for a less state-centric model for governing the emerging Internet. As a result, the Administration released its "Framework for Global Electronic Commerce" in 1997, stipulating the need for the private sector, and non-governmental entities, to take the lead in promoting, developing, and operationalizing the core functions of the Internet.¹ This framework is what helped catalyze online economic growth and commercialization, increased global interconnectivity, and a flourishing digital society.

Up until now, the Internet Corporation for Assigned Names and Numbers (ICANN), the Internet Engineering Task Force (IETF), computer security incidence response teams (CSIRT), the Internet Governance Forum (IGF), and other ad-hoc, decentralized governing bodies and organizational mechanisms have served the Internet well.² Continuing to promote bottom-up governance of the Internet is the most ideal path forward in preserving the growth and innovation that has come to characterize the Internet landscape.

General Questions

Question 2: In an environment with a wide range of industry led, multistakeholder standards development organization (SDOs) leading the development of telecommunications and information standards, does an intergovernmental organization, such as the ITU, provide any unique value? How does ITU involvement in global standards development influence, or affect U.S. industry interests in engaging in and promoting the international digital economy?

The International Telecommunications Union (ITU) was originally founded in 1865 as an international standards-setting and regulatory body for telegraph messages. In the decades that followed, it became involved in regulating radio-frequency spectrum, standards for Television transmissions, and spectrum allocation for space-based communications. In 1947, the ITU was formally subsumed into the United Nations as a specialized telecommunications agency.³

Although the ITU has had a history of semi-adaptation to evolving technologies, its fundamental structure is anathema to the needs of the modern Internet. As such, it has a limited ability to provide any substantive or meaningful contributions to the ongoing Internet governance issues surrounding the ICANN and Internet Assigned Numbers Authority (IANA) transition.

¹ Ryan Hagemann, *Niskanen Center comments to NTIA in the matter of the Benefits, Challenges, and Potential Roles for the Government in Fostering the Advancement of the Internet of Things*, Docket No. 160331306-6306-01, submitted May 23, 2016, https://www.ntia.doc.gov/files/ntia/publications/niskanencenter_ntia_iot_comments.pdf.

² Eli Dourado, "Internet Security Without Law: How Service Providers Create Order Online," Mercatus Center Working Paper No. 12-19, June 2012, http://mercatus.org/sites/default/files/ISP_Dourado_WP1219.pdf.

³ Overview of ITU's History, <http://www.itu.int/en/history/Pages/ITUsHistory.aspx>.

The issues at play with the ICANN transition go to the heart of an ongoing conflict between global governance of the Internet ecosystem and the nation state system. As Milton Mueller noted in his book *Networks and States*:

“[S]tates need to abandon outmoded notions that nation-states have some privileged right to establish public policy for critical Internet resources and concentrate on establishing more general rules. ICANN’s status as a public, global governance agency needs to be accepted and recognized, and the job of policy making within that institutional framework ceded to the stakeholders from various sectors—government, business, and civil society—who participate in it.”⁴

Up until now, ICANN has served as an effective administrator of Internet governance policies, precisely because of the multistakeholder model upon which it was built. Abandoning that model to the ITU will only endanger what has thus far been a productive and inclusive engagement. Furthermore, the ITU’s involvement in affairs with which it has historically had no involvement or expertise is only likely to reduce trust in both ICANN and the current multistakeholder transition process expected to be concluded in September of this year.

The ITU is not in an ideal position to expand its powers and authority into the realm of Internet governance. Historically, the organization has not been involved in these matters and granting it more expansive powers over Internet governance issues would be a step back in promoting an effective multistakeholder Internet governance regime. This is particularly true given its nature as a centralized, heavily bureaucratized and hierarchically-structured organization dependent on government-appointed officials.⁵ This stands in stark contrast to groups like the IETF, IGF, and others, which have long operated on more decentralized and flexible models of organization that permit timely and rapid responses to the needs of the Internet ecosystem.

Having neither historical knowledge nor technical expertise pertaining to Internet governance issues, the ITU does not “provide any unique value” to this space.

Conclusion

The Internet has been an incredible force for global well-being. In order to continue facilitating its positive impact on the world, governing bodies primarily answerable to nation-states and governments must not be involved in setting technical standards or rendering policy judgements upon those standards. Government voting rights in this process moves away from a multistakeholder engagement model and are likely to result in mission creep. Additionally, the policy priorities of individual nation-states will inevitably be advocated by the ITU officials of those associated states. Invariably, policies unrelated to technical standards-setting will be swept up into what is otherwise a non-political governance model.

⁴ Milton Mueller, “Networks and States: The Global Politics of Internet Governance,” The MIT Press (Cambridge, MA: 2010), p. 251.

⁵ Patrick Ryan, “The ITU and the Internet’s *Titanic* Moment,” 2012 Stan. Tech. L. Rev. 8, <https://journals.law.stanford.edu/sites/default/files/stanford-technology-law-review-stlr/online/ryan-theituanandtheinternetstitanicmoment.pdf>.

Former Network Solutions CEO Mike Daniels best encapsulated this sentiment in a recent op-ed in which he argued:

Ultimate control of the IANA function must never pass to an international organization controlled by governments, whether the United Nations, the International Telecommunications Union, or ICANN recast with governments in control. Congress must ensure that the U.S. remains in a position to protect the stability and freedom of the internet. That means making sure that any institution taking over the stewardship of the internet's core functions should be structured to keep the internet decentralized, open and free.⁶

Former FCC Commissioner Robert McDowell agrees. In a 2012 *Wall Street Journal* op-ed, he warned against an organization like the ITU having a greater say in Internet governance:

A top-down, centralized, international regulatory overlay is antithetical to the architecture of the Net, which is a global network of networks without borders. No government, let alone an intergovernmental body, can make engineering and economic decisions in lightning-fast Internet time. Productivity, rising living standards and the spread of freedom everywhere, but especially in the developing world, would grind to a halt as engineering and business decisions become politically paralyzed within a global regulatory body.⁷

For all these reasons, the ITU and other state-centric international governing bodies are not well positioned to be involved in the technical operations of Internet operations and governance. In short, the ITU provides no “unique value” to the governance of the Internet and its involvement in this important process can only undermine the multistakeholder framework that is slowly emerging to transition ICANN and IANA away from its home at NTIA.

We thank NTIA for the opportunity to offer our comments in regards to this matter.

⁶ Mike Daniels, “This summer, Congress must make sure the internet stays free,” *The Hill*, April 27, 2016, <http://thehill.com/blogs/pundits-blog/technology/277806-this-summer-congress-must-make-sure-the-internet-stays-free>.

⁷ Robert McDowell, “The U.N. Threat to Internet Freedom,” *Wall Street Journal*, February 21, 2012, <http://www.wsj.com/articles/SB10001424052970204792404577229074023195322>.