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## Update on IANA Stewardship Transition and ICANN Accountability: US Senate Holds Hearing on Transition and Future of Multistakeholder Model

By [Brian J. Winterfeldt](#) and [Griffin M. Barnett](#)

On February 25, 2015, the US Senate Committee on Commerce, Science, and Transportation held a hearing on “Preserving the Multistakeholder Model of Internet Governance,” during which it heard testimony regarding the Internet Assigned Numbers Authority (IANA) Stewardship Transition and enhancing the Internet Corporation for Assigned Names and Numbers (ICANN) accountability processes that have commanded significant attention of the global Internet community over the last year. During the hearing, testimony was presented by Fadi Chehadé, ICANN President and CEO; Lawrence Strickling, Assistant Secretary for Communications and Information and Administrator of the National Telecommunications and Information Administration (NTIA); and Ambassador David Gross, former US Coordinator for International Communications and Information Policy for the US Department of State. The following is a brief summary and analysis of this hearing.

The Senate Committee members were keenly interested in learning more about the IANA transition process, and in particular:

- What the transition would mean for the future of the open Internet;
- How the transition might affect US national security;
- The interplay between the transition, the possible reclassification of the Internet as a broadband service by the FCC, and possible capture of Internet governance by intergovernmental organizations such as the International Telecommunication Union (ITU);
- What kinds of accountability mechanisms were being considered in conjunction with the transition planning; and
- How the transition might affect the protection of American intellectual property.

The overall timbre of witness testimony was providing assurances to Congress that the transition would be beneficial for American interests and would preserve a free and open Internet. In his opening statement, for example, Mr. Chehadé highlighted that ICANN’s goal for the transition is to maintain the values of an open Internet system that provides equal opportunity to all users globally. In addition, he asserted that during the course of its 20-year existence, ICANN has grown into a trusted global institution. Many in the community might challenge that assertion, pointing in particular to the significant work being undertaken in conjunction with the transition process to overhaul and enhance ICANN accountability mechanisms. Mr. Chehadé did provide some important guarantees, however, including that ICANN was committed to preventing the undue influence of governments over Internet governance, that ICANN aligned with the community proposal to enshrine the Affirmation of Commitments in the ICANN Bylaws, and that jurisdiction over ICANN would remain in the United States.

For more information, or if you have any questions, please contact your Katten Muchin Rosenman LLP attorney or the following member of Katten’s **Intellectual Property practice**.

Brian J. Winterfeldt  
+1.202.625.3562  
[brian.winterfeldt@kattenlaw.com](mailto:brian.winterfeldt@kattenlaw.com)

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The witnesses also attempted to placate repeated concerns from Committee members about capture of Internet governance by foreign governments by suggesting that (1) a transition from US government oversight of the IANA functions to oversight by the global multistakeholder community would increase buy-in from “middle governments,” thereby bolstering Internet governance against capture by “fringe governments,” (2) any transition proposal would undergo stress-testing and implementation-testing prior to delivery to NTIA, and (3) any proposal ultimately would be required to satisfy the five NTIA criteria for an acceptable proposal, which include a requirement that the transition not be to a governmental or inter-governmental body (such as the ITU or any other United Nations agency). All three witnesses also promised Congress that the transition would not be rushed, and that it was more important to “get it right.” It is evident that commitments such as these remain extremely important to all ICANN stakeholders, including brand owners as critical participants in the ICANN community and the broader Internet governance ecosystem.

With respect to intellectual property concerns, Mr. Chehadé opined on the importance of protecting intellectual property and the measures ICANN had undertaken to support the protection of intellectual property and consumers. He explained that intellectual property is the “greatest asset that can be challenged through the open Internet”—however, he also noted that ICANN does not handle content issues. Mr. Chehadé highlighted that ICANN has endeavored to put good policies in place to protect intellectual property owners around the world with respect to the Domain Name System, including the Trademark Clearinghouse, a single global repository for trademarks rights. In addition, he highlighted the 2013 Registrar Accreditation Agreement and new Registry Agreement, both of which provide, according to Mr. Chehadé, more robust provisions regarding the protection of intellectual property than prior such agreements. It was an obvious reference to enhanced WHOIS requirements and mandatory rights protection mechanisms, the beneficial impact of which remain in both study and debate. Mr. Chehadé also highlighted last year’s hiring of Allen Grogan to support and enforce these contracts as head of the ICANN Compliance Department, which has become one of ICANN’s largest departments in recent years.

Another interesting point reiterated during the hearing came from Mr. Strickling, specifically that the IANA contract could be renewed automatically for another two-year period, or for any lesser period as mutually agreed by the parties, in the event the transition cannot be initiated prior to September 30, 2015—the date when the current IANA contract expires. This nuance is key because last year, Congress passed a rider in its omnibus budget prohibiting the NTIA from expending any funds in connection with the IANA transition prior to September 30, 2015.

If you are interested in reviewing the full hearing, an archived webcast is available [here](#). More information about the Senate Committee is available [here](#), and a July 31, 2014, letter from Senators Thune and Rubio (members of the Committee) to ICANN opining on the transition process and more generally on ICANN accountability is available [here](#).

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*We hope you find this summary helpful and informative. If you have any questions or concerns regarding our analyses and advice, or if you wish to discuss any of these or any other ICANN advocacy matters in greater detail, please contact Brian Winterfeldt at +1.202.625.3562 or [brian.winterfeldt@kattenlaw.com](mailto:brian.winterfeldt@kattenlaw.com).*

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