

DOMAIN OPENNESS THROUGH CONTINUED OVERSIGHT
MATTERS ACT OF 2014

DECEMBER 23, 2014.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 4342]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 4342) to prohibit the National Telecommunications and Information Administration from relinquishing responsibility over the Internet domain name system until the Comptroller General of the United States submits to Congress a report on the role of the NTIA with respect to such system, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 4342, the “Domain Openness Through Continued Oversight Matters (DOTCOM) Act of 2014,” promotes accountability and transparency in the transition of oversight of domain name functions away from the National Telecommunications and Information Administration (NTIA). The legislation prohibits NTIA from relinquishing their role until the Government Accountability Office completes a report on the facts and consequences of any transition proposal considered by NTIA.

BACKGROUND AND NEED FOR LEGISLATION

What we now know as the Internet began as an experimental network designed and managed by the U.S. Defense Advanced Research Projects Agency (DARPA). Since the time the Internet was opened for commercial participation in 1992, the U.S. government has worked to reduce its involvement in governing the Internet when appropriate. As part of that process, the Internet Corporation for Assigned Names and Numbers (ICANN), a non-profit U.S. corporation, began managing the Internet Assigned Names and Numbers Authority (IANA) under contract with NTIA. The terms of the contract gave NTIA a role overseeing and approving changes proposed by IANA to the DNS root zone files. While the role has been described by some as administrative, the backstop of the government has been an important and effective measure for keeping both the process and potential bad actors in check.

On March 14, 2014, NTIA announced its intention to transition its oversight of the Internet DNS root zone functions, currently performed by IANA, to the global multi-stakeholder community. The existing contract between the U.S. government and ICANN expires in September 2015, although the contract provides for additional renewal periods.

In order to facilitate the transition, NTIA asked the global multi-stakeholder community to generate a proposal for a successor solution to the role of the government in the IANA functions. According to NTIA, any proposal should garner wide community support. In seeking proposals, NTIA also set forth the following criteria for any acceptable option:

- It must support and enhance the multi-stakeholder model;
- It must maintain the security, stability, and resiliency of the Internet DNS;
- It must meet the needs and expectations of the global customers and partners of the IANA services; and,
- It must maintain the openness of the Internet.

These criteria are all important factors in any successful proposal, but there are still significant questions that remain to be answered before the transition should happen. The DOTCOM Act is intended to place a temporary hold on NTIA’s transition process as the non-partisan Government Accountability Office examines the facts and consequences of any proposal that NTIA considers. While

the criteria set forth by NTIA address many of the potential concerns that arise out of this transition, having a neutral third party evaluate the proposals and their adherence to the criteria helps to ensure that any successor solution is legitimately satisfactory and in the best interests of the Internet and its users. GAO is uniquely situated to provide an unbiased and thoughtful assessment of the transition and allow for others to evaluate based on the facts discovered.

Chairmen Upton and Walden, along with Congressmen Shimkus, Blackburn, Kelly, and Rokita, wrote to GAO in June 2014 requesting an initial examination of the implications of the transition itself. The request included a look at the current contract and its protections, risks of completing or not completing the transition, and the need for any additional criteria, among other questions. This preliminary GAO report is important groundwork for NTIA's consideration, but an additional examination of any submitted proposal is also necessary. Asking NTIA to simply pause during this investigative process ensures that any decision will not be hasty or poorly informed. While NTIA will hopefully take advantage of a GAO report when making their decision, nothing in the DOTCOM Act binds them to act in a specific way, regardless of GAO's findings. No matter the outcome, having a full picture of the facts and consequences of such a significant change in the basic fabric of the Internet is the responsible action for the government to take.

The Subcommittee has long supported the multistakeholder process for Internet governance, as demonstrated by the passage of H.R. 1580 and H. Con. Res. 127, both of which expressed the sentiment that the Internet should remain free from international regulation. However, support for the international multistakeholder model does not need to be blind or passive.

By taking this type of deliberate step within the government decision making process, the United States is better able to ensure that the Internet remains open and free, a principle the Committee has long supported. With the ever present international threats to these values, it is essential that any successor solution be scrutinized so that if or when a transition takes place, the operation of the Internet, an engine of commerce and innovation, is not affected.

HEARINGS

The Subcommittee began its consideration of this transition shortly after NTIA's announcement of the intent to transfer to IANA functions. The Subcommittee on Communications and Technology held an oversight hearing on April 2, 2014, entitled "Ensuring the Security, Stability, Resilience, and Freedom of the Global Internet." The Subcommittee received testimony from the Honorable Larry Strickling, Assistant Secretary for Communications and Information at the National Telecommunications and Information Administration; Mr. Fadi Chehade, President and CEO of the Internet Corporation for Assigned Names and Numbers; the Honorable David A. Gross, partner at Wiley Rein, LLP; Mr. Steve DelBianco, Executive Director of NetChoice; and Ms. Carolina Rossini, Project Director, Latin American Resource Center, Internet Governance and Human Rights Program at New American Foundation.

COMMITTEE CONSIDERATION

Representative John Shimkus, along with Rep. Todd Rokita, Rep. Renee Ellmers, Rep. Bob Latta, Rep. Joe Barton, and Rep. Marsha Blackburn, introduced H.R. 4342 on March 27, 2014.

On April 10, 2014, the Subcommittee on Communications and Technology met in open markup session and favorably reported the bill to the full Committee by a vote of 16 to 10.

On May 7 and 8, 2014, the Committee on Energy and Commerce met in open markup session and favorably reported the bill to the House by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Upton to order H.R. 4342 reported to the House was agreed to by a voice vote. The following reflects the record votes taken during the Committee consideration:

**COMMITTEE ON ENERGY AND COMMERCE – 113TH CONGRESS
ROLL CALL VOTE # 41**

BILL: H.R. 4342, the “Domain Openness Through Continued Oversight Matters Act of 2014” or the “DOTCOM Act”

AMENDMENT: An amendment offered by Ms. Eshoo, No. 1, to make findings, to provide that it is the policy of the United States to preserve and advance the successful multistakeholder model that governs the Internet, and to amend the title.

DISPOSITION: NOT AGREED TO, by a roll call vote of 21 yeas and 28 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Hall		X		Mr. Dingell	X		
Mr. Barton				Mr. Pallone	X		
Mr. Whitfield				Mr. Rush			
Mr. Shimkus		X		Ms. Eshoo	X		
Mr. Pitts		X		Mr. Engel	X		
Mr. Walden		X		Mr. Green	X		
Mr. Terry		X		Ms. DeGette	X		
Mr. Rogers				Mrs. Capps	X		
Mr. Murphy		X		Mr. Doyle	X		
Mr. Burgess		X		Ms. Schakowsky	X		
Mrs. Blackburn		X		Mr. Matheson	X		
Mr. Gingrey		X		Mr. Butterfield	X		
Mr. Scalise		X		Mr. Barrow		X	
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers		X		Ms. Christensen			
Mr. Harper		X		Ms. Castor	X		
Mr. Lance		X		Mr. Sarbanes	X		
Mr. Cassidy		X		Mr. McNerney	X		
Mr. Guthrie		X		Mr. Braley	X		
Mr. Olson		X		Mr. Welch	X		
Mr. McKinley		X		Mr. Lujan	X		
Mr. Gardner		X		Mr. Tonko	X		
Mr. Pompeo		X		Mr. Yarmuth	X		
Mr. Kinzinger		X					
Mr. Griffith		X					
Mr. Bilirakis		X					
Mr. Johnson		X					
Mr. Long		X					
Mrs. Ellmers		X					

05/08/2014

**COMMITTEE ON ENERGY AND COMMERCE -- 113TH CONGRESS
ROLL CALL VOTE # 42**

BILL: H.R. 4342, the "Domain Openness Through Continued Oversight Matters Act of 2014" or the "DOTCOM Act"

AMENDMENT: An amendment offered by Mr. Doyle, No. 2, to provide that not later than 1 year after the date on which the National Telecommunications and Information Administration (NTIA) receives a proposal relating to the relinquishment of the responsibility of the NTIA over Internet domain name system functions that was developed in a process convened by the Internet Corporation for Assigned Names and Numbers at the request of NTIA, the Comptroller General of the United States shall submit to Congress a report on the role of the NTIA with respect to key Internet domain name functions and the transition of such functions to the global multistakeholder community and to amend the title.

DISPOSITION: NOT AGREED TO, by a roll call vote of 20 yeas and 30 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Hall		X		Mr. Dingell	X		
Mr. Barton		X		Mr. Pallone	X		
Mr. Whitfield				Mr. Rush			
Mr. Shimkus		X		Ms. Eshoo	X		
Mr. Pitts		X		Mr. Engel			
Mr. Walden		X		Mr. Green	X		
Mr. Terry		X		Ms. DeGette	X		
Mr. Rogers		X		Mrs. Capps	X		
Mr. Murphy		X		Mr. Doyle	X		
Mr. Burgess		X		Ms. Schakowsky	X		
Mrs. Blackburn		X		Mr. Matheson	X		
Mr. Gingrey		X		Mr. Butterfield	X		
Mr. Scalise		X		Mr. Barrow		X	
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers		X		Ms. Christensen			
Mr. Harper		X		Ms. Castor	X		
Mr. Lance		X		Mr. Sarbanes	X		
Mr. Cassidy		X		Mr. McNerney	X		
Mr. Guthrie		X		Mr. Braley	X		
Mr. Olson		X		Mr. Welch	X		
Mr. McKinley		X		Mr. Lujan	X		
Mr. Gardner		X		Mr. Tonko	X		
Mr. Pompeo		X		Mr. Yarmuth	X		
Mr. Kinzinger		X					
Mr. Griffith		X					
Mr. Bilirakis		X					
Mr. Johnson		X					
Mr. Long		X					
Mrs. Ellmers		X					

05/08/2014

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal and objective of H.R. 4342 is to prohibit the NTIA from relinquishing responsibility over the Internet domain name system until the Comptroller General of the United States submits to Congress a report on the role of the NTIA with respect to such system.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 4342 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives, the Committee finds that H.R. 4342 contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

MAY 30, 2014.

Hon. FRED UPTON,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4342, the Domain Openness Through Continued Oversight Matters Act of 2014.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 4342—Domain Openness Through Continued Oversight Matters Act of 2014

Under current law, the National Telecommunications and Information Agency (NTIA) has certain responsibilities in overseeing the Internet Domain Name System (DNS): the system that maintains

files that link domain names with numerical addresses needed to locate computer services and devices. The agency has announced plans to transfer those responsibilities to the international community; in preparation for that event, NTIA has requested a proposal from global stakeholders outlining a transition plan.

H.R. 4342 would prohibit NTIA from relinquishing those responsibilities until the Government Accountability Office (GAO) has prepared a report reviewing the proposed transfer. The report must analyze advantages and disadvantages of NTIA's diminished role, the proposals received from the international community for the transition plan, and the process NTIA and other agencies would use to evaluate those proposals. GAO would have one year after NTIA receives a proposal to complete the report.

CBO estimates that implementing H.R. 4342 would cost about \$1 million over the 2015–2019 period, assuming the availability of appropriated funds. That amount includes administrative costs that would be incurred by NTIA as a result of the delay in transferring its DNS oversight responsibilities to a new organization and costs for GAO to prepare the required report. Pay-as-you-go procedures do not apply to this legislation because it would not affect direct spending or revenues.

H.R. 4342 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The staff contact for this estimate is Susan Willie. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 4342 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

Enacting H.R. 4342 does not require any rule making.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 2. Subsection 2(a) requires the Assistant Secretary of Commerce for Communications and Information to refrain from relinquishing or agreeing to a proposal that relinquishes the responsibilities of NTIA over the Internet DNS functions for a period of one year, during which time the Comptroller General will submit to Congress the report required by subsection (b) of the Act.

Subsection (b) requires the Government Accountability Office to produce a report on the consequences of any proposals submitted to NTIA to transition oversight of the IANA functions away from the Department of Commerce. The report must contain detail on the role of NTIA with respect to the DNS; discussion and analysis of the implications of relinquishing its role; NTIA's criteria for evaluating submitted proposals; detailed analysis of the proposals received by NTIA; discussion of the processes and criteria used by NTIA and other agencies for evaluating the proposals; and evaluation of whether acceptance of the proposals would raise national security concerns. In addition, the report must include a definition of the term "multistakeholder" and any other terms necessary to understand the report.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.

MINORITY VIEWS

I submit these minority views to explain my opposition to H.R. 4342, the Domain Openness Through Continued Oversight Matters (DOTCOM) Act of 2014, as reported.

The House of Representatives voted three times in the last two years to reaffirm the U.S. government's commitment to a global multistakeholder model of Internet governance.¹ A key element of this commitment is the termination of the Internet Assigned Numbers Authority (IANA) functions contract between the U.S. Department of Commerce's National Telecommunications and Information Administration (NTIA) and the Internet Corporation for Assigned Names and Numbers (ICANN), which represents the final stage of the privatization of the domain name system (DNS) first initiated 16 years ago. NTIA's March 14, 2014, announcement to initiate the final transition process was a critical effort to inject fresh confidence into the multistakeholder model that has been under increasing attack in recent years.

The DOTCOM Act suggests the U.S. Government Accountability Office's (GAO) judgment would supersede a consensus plan developed by the multistakeholder community. This unilateral effort stands in contrast to Congress' commitment to the multistakeholder approach to Internet governance and would create an artificial delay in the implementation of the transition.

Authoritarian regimes use continued U.S. government stewardship of technical Internet functions as evidence for a need to move these functions to another governmental or intergovernmental entity like the United Nations. The witness representing civil society organizations stated at the April 2, 2014, hearing that "by forestalling the transfer of the IANA functions to the global multistakeholder community, [the DOTCOM Act] could further empower critics who favor a governmental or intergovernmental model of internet governance."² NTIA has also specifically stated that it "will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution."³

Moreover, the DOTCOM Act misrepresents the United States' role in the management of the global Internet domain name system. NTIA's role with respect to the technical functions of the Internet domain name system has always been ministerial and

¹H. Con. Res. 127, Roll Call Vote No. 555, 112th Cong. (Aug. 2, 2012); S. Con. Res. 50, Roll Call Vote No. 617, 112th Cong. (Dec. 5, 2012); and H.R. 1580, Roll Call Vote No. 145, 113th Cong. (May 14, 2013).

²House Committee on Energy and Commerce, Subcommittee on Communications and Technology, Testimony of Carolina Rossini, Project Director, Internet Governance and Human Rights Program, New America Foundation, *Hearing on Ensuring the Security, Stability, Resilience, and Freedom of the Global Internet*, 113th Cong. (Apr. 2, 2014).

³National Telecommunications and Information Administration, *NTIA Announces Intent to Transition Key Internet Domain Name Functions* (Mar. 14, 2014) (press release).

largely symbolic.⁴ The U.S. government has never had any legal or statutory responsibility to manage the domain name system. This very limited role was also always intended to be temporary, until such time as the Internet community could manage these functions itself.

Finally, the transition announcement has already helped facilitate additional support for the bottom-up, consensus-based approach to Internet governance that the United States has historically championed. In April 2014, Brazil hosted the successful NetMundial conference where a multistakeholder group of technical experts, civil society, industry and governments all agreed that Internet governance should be built on democratic multistakeholder processes.⁵ In November 2014 at the International Telecommunication Union's (ITU) 2014 Plenipotentiary conference in Busan, Korea, the United States achieved all of its objectives, including keeping the ITU's work focused on its current mandate and not expanding its role into Internet and cybersecurity issues.⁶ ICANN is also working on enhancing accountability, addressing a key concern that has been raised as part of the IANA transition process.⁷ Congress and NTIA must continue to actively engage with the global community to strengthen the multistakeholder model that has made the Internet an open platform for commerce, innovation, and self-expression for peoples around the world.

For these reasons, I oppose H.R. 4342.

HENRY A. WAXMAN.

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⁴House Committee on Energy and Commerce, Subcommittee on Communications and Technology, Testimony of Lawrence E. Strickling, Assistant Secretary for Communications and Information, *Hearing on Ensuring the Security, Stability, Resilience, and Freedom of the Global Internet*, 113th Cong. (Apr. 2, 2014).

⁵NetMundial, *NetMundial Multistakeholder Statement* (Apr. 24, 2014) (online at netmundial.br/wp-content/uploads/2014/04/NETmundial-Multistakeholder-Documents.pdf).

⁶U.S. Department of State, *Outcomes from the International Telecommunication Union 2014 Plenipotentiary Conference in Busan, Republic of Korea* (Nov. 10, 2014) (online at state.gov/r/pa/prs/ps/2014/11/233914.htm).

⁷ICANN, *Proposed Charter for Enhancing ICANN Accountability Cross Community Working Group (CCWG) Submitted for Consideration* (Nov. 5, 2014) (online at www.icann.org/news/announcement-2014-11-05-en).