



# AMERICANS FOR LIMITED GOVERNMENT

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10332 MAIN STREET, BOX 326 · FAIRFAX, VA 22030 · PHONE: 703.383.0880 · FAX: 703.383.5288 · WWW.GETLIBERTY.ORG

March 30, 2016

The Honorable U.S. Representative Greg Walden  
Chairman, Subcommittee on Communications and Technology of the House Energy and Commerce  
Committee  
2185 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Walden:

In Singapore on Feb. 15, 2015, Assistant Secretary for Communications and Information at the Department of Commerce Lawrence Strickling answered a question about why he believed the National Telecommunications and Information Administration (NTIA) was still allowed to plan transitioning the Internet Assigned Numbers Authority (IANA) functions to the Internet Corporation for Assigned Names and Numbers (ICANN) in spite of a thrice-enacted prohibition<sup>1 2 3</sup> by Congress barring the use of funds to engage in said transition, including attending such conferences at taxpayer expense.

Strickling replied:

“So yes there was a rider attached into our budget in the budget bill last December that said that we can’t spend appropriated dollars to complete transition before the end of next September. And so we have taken that seriously and I’ve reported out that there will not be a transition before next—the end of next September. At the same time though there was some commentators, not necessarily anybody with any expertise were saying ah this shuts down NTIA. They have to sit on the sidelines and not do anything. You know, like our hands are tied. And so that concerned us. We didn’t read the bill that way or the law that way and we’ve consulted with — informally with both the House and the Senate, both Democrats and Republicans to get an understanding as to what exactly they intended. So one of the things was even in the rider it said you must provide us regular reports and updates on how the transition is going. So they clearly intended us to do things like come to the ICANN meetings and watch and report back what’s going on. We clearly are participating in the GAC and none of that affects that. And the only real issue was to what extent do we provide feedback during the process to the community. And on that, you know, the assurances I got from most of the staff on the Hill was they didn’t see any problem with that because... we want to protect the interests of the United States in all of this.”<sup>4</sup>

Americans for Limited Government Foundation President Nathan Mehrens has filed a complaint with the Commerce Department Inspector General David Smith on Feb. 1,<sup>5</sup> stating, “Despite the explicit prohibition, the NTIA is clearly engaged in activities that are designed to lead to the relinquishment of its responsibilities regarding Internet domain name system functions, including responsibility with respect to the authoritative root zone file and the Internet Assigned Numbers Authority functions. The NTIA

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<sup>1</sup> PL 114-113, H.R.2029, Section 539.

<sup>2</sup> PL 114-53, H.R.719, Section 101.

<sup>3</sup> PL 113-235, H.R.83, Section 540.

<sup>4</sup> <http://singapore52.icann.org/en/schedule/tue-ncuc/transcript-ncuc-10feb15-en.pdf>

<sup>5</sup> [https://getliberty.org/wp-content/uploads/2016/03/NPM-Complaint-to-DOC-IG-Re-NTIA-Antideficiency-Act\\_02.01.16.pdf](https://getliberty.org/wp-content/uploads/2016/03/NPM-Complaint-to-DOC-IG-Re-NTIA-Antideficiency-Act_02.01.16.pdf)

personnel have traveled to numerous conferences on internet governance and speeches from NTIA personnel clearly indicate that they are moving ahead as if Congress had not acted to prohibit their very actions.”

As for Strickling’s citing of reporting requirements that were included in the spending bills, these do not authorize working on the relinquishment of the IANA functions specifically because they cannot supersede the statute.

In the 2015 omnibus spending bill, Congress required NTIA to submit a report due January 30 “regarding any recourse that would be available to the United States if the decision is made to transition to a new contract and any subsequent decisions made following such transfer of Internet governance are deleterious to the United States.”<sup>6</sup>

In response in its first quarterly report, NTIA told Congress that “Our preliminary answer is that the criteria for the plan that NTIA established in its March 2014 announcement will ensure an outcome that is not ‘deleterious’ to the United States. Nonetheless, NTIA understands the concerns of Congress in this regard and will regularly revisit this question during the planning process and when evaluating the ultimate ICANN-submitted proposal to ensure that the final plan is not deleterious to the interests of the United States and its Internet stakeholders.”<sup>7</sup>

Besides this vague assurance, NTIA never produced its contingency plan should the IANA functions transition prove to be deleterious to U.S. interests in its subsequent quarterly reports to Congress.<sup>8 9 10 11</sup>

Congress also directed “NTIA to inform appropriate Congressional committees not less than 45 days in advance of any such proposed successor contract or any other decision related to changing NTIA’s role with respect to ICANN or IANA activities.”<sup>12</sup>

However, this reporting requirement was not fully followed when NTIA most recently unilaterally modified its contract with ICANN on August 4 allowing for a short-term extension.<sup>13</sup> According to NTIA Administrator Strickling, Congress was not notified of the contract extension until Friday, August 14, after the modification to the contract had already gone into effect.<sup>14</sup>

Again, these reporting requirements were very specific and narrowly tailored to ensure Congress would be notified of any changes to the NTIA contract with ICANN and of the agency’s contingency plan in case any IANA functions transition goes awry. None of them authorized continued work on the transition.

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[http://www.circleid.com/posts/20141210\\_breaking\\_us\\_government\\_funding\\_bill\\_delays\\_iana\\_transition/](http://www.circleid.com/posts/20141210_breaking_us_government_funding_bill_delays_iana_transition/)

<sup>7</sup> [http://www.ntia.doc.gov/files/ntia/publications/iana\\_report\\_013015.pdf](http://www.ntia.doc.gov/files/ntia/publications/iana_report_013015.pdf)

<sup>8</sup> [https://www.ntia.doc.gov/files/ntia/publications/ntia\\_second\\_quarterly\\_iana\\_report\\_05.07.15.pdf](https://www.ntia.doc.gov/files/ntia/publications/ntia_second_quarterly_iana_report_05.07.15.pdf)

<sup>9</sup> [https://www.ntia.doc.gov/files/ntia/publications/ntia\\_iana\\_third\\_quarterly\\_report.pdf](https://www.ntia.doc.gov/files/ntia/publications/ntia_iana_third_quarterly_report.pdf)

<sup>10</sup> [https://www.ntia.doc.gov/files/ntia/publications/iana\\_transition\\_report\\_to\\_congress\\_-\\_fourth\\_quarterly\\_11.02.15.pdf](https://www.ntia.doc.gov/files/ntia/publications/iana_transition_report_to_congress_-_fourth_quarterly_11.02.15.pdf)

<sup>11</sup> [https://www.ntia.doc.gov/files/ntia/publications/ntia\\_iana\\_fifth\\_quarterly\\_report\\_to\\_congress.pdf](https://www.ntia.doc.gov/files/ntia/publications/ntia_iana_fifth_quarterly_report_to_congress.pdf)

<sup>12</sup>

[http://www.circleid.com/posts/20141210\\_breaking\\_us\\_government\\_funding\\_bill\\_delays\\_iana\\_transition/](http://www.circleid.com/posts/20141210_breaking_us_government_funding_bill_delays_iana_transition/)

<sup>13</sup> [https://www.ntia.doc.gov/files/ntia/publications/mod\\_0003\\_for\\_sa1301-12-cn-0035\\_signed.pdf](https://www.ntia.doc.gov/files/ntia/publications/mod_0003_for_sa1301-12-cn-0035_signed.pdf)

<sup>14</sup> <https://www.ntia.doc.gov/blog/2015/update-iana-transition>

As for the claim by Strickling that he informally consulted with Congressional staff about the intent of the prohibition, that is no legal standard whatsoever. As Mehrens noted in the Inspector General complaint, “it is not Hill staff that decide whether there is a problem, but rather the actual language passed by Congress should be examined.”

Americans for Limited Government Foundation has since been informed by the Inspector General that they have referred the matter for an investigation.

Was your office or any Representative’s office sitting on the House Energy and Commerce Committee consulted by NTIA about the legislative intent of this prohibition, enacted in PL 114-113, H.R.2029, Section 539, PL 114-53, H.R.719, Section 101 and/or PL 113-235, H.R.83, Section 540? Was your office or any Representative’s office sitting on the House Energy and Commerce Committee ever notified about the August 4 contract modification at least 45 days prior to it going into effect? Did your office or any Representative’s office sitting on the House Energy and Commerce Committee ever receive NTIA’s contingency plan should the IANA functions transition prove to be deleterious to U.S. interests?

As Congress works to affirm its commitment to restoring the Constitution’s Article I separation of powers, including the power of the purse, a great place to start would be with prohibitions on the use of funds that Congress has already enacted. With NTIA clearly violating the prohibition barring the use of funds to engage in the IANA functions transition, plus not even meeting with the reporting requirements set for by Congress in the 2015 omnibus spending bill, there should be legislative redress, and that should be requiring NTIA to extend the current contract with ICANN for another two years.

We look forward to your reply, and any additional oversight the Subcommittee on Communications and Technology of the House Energy and Commerce Committee will provide to ensure that NTIA is following the letter of the law.

Sincerely,

A handwritten signature in black ink that reads "Richard Manning". The signature is written in a cursive style with a large, sweeping "M" and a distinct "y" at the end.

Richard Manning  
President  
Americans for Limited Government

**CC: House Speaker Rep. Paul Ryan, House Majority Leader Rep. Kevin McCarthy and House Energy and Commerce Committee Rep. Fred Upton**