

Special Report

ICANN Do What I Want

The Internet Corporation
for Assigned Names
And Numbers



A SPECIAL REPORT FROM:
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Introduction

The Internet Corporation for Assigned Names and Numbers (ICANN) is a California tax-exempt organization that manages the Internet Assigned Numbers Authority (IANA) through a contract with the U.S. Department of Commerce’s National Telecommunications & Information Administration (NTIA).¹ These functions are what ensure that when you type in a URL into your browser that you are taken to the correct website.

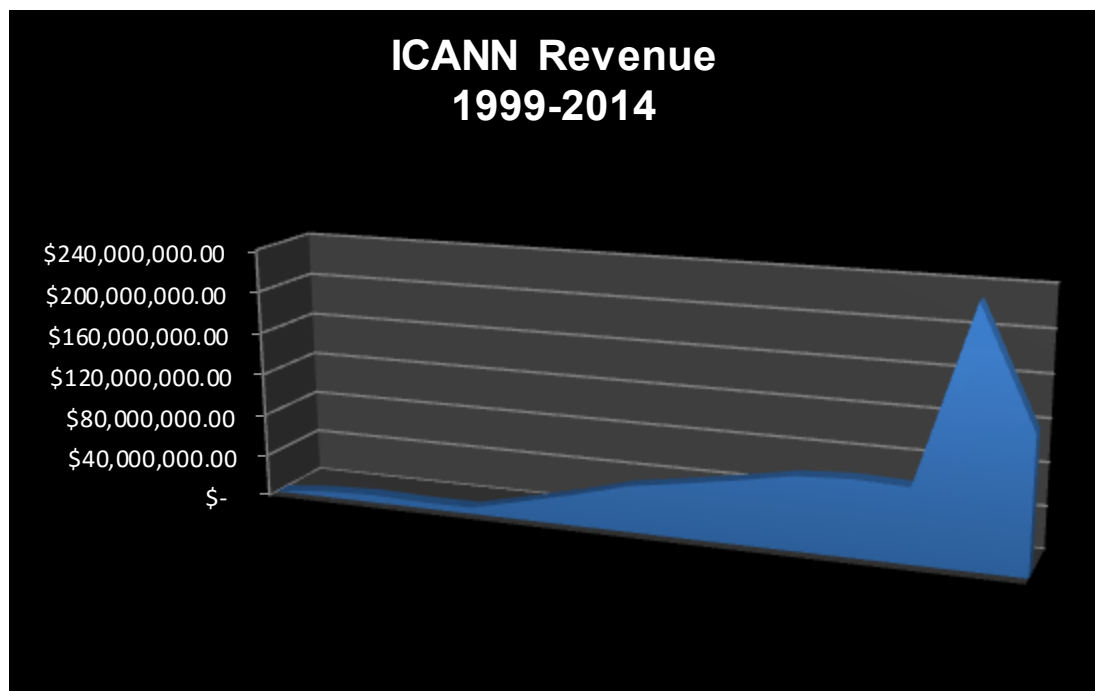
The NTIA on March 14, 2014 announced that it intended to “transition key Internet domain name functions to the global multistakeholder community.”²

This report examines a few aspects of ICANN, its structure, activities, and whether it is worthy to be entrusted with additional powers, freed from the oversight that NTIA has exercised to date.

Tax Issues, IRS Forms 990

Since its formation in 1999, ICANN has seen a steady increase in revenue. As a tax-exempt organization, ICANN files a public return with the IRS on IRS Form 990. In its first year, ICANN reported revenue of \$535,220. In the fiscal year ending in 2014, the latest year for which IRS data is available, ICANN had revenue of \$127,814,320. The previous year saw ICANN's highest revenue of \$236,182,149. The increase in this year was due largely to application fees that were paid to ICANN by internet registration companies seeking to handle new top level domains (new domain extensions).

The chart below shows the growth in ICANN's income since its creation.



Lobbying Expenditures

ICANN is an organization that is exempt from taxation under Sec. 501(c)(3) of the Internal Revenue Code (IRC). It has been assigned FEIN 45-4712218. In the process for obtaining recognition of exempt status under Sec. 501(c)(3), organizations file the IRS Form 1023. If the request for recognition of exempt status is granted, the IRS Form 1023 becomes a public document.

As part of our review of ICANN’s activities, we requested a copy of its Form 1023 from the IRS. The Form 1023 was filed on September 30, 1999.

In Part II, Question 13 of the Form 1023, the organization is required to answer the following question:

Does or will the organization attempt to influence legislation?

If “Yes,” explain. Also, give an estimate of the percentage of the organization’s time and funds that it devotes or plans to devote to this activity.

In response to this question, ICANN answered, “no.” Its answer is copied below.

13 Does or will the organization attempt to influence legislation? Yes No
If “Yes,” explain. Also, give an estimate of the percentage of the organization’s time and funds that it devotes or plans to devote to this activity.

As will be shown by the information below, this is false as ICANN clearly does attempt to influence legislation.

Lobbying Reported on ICANN’s IRS Form 990

As noted above, ICANN files a public return with the IRS on Form 990. The Form 990 requires the organization to list its lobbying expenses. These expenses, which were previously reported on Schedule A, are now listed on Schedule C. The figures below show the amounts that ICANN has reported on Schedule A and Schedule C for lobbying activities.

Fiscal Year Ending	Amount
June 30, 2014	\$576,138 ³
June 30, 2013	\$557,017 ⁴
June 30, 2012	\$568,966 ⁵
June 30, 2011	\$300,154 ⁶
June 30, 2010	\$420,070 ⁷
June 30, 2009	\$300,018 ⁸
June 30, 2008	\$240,000 ⁹
June 30, 2007	\$240,000 ¹⁰

Additionally, although not noted on its IRS Forms 990, ICANN engaged a lobbying firm, Mehlman Vogel Castagnetti, Inc. in 2005.¹¹ In 2005, ICANN paid this firm \$20,000.¹² Also not reported on the IRS Form 990 is \$120,000 that ICANN paid to the Mehlman firm in the first half of 2006.¹³

Other lobbying firms that have been employed by ICANN include the Podesta Group, Inc.,¹⁴ Kountoupes Consulting, LLC,¹⁵ and Akin Gump Strauss Hauer & Feld.¹⁶

In 2011, ICANN registered itself to lobby.¹⁷

Based on the foregoing, ICANN either falsified its statement to the IRS that it would not lobby, or it has failed to live up to its commitment to the IRS that it would not lobby.

Board Compensation

During the time between when ICANN filed its application with the IRS for tax-exempt status and the present, ICANN modified its board policies regarding compensation for board members.

At the time ICANN filed for exempt status, the relevant section of its bylaws stated the following:

Section 22. COMPENSATION

The Directors shall receive no compensation for their services as Directors. The Board may, however, authorize the reimbursement of actual and necessary reasonable expenses incurred by Directors performing duties as Directors.¹⁸

Now, the situation is different and the board is compensated. The current version of the relevant section of ICANN's bylaws now state:

Section 22. COMPENSATION

1. Except for the President of ICANN, who serves ex officio as a voting member of the Board, each of the Directors shall be entitled to receive compensation for his/her services as a Director. The President shall receive only his/her compensation for service as President and shall not receive additional compensation for service as a Director.
2. If the Board determines to offer a compensation arrangement to one or more Directors other than the President of ICANN for services to ICANN as Directors, the Board shall follow a process that is calculated to pay an amount for service as a Director that is in its entirety Reasonable Compensation for such service under the standards set forth in §53.4958-4(b) of the Treasury Regulations.
3. As part of the process, the Board shall retain an Independent Valuation Expert to consult with and to advise the Board regarding Director compensation arrangements and to issue to the Board a Reasoned Written Opinion from such expert regarding the ranges of Reasonable Compensation for any such services by a Director. The expert's opinion shall address all relevant factors affecting the level of compensation to be paid a Director, including offices held on the Board, attendance at Board and Committee meetings, the nature of service on the Board and on Board Committees, and appropriate data as to comparability regarding director compensation arrangements for U.S.-based, nonprofit, tax-exempt organizations possessing a global employee base.
4. After having reviewed the expert's written opinion, the Board shall meet with the

expert to discuss the expert's opinion and to ask questions of the expert regarding the expert's opinion, the comparability data obtained and relied upon, and the conclusions reached by the expert.

5. The Board shall adequately document the basis for any determination the Board makes regarding a Director compensation arrangement concurrently with making that determination.

6. In addition to authorizing payment of compensation for services as Directors as set forth in this Section 22, the Board may also authorize the reimbursement of actual and necessary reasonable expenses incurred by any Director and by non-voting liaisons performing their duties as Directors or non-voting liaisons.

7. As used in this Section 22, the following terms shall have the following meanings:

a. An “Independent Valuation Expert” means a person retained by ICANN to value compensation arrangements that: (i) holds itself out to the public as a compensation consultant; (ii) performs valuations regarding compensation arrangements on a regular basis, with a majority of its compensation consulting services performed for persons other than ICANN; (iii) is qualified to make valuations of the type of services involved in any engagement by and for ICANN; (iv) issues to ICANN a Reasoned Written Opinion regarding a particular compensation arrangement; and (v) includes in its Reasoned Written Opinion a certification that it meets the requirements set forth in (i) through (iv) of this definition.

b. A “Reasoned Written Opinion” means a written opinion of a valuation expert who meets the requirements of subparagraph 7(a) (i) through (iv) of this Section. To be reasoned, the opinion must be based upon a full disclosure by ICANN to the valuation expert of the factual situation regarding the compensation arrangement that is the subject of the opinion, the opinion must articulate the applicable valuation standards relevant in valuing such compensation arrangement, and the opinion must apply those standards to such compensation arrangement, and the opinion must arrive at a conclusion regarding the (*sic*) whether the compensation arrangement is within the range of Reasonable Compensation for the services covered by the arrangement. A written opinion is reasoned even though it reaches a conclusion that is subsequently determined to be incorrect so long as the opinion addresses itself to the facts and the applicable standards. However, a written opinion is not reasoned if it does nothing more than recite the facts and express a conclusion.

c. “Reasonable Compensation” shall have the meaning set forth in §53.4958-4 (b)(1)(ii) of the Regulations issued under §4958 of the Code.

8. Each of the non-voting liaisons to the Board, with the exception of the Governmental Advisory Committee liaison, shall be entitled to receive compensation for his/her services as a non-voting liaison. If the Board determines to offer a compensation arrangement to one or more non-voting liaisons, the Board shall approve that arrangement by a required three-fourths (3/4) vote.¹⁹

Recent Contributions

In its RRF-1 filing with the California Attorney General ICANN states the following in an answer to question 8 about government funding:

In connection with its primary exempt purpose to privatize the management of the domain name system and other internet coordination in a manner which increases competition and facilitates international participation, ICANN receives contributions from various foreign governmental agencies.²⁰

These contributions, along with contributions from domestic entities, are disclosed on ICANN's IRS Form 990, Schedule B, which is posted on its website. ICANN's latest Form 990, for the fiscal year ending June 2014, reports the amounts listed below.

Name	Amount	Description
.au Domain Administration	\$280,000	The policy authority and industry self-regulatory body for .au domain names.
.co Internet SAS	\$17,240	Columbian company handling administration of the .co domains.
AFNIC	\$45,000	French organization handling the .fr and other France oriented domain extensions.
Association DNS .pt	\$7,500	Portuguese organization administering the .pt domain extensions.
Canadian Internet Registration Authority	\$85,000	"The official .ca registry." The board includes a representative of the government.
China Internet Network Information Center (CNNIC)	\$50,000	Administers the .cn domains and appears to be set up under the auspices of the Chinese government.
Coordination Center for TLD .ru	\$110,000	Administers the .ru and .рФ domains. There is at least one Russian Federation government representative on the board.
Council of Hungarian Internet Providers	\$50,000	Administers the .hu domains.
cz.nic z.s.p.o	\$17,000	Administers the .cz domains (Czech Republic).
Dansk Internet Forum	\$25,000	Handles domain registrations in Denmark.
DENiC EG	\$90,000	Registry for .de domains.
DNS Belgium VZW	\$80,000	Handles the .be domains.
Finnish Communications Regulatory Authority	\$22,000	Manages the .fi domains and communications issues in Finland.

Name	Amount	Description
Hong Kong Internet Registration Corporation	\$12,000	Administers the .hk domains.
Forth – Institute of Computer Science	\$10,000	Greek foundation with labs in a variety of computer science areas.
IIT CNR Institute	\$175,000	Italian organization managing the .it domains.
Internet Infrastructure Foundation	\$75,000	This foundation in Sweden administers the .se domains.
InternetNZ	\$15,000	Handles the .nz domains.
ISNIC Internet Iceland	\$8,000	Administers the .is domains.
Israel Internet Association (ISOC-IL)	\$18,000	Administers the .il domains.
Japan Registry Services Co. Ltd.	\$75,000	Administers the .jp domains.
Korean Internet and Security Agency	\$30,000	This Korean (South) organization handles the .kr domains.
NASK (Poland)	\$8,000	Administers the .pl domains.
National Institute for Research and Development in Informatics	\$25,872	Handles .ro domains.
Neustar (Sterling, VA)	\$40,000	Data and other IT services company.
NIC.AT	\$40,000	Handles the .nt domains.
NIC-Mexico	\$82,500	Handles domain registrations in Mexico.
Nominet UK	\$150,000	Official registry for domain names in the UK.
Nucleo de Informação e Coordenação	\$50,000	Domain registration in Brazil and other services.
Restena	\$15,000	Internet service provider in Luxembourg.
Stichting Internet Domeinregistratie Ned	\$160,000	Domain registrations in the Netherlands.
Switch (CH) (Swiss Information Technology Services)	\$70,000	Handles the .ch and li domains.
Uninett Norid As	\$32,000	Norwegian company handling the .no. sj. and .bv domains.
Universidad de Chile (NIC Chile)	\$45,000	Handles the .cl domains.
Academic and Research Network of Slovenia	\$5,000	Public research institution founded by the Republic of Slovenia.
Gauss Research Laboratory, Inc.	\$5,000	Handles the .pr domains for Puerto Rico.
University of Latvia	\$5,000	State university of Latvia.
VeriSign Sarl (Switzerland)	\$5,000	Subsidiary of VeriSign, Inc.

Department of Commerce Problems Related to ICANN

Unauthorized Spending of Appropriated Funds

Congress, in the appropriations for the Department of Commerce for Fiscal Years 2015 and 2016, included a rider which prohibits the National Telecommunications and Information Administration (NTIA) from relinquishing certain responsibilities as detailed below. Despite the explicit prohibition from Congress, the activities of officials at NTIA clearly indicate that they are working hard to ensure that the relinquishment occurs.

Legal Standards

The U.S. Constitution in Article I, Section 9, Clause 7 states, “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.”

Title V, Sec. 539 of the Consolidated Appropriations Act of 2016, Public Law 114-113 prohibits the relinquishment of “the responsibility of the National Telecommunications and Information Administration, during fiscal year, 2016, with respect to Internet domain name system functions, including responsibility with respect to the authoritative root zone file and the Internet Assigned Numbers Authority functions.” The same prohibition was present in the appropriations for 2015, Public Law 113-235, Title V, Sec. 540.

The Antideficiency Act at 31 U.S.C. § 1341(a)(1)(A) states that the federal government cannot, “make or authorize an expenditure or obligation exceeding an amount available in an appropriation fund for the expenditure or obligation.”

An agency official violates the Antideficiency Act when they expend appropriated funds in violation of prohibitions in the appropriations act, “as the agency’s appropriations were not available for these prohibited purposes.”²¹

Federal officials who “knowingly and willfully” violate this prohibition commit a criminal offense and are subject to punishment of a fine of not more than \$5,000 and a maximum jail term of two years. 31 U.S.C. § 1350.

Facts

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. NTIA 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.

Recently, Lawrence E. Strickling, Assistant Secretary of Commerce for Communications and Information asked in a speech: “Will we complete the IANA stewardship transition this year? There is a lot riding on this question.”²²

Nowhere in the speech does he acknowledge that it is unlawful for NTIA to do the transition. Instead, he recites what he views as progress in how the administration is closer to the transition than it previously was.

This is not the first time that Strickling has spoken recently regarding NTIA relinquishing its responsibilities, in violation of law. On November 10, 2015 Strickling gave a speech to the Internet Governance Forum in João Pessoa, Brazil.²³

In that speech, Strickling stated,

In the United States, we are committed to multistakeholder Internet governance, as convincingly demonstrated by our announcement in March 2014 that the U.S. government would transition its historical stewardship role over the Internet Domain Name System to the multistakeholder community.

He failed to acknowledge that the transition is unlawful and that any actions he and NTIA take to achieve the transition are unlawful. Strickling further stated, “Most importantly, the process is working, and I am confident it will be successful.”

On July 16, 2015, Strickling spoke to the Internet Governance Forum USA in Washington, D.C. In his speech Strickling displayed a clear disdain for Congress when he stated, “Where does this discussion leave us? We have to ask ourselves whether we are better off playing the legislative and regulatory waiting game where progress perhaps never occurs.”²⁴ Thus, Strickling indicates that he doesn’t view the law passed by Congress prohibiting his actions in furtherance of relinquishing the NTIA responsibilities as something to be followed.

Indeed, in a previous speech on January 27, 2015, Strickling indicated his belief that in passing the prohibition on NTIA relinquishing its responsibility, “Congress did not expect us to sit on the sidelines this year.”²⁵ While Strickling has claimed in the past that “the assurance I got from most of the staff on the Hill was they didn’t see any problem,” it is not Hill staff that decide whether there is a problem. Rather, the actual language passed by Congress must be examined.

The amount of appropriated funds that are being expended by NTIA to continue its efforts to relinquish its responsibilities are unknown at this point, but the agency is clearly expending appropriated funds for this purpose.

Conclusion

The actions of officials in the NTIA in many instances have been directly in conflict with the appropriations language that was enacted into law by Congress. Congress prohibited relinquishing the NTIA responsibilities detailed above, yet NTIA continues to act as if that prohibition does not apply to them.

These actions constitute an expenditure of appropriated funds, to cover employee and other costs, for a prohibited purpose. Spending appropriated funds for a prohibited purpose violates the Antideficiency Act.

Therefore, NTIA officials have violated the Antideficiency Act by the expenditure of funds for the purpose of relinquishing its responsibilities.

NTIA Violation of Travel Rules to Attend ICANN Junkets

Federal employees are generally prohibited from purchasing “premium” airfare, except in tightly limited circumstances. As will be shown below, an official of the National Telecommunications and Information Administration (NTIA) recently violated this prohibition by purchasing business class airfare to fly to a conference, incurring substantial expense to taxpayers in the process. Additionally, the conference to which this official was traveling was organized, among other reasons, to discuss NTIA relinquishing certain responsibilities. Congress, in the appropriations for the Department of Commerce for Fiscal Years 2015 and 2016, included a rider which specifically prohibited NTIA from relinquishing these responsibilities. Despite the explicit prohibition from Congress, the activities of officials at NTIA clearly indicate that they are working hard to ensure that the relinquishment occurs.

Legal Standards

Federal Travel Regulations

The Federal Travel Regulations are found at 41 C.F.R. subtitle F. In general, the regulations prohibit the purchasing of “other than coach” airfare, except in tightly limited circumstances. “For official business travel, both domestic and international, you must use coach-class accommodations, except as provided under §§ 301-10.123 and 301-10.124.” 41 C.F.R. § 301-10.122.

The situations in which other than coach airfare may be purchased include those such as where there are no coach airfare accommodations reasonably available, there is a medical issue or disability, “exception security circumstances” so require, and certain long-distance situations where the flight time will be longer than fourteen hours. 41 C.F.R. §§ 301-10.123, 301-10.124.

In order to take advantage of the “14-hour rule” (1) either the origin or destination must be outside of the continental United States; (2) the flights must be in excess of fourteen hours; and (3) the employee must be required to work the following day or sooner. 41 C.F.R. § 301-10.125.

These regulations are incorporated into the Department of Commerce's *Department Travel Handbook*, at Sec. C301-10-120 *et seq.*

A rule of thumb is “travelers are told to exercise the same standard of care in incurring expenses that a prudent person would exercise if traveling on personal business.”²⁶

Employees who improperly purchase other than coach airfare are liable for the added expense as detailed at 41 C.F.R. § 301-10.6, “any additional expenses you incur which exceed the cost of the authorized method of transportation **will be borne by you.**” (Emphasis added.)

The appropriations law standards are the same here as in the section above.

Facts

The following information comes from records that were provided to Americans for Limited Government Foundation by NTIA in response to a Freedom of Information Act request.²⁷

On October 9, 2015 Suzanne Murray Radell, Senior Policy Advisor in NTIA's Office of International Affairs, submitted a request on Department Form CD-334 for “approval of other than coach-class accommodations.” The request was for business class airfare for Radell to attend the ICANN 54 conference in Dublin, Ireland. The difference between business class and coach airfare, as noted in Sec. 15 of the Form CD-334, is substantial. Coach airfare to this destination was \$995, and business class airfare was \$7,188.90, a difference of \$6,193.90. In Sec. 13 of the Form CD-334, where the agency is supposed to list the justification for the expenditure, NTIA failed to list any justification at all. Instead, a conclusory statement that the request had been granted is the only “justification” provided. The request was approved the same day it was submitted. Also of note, the signature on the form does not appear to be that of Leonard Bechtel, the named authorizing official, but rather a different name.

Per Radell's OIA Travel Request Form, the dates of her travel were October 14, 2015, a Wednesday, through October 25, 2015, a Sunday. The form also indicates that Radell took October 23, 2015, a Friday, as a personal day, presumably to vacation on Friday and Saturday before returning on Sunday.

Among other things, the ICANN conference Radell attended had a session on “IANA Stewardship Transition Implementation.”²⁸

The “IANA Stewardship Transition” refers to the plan of the Department of Commerce to relinquish its Internet Assigned Names and Numbers Authority to an international multi-stakeholder body:

In the United States, we are committed to multistakeholder Internet governance, as convincingly demonstrated by our announcement in March 2014 that the U.S.

government would transition its historical stewardship role over the Internet Domain Name System to the multistakeholder community.²⁹

Additionally, the NTIA provided Americans for Limited Government Foundation with a spreadsheet totaling the costs associated with other NTIA personnel, including the Assistant Secretary, who attended the conference.

Analysis - Travel Regulation Violation

Given the conclusory nature of the statement on Sec. 13 of the Form CD-334, it is impossible to ascertain the exact justification supporting the decision of NTIA to allow premium travel in this instance.

Assuming for the sake of argument that the justification was not security or medically related, it is possible that NTIA misapplied the “14-hour rule” in this instance. The OIA Travel Request Form filed by Radell indicates that the total time of the outbound leg of the trip was to take 13.9 hours and the return leg 15.7 hours. Of this travel time, less than fourteen hours on both legs were to be expended in flight time and airport wait time, the portions of travel time that are applicable to determining whether the “14-hour rule” applies. Thus, this trip was not eligible for premium travel. Also worth noting, Radell apparently voluntarily altered her schedule to return home on a Sunday rather than on Friday, a day for which she took personal leave. Under the Federal Travel Regulations, if a traveler is not required to report to work the next day then the trip is not eligible for premium travel under the “14-hour rule.” 31 C.F.R. § 301-10.125(a)(3). If Radell had returned on Friday rather than taking leave, she presumably would not have been required to report for work on the next day or even the day following that. If Radell was required to report to work on the Monday following her travel back and that requirement was part of the justification for allowing the use of premium travel to return, then that justification is faulty as it was Radell’s own choice that put her into the position of returning to work the next day.

Again, due to the lack of a stated justification, it is impossible to determine the intended justification. In any event, the lack of a clearly stated justification is evidence of an internal control weakness that should be immediately remedied.

As previously noted, Congress has directly prohibited the NTIA from spending any funds to relinquish its responsibilities as described above. The actions of NTIA officials in many instances have been directly in conflict with the appropriations language that was enacted into law by Congress. Congress prohibited relinquishing the NTIA responsibilities detailed above, yet NTIA continues to act as if that prohibition does not apply to it, including by participating in ICANN 54.

NTIA officials should also refrain from improperly using premium travel to any such conferences.

Problems at ICANN

Transparency Issues on Advocacy Expenditures

In addition to the amounts detailed above for lobbying, ICANN has also come under fire for spending additional amounts on other advocacy.

ICANN has revealed how much it has spent so far on a few controversial professional services firms that have been accused of “lobbying” the US government on behalf of the organization.

It said today that between July 2015 and September 2015 it spent \$1,070,438 on six companies providing “Education/Engagement” services related to the transition of IANA from US government oversight.

Two of the payees are consulting firms run by former high-level US officials.

One is Albright Stonebridge Group LLC, founded by Clinton-era secretary of state Madeleine Albright.

The other is Rice Hadley Gates LLC, which counts W-era officials Condoleeza Rice, Stephen Rice and Robert Gates as its principles.

The \$1 million figure also includes payouts to PR firm Edelman, which has been working with ICANN for as long as I can remember, a video production company, and two other consultants.³⁰

ICANN resisted disclosing its total advocacy expenses; when it did disclose its lobbying expenses, it lumped them in with other expenses to make it impossible to know exactly how much was spent on lobbying and how much went to each lobbying firm. The Register, which reports on the IT industry, estimates that ICANN spent \$2.5 million on lobbying and other advocacy activities.

Domain name overseer ICANN has spent \$2.5m in the past year lobbying the US government, putting the small non-profit on a par with multi-national corporations.

The figure is five times larger than the organization has previously admitted to. It emerged after ICANN was repeatedly asked to reveal the true amount it was spending on professional lobbyists in its bid to take over the internet's critical IANA functions – that's the heart of the global DNS, worldwide IP address allocation, and management of communication protocol details.³¹

Rampant Cronyism

Fadi Chehade, ICANN's recently-departed president, and Akram Atallah, president of ICANN's global domains division, knew each other growing up in Lebanon; and they worked together at CoreObjects. Atallah brought Chehade onboard at ICANN; and under their combined leadership, there has been a lot of cronyism at ICANN. Perhaps unsurprisingly, some of the people hired do not appear to be the best match for their position.

A striking 57 per cent [of poll respondents] said that [Chehade] hired too many old friends and colleagues into roles at the organization.

That last part was particularly problematic, if understandable. Frustrated at the internal culture of meetings over movement and papers over progress, Chehade and COO Akram Atallah – who are old friends – brought in more and more of their own people in an effort to shift the culture. Not all of them were best suited or qualified, but real frustration developed when jobs were filled without the job even being posted internally.

Nora Abusitta-Ouri, a former classmate of Chehade's, became vice president of public responsibility programs. Former neighbor Susanna Bennett became Chief Operating Officer. Former co-worker Chris Gift became vice president of online community services. Former co-worker Allen Grogan became chief contracting counsel and then when that job finished, chief contract compliance officer.

Neighbor of Atallah, Elizabeth Hoover became HR manager. Former co-worker Cyrus Namazi became vice president of industry engagement. Old friend Ashwin Rangan became chief innovation and information officer. The wife of a former co-worker, Maguy Serad, became vice president of contractual compliance. Another former neighbor, Christine Willett, became vice president of gTLD operations.

In all, only one member of the C-suite hired since Chehade came on board has not been a friend or former co-worker – and that was ICANN's former CTO David Conrad hired back into his old position. Every new vice president based in the Los Angeles headquarters has been a friend or former co-worker.³²

Conflicts of Interest

How can ICANN be trusted to do the right thing for businesses, nonprofits, Internet users, etc., when the overwhelming majority of the organization's revenue is derived from selling domain names? According to the editor of DomainMondo.com,

This current ICANN administration (CEO Fadi Chehade and Global Domains Division President Akram Atallah) has the worst record in the history of ICANN in regard to conflicts of interest, and this appears to have been knowingly tolerated by a complicit, conflicted, inept, or passive ICANN Board of Directors.³³

Poor Stewardship

According to Garth Bruen, a security fellow at the Digital Citizens Alliance, "ICANN has made a lot of mistakes, and ICANN has not really been a good steward."³⁴

According to Jon Leibowitz, a former chairman of the Federal Trade Commission, "The public at large, consumers and businesses, would be better served by no expansion or less expansion' of domains."³⁵

Greed

The founding ICANN chairman strongly disagreed with the expansion of domain names, which has created windfall profits for the organization.

This is a "way for registries and registrars to make money," says [Esther] Dyson. She also points out that "there are huge trademark issues. I just think it is offensive. If I own a trademark, now I have to go register it on 2,800 domains. It will create a lot of litigation."³⁶

University of Pennsylvania Wharton School marketing professor Peter Fader, who is the co-director of the Wharton Customer Analytics Initiative, was also vehemently opposed to the domain expansion.

"I really can't see a legitimate upside where new benefits [of the new domains] outweigh costs, and everyone I mention this to feels the same way. People just shake their heads. It's all about the money. They [ICANN] are creating these extensions because they can."³⁷

Poor Customer Service

ICANN has done a poor job of addressing concerns and complaints.

With all the applicants for new gTLDs gathered in one place, it presented some with an opportunity to share war stories.

And it seems that many had had the same experience: concerted and unusual efforts to disrupt their applications with spurious complaints, astroturfing and procedural barriers designed to wear them down.

Having realised they were at the end of the same tricks, a number of applicants decided to go straight to ICANN with their complaints. From what we hear, ICANN is extremely keen to sort the problem out. And, at least according to our sources, its plan for doing so is to ignore them, turn down reconsideration requests, refuse to consider relevant documentation, and stick their fingers in their ears while singing “lalalalalala”.³⁸

As the dot-brands start rolling out, some challenges remain. Several complained of trouble communicating with ICANN, a rather labyrinthine organization...³⁹

Dan Jaffe, Executive Vice President of Government Relations for the Association of National Advertisers, worried that companies would be forced to spend millions not only to monitor their trademarks in top level domains but in the proliferating number of websites.

“The problem is the history and the history has been that ICANN has not been responsive,” said Jaffe.⁴⁰

Falling Short

Sales of new domains fell far short of projections.

So how badly are ICANN’s new gTLDs failing? Well, ICANN originally predicted 33 million new gTLD domain name registrations in FY15 (Fiscal Year 2015: July 1, 2014- June 30, 2015), then “lowered the bar” by more than half in the adopted ICANN FY15 budget to just 15 million new gTLD domain name registrations in FY15. So where are we at the end of the first half of FY15 (December 31, 2014)?

According to ntlidstats.com* there were 1,418,338 new gTLD registrations at the end of FY14 (June 30, 2014). If you subtract that from 3,715,143 total new gTLD registrations at the end of calendar year 2014,* then there were only 2,296,805 new gTLD registrations in the first-half of FY15 (including the hundreds of thousands of new gTLD registrations given away for free!) --meaning ICANN and “whomever ICANN listens to,” were “delusional” about the demand for new gTLDs. Of course this shouldn’t surprise anyone--ICANN made monumental mistakes in its new gTLDs program, including not considering “registrant demand for new gTLDs” as a “relevant factor” in deciding whether to even authorize any new gTLDs. Instead ICANN decided to just flood the Internet Domain Name System (DNS) with hundreds of unwanted, unneeded domain extensions because there were fools willing and able to pay ICANN \$185,000 per new gTLD for the right to do so, or to participate in ICANN’s auctioning off of the Internet DNS to the highest bidders. Remember, for ICANN, itself a monopoly, “It’s all about the money” and to heck with the public interest and Internet security and stability.⁴¹

Incompetence

Not only do new domains not work, but they also “break stuff” as a slide informed audience members at an ICANN 52 session last year. At the session, ICANN was looking for ideas of ways to solve the problem.

The following is from the description of the Universal Acceptance session at ICANN 52:

Many of the services and applications Internet users rely on, do not accept new top-level domains...This session is intended to solicit community interest in participating in ICANN’s Universal Acceptance Initiative, discuss ICANN’s outreach plans and gather new ideas for tackling the issue.⁴²

According to another ICANN slide, “This [effort to fix the problem with new domains] is a project that will take years to make progress on...”⁴³

ICANN has had a number of security issues.

ICANN says its website’s user accounts have been compromised by hackers who gained access to their names, email addresses, hashed passwords, and more... This is not, by a long shot, the first time ICANN has been attacked. In March, a security hole was found in the dot-word domain-name portal; in April, gTLD applicants’ information was exposed; in December, hackers compromised a database of DNS information; and earlier that year, security bugs delayed the launch of the new dot-word gTLDs. Perhaps, the US government would like to take another hard look at ICANN before the California-based org takes over the DNS binding together the internet.⁴⁴

These Security Issues Have Occurred Over 300 Times

Two months after claiming there was “no indication” that confidential information was exposed in a security cock-up, domain name overseer ICANN has admitted it happened on at least 330 occasions.⁴⁵

History of Security Issues

ICANN has a history of security breaches despite being the organization in charge of the internet’s domain name system and being in line to take over the critical IANA functions, which the internet depends on for its smooth running.

A “glitch” in its application software for the hundreds of new top-level domain names back in April 2012 also allowed users to see the details of other applicants.

ICANN took down its web app for a month, and was forced to delay the launch of its landmark program that it had been working on for more than four years.

In December 2014, the organization admitted that a number of its systems had been compromised including the Centralized Zone Data System (CZDS) – where the internet core root zone files are mirrored – the wiki pages of the Governmental Advisory Committee (GAC), the domain registration Whois portal, and the organization’s blog. That incident revealed that ICANN did not use even basic two-factor authentication for many of its systems.

And those are just the security breaches that ICANN has owned up to. In an extensive paper published by dot-com registry and maintainer of the internet’s root zone Verisign late last year, a long list of technical and security problems at ICANN were highlighted.⁴⁶

Verisign Questioned ICANN’s Competence

A review of the globe’s DNS security, stability and resiliency by dot-com registry and root server operator Verisign has called into question the technical competence of domain name overseer ICANN.

The report highlights the database that was hacked – the Central Zone Data System (CZDS) – alongside a raft of other systems that ICANN runs, as a “growing list of examples where ICANN’s operational track record leaves much to be desired.” That list includes the system used to run applications for new internet extensions (which failed spectacularly and was taken offline for six weeks a while ago), the

Trademark Clearinghouse and the Registrar Contact Information Database (RADAR).

But it is on the internet's technical functions that the report – the third in a series, this one titled “Operational Foreshocks” – pays most attention. On those it paints a picture of an under-resourced, poorly communicating and freewheeling organization that fails to address known problems and lacks the capacity to look forward to upcoming ones.

Questions over the organization's technical abilities may give pause for thought since ICANN is pushing to be given greater control over the internet's critical IANA functions next year. IANA does a lot of behind-the-scenes work to keep the internet as we know it glued together, such as by running the world's DNS and allocating IP addresses.

Although ICANN's revenues have exploded in the past year thanks to the millions of dollars that the new gTLD program has brought in, the job that the entire organization was created to carry out - the technical underpinnings of the internet - accounts for just five per cent of its budget.

[The] fact that Verisign is able to put together a 33-page report full of dozens of examples of where ICANN is found wanting should serve as a warning sign both to ICANN and the broader technical community of likely underfunding and under-resourcing of vital internet functions.⁴⁷

Broken Promise

The chairman of the ICANN board and a former ICANN CEO both promised to only spend money derived from the sale of new domains on domain expansion-related issues, to account for the spending, and to spend any remaining funds according to the wishes of the Internet community. In reality, there was little accountability, and ICANN was slow to solicit input on the expenditure of the surplus funds.

ICANN has already backtracked once on a promise as to how it will spend the millions it has received in total through the new gTLD process.

When Crocker and former ICANN CEO Rod Beckstrom were asked how the organization would spend the money received through the \$185,000-a-throw

application fees for the new gTLD program back in 2012, they assured the internet community it would be ring-fenced, spent only on issues related to the program, and that every cent would be accounted for. Any remaining funds would be spent according to the internet community's wishes.

Despite repeated requests for a consultation exercise to be opened, however, ICANN has insisted that it remains uncertain if there will be any money left over.

Now, with most of the process completed, tens of millions of dollars remain unspent. Meanwhile, ICANN has more than doubled its expenses and provided very little real accounting or explanation for how that money was spent. Once (sic) item that we know has increased is the money and expenses paid to ICANN board members – which averaged \$90,000 per member from July 2013 to July 2014.

The organization has still yet to announce any plans to hold a community consultation.⁴⁸

The China Problem

While still ICANN CEO, Chohade cozied up to the repressive Chinese government, and the ICANN board approved of it. Chohade agreed to serve as the co-chair of an advisory committee for the “World Internet Conference” (WIC), a project of the Chinese Communist Party. Jack Ma, Chohade's co-chair, runs Alibaba, which is working on a project to help silence dissent on the Internet. Another member of the advisory committee is a Russian who chairs an organization that promotes “a scheme for accessing an Internet with only pre-approved, white-listed websites available.”⁴⁹

The internet community was stunned when Chohade announced on stage in December that he would head up the conference's “high-level advisory committee” that would guide the agenda of future conferences and “contribute ideas for the development of the internet.”

He then gave a nauseating ingratiating interview with the conference organizers (the Chinese government) in which he praised “what great things can come out of China” and told the interviewer: “We all need to give a big hug to China. And China typically hugs back.”

Chohade was exactly the sort of person the Chinese government was seeking to lend credibility to its efforts to influence internet governance discussions, and the decision left observers wondering whether he was being naïve or reckless.

This also led to an angry letter from several US Congressmen – including Republican presidential hopeful Ted Cruz – asking Chehade to explain himself and suggesting he had become complicit in Chinese online censorship.

And it led to what we understand was a heated discussion by the ICANN board in which they considered publicly rebuking Chehade but, in typical style, decided instead to issue a bland statement in support.⁵⁰

A keen ICANN critic explains why Chehade’s actions were so egregious, because “an advisor to the WIC is, for all practical purposes, an advisor to a vital organ of the Chinese Communist Party (CCP).”⁵¹

Just how bad is China’s record on Internet freedom? “China ranked last in a 2015 country index of Internet freedoms put together by Freedom House, a U.S. nongovernment watchdog, just below Iran and Syria.”⁵²

Conclusion

ICANN has issues, a sampling of which were discussed above. The organization clearly chafes at U.S. oversight even though it was created at the request of the U.S. government. Given that even now, while a U.S. government contractor, ICANN acts as if it is above scrutiny and accountability, one can only wonder how much less accountable it will be if the U.S. oversight role is relinquished.

The U.S. oversight role in Internet governance has worked. This role should continue. Releasing ICANN and allowing it to go on its own way will not improve Internet governance and is fraught with problems. As stated in a paper published by the Global Commission on Internet Governance:

The symbolism of having a single government in control of one of the Internet’s few choke points has obscured the fact that the IANA works well. There has been no credible challenge to the United States’ assertion that it has never interfered in updates to the root zone. The US government has exercised restraint in its oversight of the IANA and “has generally established a prudent policy of non-intervention in the DNS operation” (Demidov 2014).⁵³

This is the status quo, and in the absence of any compelling reason to the contrary, ICANN should remain a U.S. contractor and the U.S. government should continue its oversight role.

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