

Congress of the United States

Washington, DC 20510

September 22, 2015

Mr. Gene Dodaro
Comptroller General
U.S. Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Mr. Dodaro:

On March 14, 2014, the National Telecommunications and Information Administration (“NTIA”) announced its intent to relinquish oversight of Internet domain name functions to the “global stakeholder community.” This proposed transition raises questions about NTIA’s authority to transfer possession and control of critical components of the Internet’s infrastructure to a third party.

The Internet as we know it has evolved from a network infrastructure first created by Department of Defense researchers. One key component of that infrastructure is the root zone file, which the federal government currently designates as a “national IT asset.”¹ Creation of the root zone file was funded by the American taxpayer and coordinated by the Department of Defense, and the file has remained under United States control ever since.

Under Article IV, Section 3 of the Constitution, Congress has the exclusive power “to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.” One question arising from NTIA’s decision to transfer its Internet oversight functions to a third party is whether NTIA may relinquish possession and control of the root zone file—or any other similar component of the Internet that was financed and developed by the United States—without authorization from Congress. This concern was raised in 2000 by the Government Accountability Office (“GAO”), which questioned whether NTIA could relinquish authority over the root zone file and concluded that it was “unclear whether such a transition would involve a transfer of government property to a private entity.”² The 2000 GAO report further detailed that the Department of Commerce advised the GAO at the time that “we have not devoted the possibly substantial staff resources that would be necessary to develop a legal opinion as to whether legislation would be necessary” to authorize transfer of the root zone file. Congress should be made aware of the legal status of the root zone file—or any other potential government property—before it makes any final decisions about whether to transfer the government’s Internet oversight functions to a third party.

¹See, Verisign Company Information: http://www.verisign.com/en_US/company-information/index.xhtml

²U.S. Government Accountability Office., GAO-B-284206, Department of Commerce: Relationship with the Internet Corporation for Assigned Names and Numbers (2000)

Some observers and parties involved in the proposed transfer have asserted that the termination of NTIA's contract with ICANN would not result in the transfer of United States Government property.³ Others believe that termination of this contract would result in government property being transferred to ICANN and point to a number of factors that would indicate that the root zone file and other contractual deliverables are property of the United States. Supporters of this position point to the fact that the United States acquired title to the root zone file because it was invented pursuant to Department of Defense contracts.⁴ In addition, the United States has long claimed ownership or control over the root zone file. For example, President Clinton's Internet "czar" Ira Magaziner asserted United States ownership of the entire Domain Name System because "[t]he United States paid for the Internet, the Net was created under its auspices, and most importantly everything [researchers] did was pursuant to government contracts."⁵ Additionally the Commerce Department's contract with ICANN explicitly declares that "[a]ll deliverables provided under this contract," including the "automated root zone," are "the property of the U.S. government."⁶ And Verisign and ICANN contracts make clear that changes to the root zone file cannot be made without approval of the Department of Commerce.⁷ Congress has also been actively engaged in managing the root zone file. Recently, it enacted the Consolidated and Further Continuing Appropriations Act of 2015, which explicitly prohibited the Commerce Department from using federal funds to relinquish stewardship of the domain name system, "including responsibility with respect to the authoritative root zone file."⁸

Given this history, we are concerned that NTIA might potentially relinquish ownership of some form of United States property. To inform the Congress so that it may take any necessary and appropriate steps regarding NTIA's planned transition of the IANA functions, we would like the GAO to conduct a review to address a number of specific questions.

1. Would the termination of the NTIA's contract with ICANN cause Government property, of any kind, to be transferred to ICANN?
2. Is the authoritative root zone file, or other related or similar materials or information, United States government property?
3. If so, does the NTIA have the authority to transfer the root zone file or, other related materials or information to a non-federal entity?

³Letter from Lawrence Strickling, Assistant Sec'y for Commc'ns and Info., U.S. Dep't of Commerce, to Representative Sean Duffy & Representative James Sensenbrenner, U.S. House of Representatives (June 11, 2015)

⁴U.S. Congressional Research Service. Internet Governance and the Domain Name System: Issues for Congress (R42351; August 18, 2015), by Lennard G. Kruger

⁵Jack Goldsmith & Tim Wu, *Who Controls the Internet?: Illusions of a Borderless World* 41 (2006)

⁶Internet Assigned Numbers Authority Functions Contract between U.S. Department of Commerce and Internet Corporation for Assigned Names and Numbers. Contract Number SA1301-12-CN-0035. October 1, 2012.

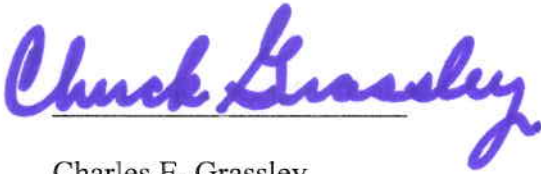
⁷See, Amendment 11 of the Cooperative Agreement NCR-9218742 between the U.S. Department of Commerce and Verisign, Inc. Also see, Internet Assigned Numbers Authority Functions Contract between U.S. Department of Commerce and Internet Corporation for Assigned Names and Numbers. Contract Number SA1301-12-CN-0035. October 1, 2012.

⁸Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No 113-235, § 540, 128 Stat. 2130, 2217 (Dec. 16, 2014)

Please include in this report a description and analysis of the relevant legal authorities and case law dealing with the transfer of United States Government property. We understand that to perform this work, GAO will need to conduct both significant audit work and complex legal analysis.

Please contact Jonathan Nabavi (Chairman Grassley), Sean McLean (Senator Cruz), Vishal Amin (Chairman Goodlatte), and Veronica Wong (Congressman Issa) of our staffs if there are questions regarding this request.

Sincerely,



Charles E. Grassley
Chairman
Senate Committee on the Judiciary



Ted Cruz
United States Senator



Bob Goodlatte
Chairman
House Committee on the Judiciary



Darrell Issa
Member of Congress