



ELECTRONIC FRONTIER FOUNDATION

Protecting Rights and Promoting Freedom on the Electronic Frontier

May 13, 2015

Hon. Bob Goodlatte, Chairman
House Judiciary Committee
2309 Rayburn HOB
Washington, D.C. 20515

Re: ICANN Oversight Hearing

Dear Chairman Goodlatte and Members of the Judiciary Committee:

As advocates for free speech, privacy, and liberty on the global Internet, we ask the Committee to resist calls to impose new copyright and trademark enforcement responsibilities on ICANN. In particular, the Committee should reject proposals to have ICANN require the suspension of Internet domain names based on accusations of copyright or trademark infringement by a website. This is effectively the same proposal that formed the centerpiece of the Stop Online Piracy Act of 2011 (SOPA), which this Committee set aside after millions of Americans voiced their opposition. Using the global Domain Name System to enforce copyright law remains as problematic in 2015 as it was in 2011.

The Domain Name System, administered by ICANN, is critical to the functioning of the Internet as a global system. It is vital to keeping Internet sites accessible the world over, by providing a uniform and unique way to reference each site. Trust in this system is vital, but that trust is undermined when governments or other authorities use the DNS system to censor the Web, whether by blocking or misdirecting domain name resolution requests as SOPA would have required, or by directly censoring domains by requiring domain name registrars to cancel or suspend them as it is being proposed that ICANN should do.

When SOPA was being considered four years ago, eighty-three Internet engineers, comprising many of the people who designed and built today's Internet, warned that "we cannot have a free and open Internet unless its naming and routing systems sit above the political concerns and objectives of any one government or industry."¹

The Committee is aware of what happened next. In January 2012, millions of Americans wrote and called their Senators and Representatives, imploring them not to impose DNS blocking as a means of enforcing copyright and trademark. The Committee put SOPA aside and has not returned to it.

¹ "An Open Letter From Internet Engineers to the U.S. Congress,"
<https://www.eff.org/deeplinks/2011/12/internet-inventors-warn-against-sopa-and-pipa>

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This year, as the Department of Commerce considers withdrawing its oversight of ICANN, some spokespeople for major entertainment distributors have proposed pressuring ICANN itself to implement a system of domain name suspension based on accusations of copyright or trademark infringement. For example, on March 5th of this year, the Recording Industry Association of America wrote to ICANN's CEO, asking him to require domain name registrars to police alleged copyright infringement by websites as a condition of accreditation by ICANN.² And the Motion Picture Association of America has asked ICANN to reinterpret its agreements to require registrars to "promptly investigate and respond to use of domain names for . . . IP infringement."³ The only way a domain name registrar can address copyright infringement accusations against an existing website is by suspending its domain name, causing it to disappear from the Internet for most visitors. This is a blunt instrument, inevitably censoring more speech than is necessary. If it occurs without a finding of infringement by a court, as the RIAA and MPAA proposals envision, then it constitutes a prior restraint on speech—the type most abhorred by our First Amendment legal tradition.

The essential operations of the Internet must not be used to further the political or business interests of any government or industry. It is no more appropriate to turn ICANN into a copyright police force than it would be to have that body enforce political censorship regimes based on foreign sedition or blasphemy laws.

Four years ago, in its one and only hearing on SOPA, Representative Jason Chaffetz memorably said that this Committee should "bring in some nerds" and consult with unbiased technical experts before changing the way the Internet runs. That remains sound advice. The open Internet, governed by sound technical principles and not by the policy preferences of special interests, is the single greatest creator of American jobs and economic growth today. We urge the Committee to preserve this openness by preserving the separation between intellectual property enforcement and the technical governance of the Internet.

Respectfully submitted,

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Jeremy Malcolm
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² David Post, "ICANN, copyright infringement, and 'the public interest,'" The Washington Post, <http://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/03/09/icann-copyright-infringement-and-the-public-interest/>

³ Alex Deacon, "ICANN52 and the year ahead," <http://www.mpaa.org/icann52/#.VVFXwGYb482>.