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**From:** William Kirsch <email>  
**Sent:** Monday, July 11, 2016 6:59 AM  
**To:** eo-commission; cybercommission  
**Subject:** Open Meeting of the Commission on Enhancing National Cyber-security-Texas

Please include my comments below to the June 30, 2016 Meeting of the North American Numbering Council in the written record for the July 2016 Open Meeting of the Commission on Enhancing National Cyber-security.

Thank you.

William J. Kirsch

Ladies and Gentlemen:

Thank you for your service on the North American Numbering Council (NANC)

Please note that as a matter of U.S. national security the NANC cannot and must not proceed with the transfer of the administration of U.S. telephone numbers to a Swedish company.

Sweden, while a member of the North Atlantic Treaty Organization (NATO) Partnership for Peace, shares this distinction with other U.S. partners such as Russia.

Sweden has no obligation under Article 5 of the NATO treaty. See, e.g. NATO 22 U.S.C. 1928.

In 2012 the United States General Accounting Office (GAO) stated that "[n]early every aspect of American society increasingly depends on information technology systems and networks." GAO also stated that "[p]ervasive and sustained attacks against the United States could have potentially devastating impact on federal and non-federal systems." See *Cybersecurity: Threats Impacting the Nation*, U.S. GAO, April 24, 2012.

The Securities and Exchange Commission has stated that "electronic mail (e-mail) is not secure...." See U.S. SEC *Electronic Mailboxes at the Commission*.

Earlier this year we learned that U.S. telephone networks are not secure even for telephone conversations considered particularly sensitive under the FTC privacy guidelines. See Dan Goodin, *How hackers eavesdropped on a U.S. Congressman using only his phone number*, *Ars Technica*, April 18, 2016.

The transfer of U.S. administration of U.S. telephone numbers to a Swedish-owned corporation represents a clear and present danger to U.S. national security and to personal privacy.

There is no FCC rate regulation of some of the largest U.S. broadband providers, including the Japanese/People's Republic of China's SoftBank Sprint, See 28 FCC Rcd 9658 (2013) now operating unlawfully in the United States in light of the D.C. Circuit Court decision in *U.S. Telecom v. FCC*.

The NANC should not provide for a transfer of administration of the North American Numbering Plan based on the thin reed of lower price to U.S. telephone companies given the absence of rate

regulation of these much larger companies and the much more lucrative nature of data mining done by many companies including the top 5 U.S. internet companies worth \$2 trillion often based solely or primarily based on advertising revenues.

It would be unlawful for the NANC to proceed with the proposed North American Numbering Plan telephone number administration transfer to a Swedish-owned corporation in light of the inadequate (i.e. not secure) nature of the network under 47 U.S.C. 34-39, 151, 152, 214, 251, 310 and 1001 et seq. and given the possibility that this might be a violation of the deceptive practices requirements under the Federal Trade Commission Act as well as the non-feasance requirements for government officials established by M'Cluny v. Silliman.

Please therefore provide for proper and additional notice and comment under the Administrative Procedure Act in the Federal Register before proceeding with any NANP transfer.

Thank you.  
William J. Kirsch

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**From:** William Kirsch <email>  
**Sent:** Monday, July 11, 2016 7:03 AM  
**To:** eo-commission; cybercommission  
**Subject:** Open Meeting of the Commission on Enhancing National Cybersecurity-Texas  
**Attachments:** reconpetition.pdf; erratumandsupplementpage1.pdf; erratumandsupplementpage2.pdf; ustr13082776page1.pdf; ustr13082776page2.pdf; state2014-21465page1.pdf; state2014-21465page2.pdf; state2014-21465page3.pdf; state2014-21465page4.pdf; state2014-21465page5.pdf

Please my Petition for Reconsideration and Erratum and Supplement in the Open Internet Proceeding, GN Docket 14-28, Federal Communications Commission in the record of the Open Meeting of the Commission on Enhancing National Cyber-security-Texas.  
Thank you.  
William J. Kirsch

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

OPEN INTERNET PROCEEDING

GN 14-128

PETITION FOR RECONSIDERATION

1. William J. Kirsch, hereinafter "Petitioner," requests reconsideration of the Open Internet Order under 47 CFR 1.429 by stating with particularity the legal requirement that the Commission apply: (1) the "same footing as regards privileges" standard established by President Wilson for Submarine Cable Landing Licenses to common carrier broadband access providers under Title III;<sup>[1]</sup> (2) provide for modern streamlined Title II regulation of ICANN;<sup>[2]</sup> (3) provide for modern streamlined Title II regulation to ensure "adequate facilities at reasonable charges"<sup>[3]</sup> and modern streamlined Title II regulation for small or medium-sized common carriers.

2. Petitioner also requests that the Commission assist with compliance by the United States Trade Representative with Section 1377 of the Omnibus Trade and Compliance Act of 1988<sup>[4]</sup> by ensuring that the "same footing as regards privileges" standard and the new and revised Open Internet requirements are included as part of the assessment of trading partner commitments to progressively liberalize trade in telecommunications services under the General Agreement on Trade in Service (GATS) Article XIX, paragraph 1 in USTR's 2016 Annual Telecom Trade Report.

William J. Kirsch

May 12, 2015

<sup>[1]</sup> 47 U.S.C. 34-39. See also Report of the Working Party on the Accession of China, World Trade Organization, WT/ACC/CHN/49/Add.2, 1 October 2001.

<sup>[2]</sup> See, e.g., 47 U.S.C. 201, 202, 205, 214, 251.

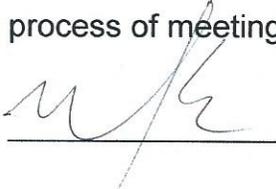
<sup>[3]</sup> 47 U.S.C. 151, 152, 201, 205, 214. See E. Johnson, NSA Chief: Chinese Cyber-Theft "Most Significant Transfer of Wealth in History," Nat. Rev., 6/23/13.

<sup>[4]</sup> 19 U.S.C. 3106.



the Subcommittee on Communications and Technology, Committee on Energy and Commerce, United States House of Representatives Hearing entitled "Internet Governance Progress After ICANN 53" in which Mr. Strickling makes clear that NTIA does not have "any statutory or legal responsibility" to enter into a "sole-source, no-cost-to-the-government contract with ICANN, designating it to perform the IANA functions...."

3. The FCC has failed to provide for adequate network and national security and has failed to provide for access for the Open Internet on a worldwide basis despite the fact that, unlike NTIA, the FCC not only has the authority, but also the statutory and legal responsibility, under Titles I, II and III of the Communications Act of 1934 to provide for adequate nationwide and worldwide facilities. The FCC should begin the process of meeting that responsibility on reconsideration.



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William J. Kirsch

July 8, 2015

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

June 17, 2015

**VIA EMAIL**

Mr. William Kirsch

Dear Mr. Kirsch:

This letter is the Office of the United States Trade Representative's (USTR) response to your request under the Freedom of Information Act (FOIA), 5 U.S.C. §552, dated August 26, 2013, for all information that USTR has to demonstrate whether the World Trade Organization (WTO) on Agreement on Basic Telecommunications Services (ABT) has been a success or failure in USTR's view.

After a search of our files, we have determined that the information you seek can be found on our website at the link below:

<https://ustr.gov/issue-areas/services-investment/telecom-e-commerce/section-1377-review>

This constitutes a complete response to your request. Pursuant to 15 C.F.R §2004.6(d), if you are not satisfied with this decision, then within sixty (60) days you may appeal it in writing to:

USTR FOIA Appeals Committee  
GSD/RDF; Jacqueline Caldwell  
Phone number: 202-395-3419  
Anacostia Naval Annex  
Bldg. 410/Door 123  
250 Murray Lane, S.W.  
Washington, D.C. 20509

Both the letter and the envelope should be clearly marked: "Freedom of Information Act Appeal" and should include a reference to the FOIA Case File number listed below. Heightened security in force may delay mail delivery; therefore we suggest that you also email any such appeal to [foia@ustr.eop.gov](mailto:foia@ustr.eop.gov). In the event you are dissatisfied with the results of any such appeal, judicial review will thereafter be available to you in the United States District Court for the judicial district in which you reside or have your principal place of business, or in the District of Columbia, where we searched for the records you requested.

Mr. William Kirsch  
Page 2

Should you have any questions, please feel free to contact the FOIA office at (202) 395-3419.

Sincerely,

A handwritten signature in cursive script that reads "Melissa Keppel".

Melissa Keppel  
Associate General Counsel

**Case File#: 13082776**

From: SMART Archive  
Sent: 6/17/2014 4:21:25 AM  
To: SMART Core  
Subject: China Uses UN Conference to Promote Its Vision of Cyberspace, Blast U.S. Surveillance

UNCLASSIFIED  
SBU

RELEASE IN FULL



REVIEW AUTHORITY: Clarke Ellis, Senior Reviewer

MRN: 14 BEIJING 2134  
Date/DTG: Jun 17, 2014 / 170819Z JUN 14  
From: AMEMBASSY BEIJING  
Action: WASHDC, SECSTATE IMMEDIATE  
E.O.: 13526  
TAGS: PREL, PGOV, PINR, ECON, KCYB, AINT, TINT, CH  
Captions: SENSITIVE  
Subject: China Uses UN Conference to Promote Its Vision of Cyberspace, Blast U.S. Surveillance

1. (SBU) Summary: During his remarks to open the June 5-6 China-United Nations co-hosted International Workshop on Information and Cybersecurity, PRC Vice Foreign Minister (VFM) Li Baodong delivered a sharp rebuke of U.S. government surveillance while promoting China's vision of peace, state sovereignty, co-governance, and cooperation in cyberspace. China plugged its co-sponsored International Code of Conduct for Information Security, and called for a greater role for the United Nations in Internet governance. Looking ahead to the UN Group of Governmental Experts meeting in July on cyber issues, China called for a discussion of privacy concerns and new international norms in cyberspace to supplement existing international law. Participants were divided over how extensive a role the UN should play in cybersecurity, with most agreeing the UN should continue to facilitate international dialogue on, rather than attempt to manage, cyberspace. End Summary.

China Calls for More Cyber Cooperation...

2. (SBU) China's Ministry of Foreign Affairs (MFA) and the United Nations Regional Center for Peace and Disarmament in Asia and the Pacific (UNRCPD) co-hosted the *International Workshop on Information and Cybersecurity: Towards a Peaceful, Secure, Open and Cooperative Cyberspace* June 5-6 in Beijing. Participants included representatives from ASEAN and P5 member states, Germany, Pakistan, Australia, New Zealand, Japan, Sri Lanka, South Africa, and Chinese and international think tanks. This marked China's first time co-hosting a UN conference on cybersecurity. Panel topics included discussions on states' cyberspace policies and emerging challenges; the formulation of international rules and norms in cyberspace;

CLASSIFICATION: UNCLASSIFIED

2 of 5

the role of the United Nations in promoting cybersecurity dialogue; cyber cooperation among national level actors; and, regional cooperation and capacity building.

...After a Few Opening Barbs

3. (SBU) During his opening remarks, PRC Vice Foreign Minister (VFM) Li Baodong wasted little time in slamming the United States. Without directly naming the United States, Li told participants that the "imbalanced situation" in which "an individual country" could conduct massive surveillance and infringe upon the privacy of other nations' citizens "must be corrected." Li said China was committed to dialogue on cyber issues on the basis of mutual respect, but could not accept a situation in which another country exercises double standards, draws lines out of its selfish interests, defames others, and displays hypocritical, hegemonic behavior. Instead of reflecting on its behavior that has undermined the sovereignty of other nations and the privacy of those nations' citizens, that "individual country" paints itself as a victim.

Panel Highlights: Cyberspace Policies and Emerging Challenges

4. (SBU) During the first session, panelists described aspects of their respective governments' cyber policies and focused on some of the main challenges they face. Sri Lanka Computer Emergency Response Team (CERT) Operations Manager Rohana Palliyaguru described the difficulties ICT (information and communications technology) managers face in convincing their companies' executives to invest in better ICT security systems as the latter group sees no tangible benefits from doing so. Japanese Ambassador for Cyber Policy Shimmi Jun spoke of the need for widespread application of international law in cyberspace and of Japan's short-term plans to provide capacity-building assistance to developing countries in ASEAN, and long-term plans to similarly aid other countries in the Asia-Pacific and Africa. Ambassador Shimmi also strongly endorsed the Budapest Convention on Cybercrime. MFA Cyber Affairs Office Director Li Chijiang said overreliance on another country's ICT products and the unsecure flow of information threatened China's cybersecurity. Countries need laws to manage that flow of information, he asserted.

MFA Cyber Coordinator Outlines PRC Views on Cyber Norms

5. (SBU) Opening the second session on the formulation of international norms in cyberspace, MFA Coordinator for Cyber Affairs Fu Cong echoed many of the same lines -- and requisite U.S.-bashing -- used in VFM Li Baodong's opening address. Fu touted China's role in co-sponsoring the Shanghai Cooperation Organization's (SCO) International Code of Conduct for Information Security (ISCoC) as evidence of China's willingness to make important contributions to international cyber norms-making. The ISCoC had won the support of many countries, he claimed. China was watching with great interest how ICANN (Internet Corporation for Assigned Names and Numbers) would move out from under direct U.S. government control, and believed ICANN should go a step further by physically moving its offices out of the United States so as to be "free of control by unilateral

forces," said Fu. ICANN's government advisory committees (GAC) should have more representatives from developing countries as members, and those members should be given a bigger say in ICANN. Fu also called for strengthening the mandate of the Internet Governance Forum. China was not opposed to the multi-stakeholder model of Internet management, but believed governments should play the primary role.

6. (SBU) Looking ahead to July's meeting of the UN Group of Governmental Experts (GGE), Fu called on GGE participants to study objectively the 2013 GGE report, which he said reflected international consensus to define the principle of sovereignty and the applicability of international law in cyberspace. China believes the body of existing international law is insufficient to deal with the challenges of cyberspace, and that there needed to be new international norms, Fu asserted. The GGE should also discuss states' privacy concerns in the context of norms of behavior in cyberspace. Even though privacy is discussed as part of a broader discussion on human rights at the UN Third Committee, that did not preclude talking about it during the GGE, Fu opined.

7. (SBU) Norms of behavior were also needed to prevent cyber warfare, Fu Cong stressed, adding that the emergence of Stuxnet came against the background of "some countries" developing offensive cyber weapons. It was not acceptable to develop cyber weapons first and seek to control them later, he argued.

8. (SBU) The reason China and other countries so jealously guard the principle of state sovereignty in cyberspace is because "some countries" use the principle of free flow of information to "propagate lies against other governments," explained Fu. Unless countries abide by the principle of non-interference in other states' affairs, China has no choice but to safeguard its sovereignty in cyberspace. The Snowden leaks revealed the magnitude of U.S. surveillance, which made it more than just an "old issue" of state-on-state espionage, argued Fu.

#### Pushing Back on China's Claims

9. (SBU) Germany's Head of International Cyber Policy Martin Fleischer challenged several of Fu Cong's claims. It was false to assert that a few western countries dominated Internet governance, he said, pointing out that each ICANN member country had one vote in the organization. Fleischer also called it "illogical" to see a link between U.S. oversight over ICANN and NSA surveillance and cast doubt on the view that only under the UN framework could Internet governance be made more democratic and efficient. UK-based International Institute of Security Studies' (IISS) Director of Transnational Threats Nigel Inkster asked rhetorically whether any government that had technical surveillance capabilities on par with those of the U.S. National Security Agency (NSA) would not have used them for national security purposes as the United States had.

#### Split Over UN Role in Cybersecurity

10. (SBU) In the third session, participants were divided over the role the

United Nations should play in cybersecurity. Representatives from UN agencies described the UN as a unique platform for promoting international dialogue on cybercrime and cybersecurity and building capacity, but dismissed any attempt to outsource cyber issues wholesale to the UN or to ascribe to it the role of global cyber policeman. IISS's Nigel Inkster called for the UN to develop practical working arrangements with entities such as ICANN and the Internet Engineering Task Force (IETF) rather than seeking to supplant them. Chinese Ministry of State Security-affiliated China Institutes of Contemporary International Relations (CICIR) Vice President Yang Mingjie said the UN's inclusiveness and unparalleled authority made it a critical player on cybersecurity issues, and contrasted it with what he called ICANN's lack of inclusiveness. Yang also recommended that the UN ensure it has adequate financial resources to follow up on activities of the Internet Government Forum and the GGE. Georgina Sargison, an official from New Zealand's Ministry of Foreign Affairs and Trade, argued that the UN could not be the main actor on Internet governance issues, and that its main role should instead be as facilitator of such debate.

#### Challenges and Opportunities of Cyber Cooperation

11. (SBU) During the final two sessions, discussants raised the challenges and opportunities posed by cooperation on cyber issues. MFA-affiliated China Institute of International Studies (CIIS) Associate Research Fellow Xu Longdi reflected his government's view that states must command the central role in guarding cyberspace because only states could "mobilize social forces" and connect policy with technical aspects of cyberspace. U.S. Information Technology Office (USITO) President Matt Roberts stressed that governments alone are ill-equipped to develop Internet standards because they cannot keep up with the pace of innovation. Dialogue and partnership between governments and the private sector are critical to Internet security, he added.
12. (SBU) Republic of Korea Ministry of Foreign Affairs International Security Division Deputy Director Kang Joo-yeon described her country's strategic decision to rely on a free, open cyberspace to drive new economic growth policies. Many countries were losing out on such opportunities by focusing too much on threats, she observed. The 2013 Seoul Conference on Cyberspace increased global awareness of cyber issues and highlighted the need for more cyber cooperation, she recalled, but it was far too premature to entertain talk of any treaty on cyberspace, as some participants had called for. After all, how many countries were even prepared to negotiate a cyberspace treaty when they did not yet fully understand the issues, she asked. Australian Department of Foreign Affairs and Trade Assistant Secretary for International Security Ian Biggs and UK Cabinet Office Assistant Director for Cyber Security and Information Assurance Olivia Preston voiced their governments' support for increasing cyber capacity-building and enhancing cooperation on cyber issues.

#### The U.S. Viewpoint

13. (SBU) State Department Deputy Coordinator for Cyber Issues Tom Dukes

laid out the U.S. vision for an open, interoperable, secure, and reliable cyberspace. He emphasized the importance of the free flow of information and U.S. support for the multi-stakeholder system of Internet governance. Dukes noted the U.S. participation in Brazil's recently concluded Net Mundial conference, and cited U.S. support for the upcoming UN GGE and the development of cyber confidence-building measures in fora such as the Organization for Security and Cooperation in Europe. Finally, he pointed out that the SCO ISCoC is fundamentally at odds with freedom and human rights, and emphasized the importance of bilateral and multilateral dialogue on cyber issues.

Signature: KRITENBRINK

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Drafted By: BEIJING:Flens, William (Bill) (Beijing)  
Cleared By: SCCI: TDukes  
ECON: THilleary  
ECON: KWald

Approved By: POL:Heller, James R (Beijing)  
Released By: BEIJING:Flens, William (Bill) (Beijing)  
Info: BEIJING, AMEMBASSY ROUTINE ; CD GENEVA, USMISSION ROUTINE ;  
WHITE HOUSE NATIONAL SECURITY COUNCIL WASHINGTON DC ROUTINE ;  
SECDEF WASHINGTON DC ROUTINE ; CIA WASHINGTON DC ROUTINE ;  
DIA WASHINGTON DC ROUTINE ; HQ USPACOM ROUTINE ;  
ASEAN REGIONAL FORUM COLLECTIVE ROUTINE ;  
UN SECURITY COUNCIL COLLECTIVE ROUTINE

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**From:** William Kirsch <email>  
**Sent:** Monday, July 11, 2016 7:06 AM  
**To:** eo-commission; cybercommission  
**Subject:** Open Meeting of the Commission on Enhancing National Cyber-security-Texas.  
**Attachments:** wc16-106page1.jpg; wc16-106page2.jpg; wc16-106page3.jpg

Please include my comments in WC Docket 16-106, Federal Communications Commission, Protecting the Privacy of Customers of Broadband and Other Telecommunications Services in the meeting record.

Thank you.

William J. Kirsch

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION

PROTECTING THE PRIVACY OF  
CUSTOMERS OF BROADBAND AND  
OTHER TELECOMMUNICATIONS SERVICES

WC DOCKET 16-106  
FCC 16-39

COMMENTS OF WILLIAM J. KIRSCH

In the Open Internet proceeding the FCC stated that sunshine is the best policy. The NPRM falls far short of that approach in protecting the privacy of customers of broadband and other telecommunications service, but threatens 1st, 4th, 5th, 10th and 14th Amendment rights.

As Rogier Cremers, Professor at Leiden University, has stated, the internet is as much a tool for control, surveillance and commercial considerations as it is for empowerment. See Simon Denyer, China's scary lesson to the world: Censoring the Internet works, Washington Post, May 23, 2016. The proposal to treat both source and destination internet protocol addresses as customer proprietary network information violates the equal protection rights of customers subscribing to disfavored providers. The NPRM affords wealthy customers of "edge providers" privacy benefits under Section 222 and the "edge providers" liability protection under Section 230, without imposing the same "burdens" including a tax-like imposition of subsidies that include subsidy payments that exceed biblical tithing of ten percent. This political favoritism redistributes wealth from the middle class to a Silicon Valley elite. Five U.S. companies, for example, Amazon, Apple, Facebook, Google and Microsoft, have a market capitalization of some \$2 trillion dollars and no Title II responsibilities. Even worse it means that small "edge providers" will likely be unable to compete with the Robber Baron giants and must rely on the hope that there is no new dot.com bubble.

The FCC denied an AT&T purchase of T-Mobile, but permitted a \$130 billion Verizon buyout of Vodafone. Both were in violation of Section 310. The latter exceeded half the total U.S. investment in broadband over the last decade. The FCC also permitted the acquisition by SoftBank of Sprint despite the close association with the PRC's trade protected e-commerce giant Alibaba and the warehousing of up to one-sixth of available U.S. spectrum.

In Prometheus v. FCC, 15-3863, May 25, 2016, the Third

Circuit noted that although "the courts owe deference to agencies, we also reconize that, [a]t some point we must lean forward from the bench to let an agency know, in no uncertain terms, that enough is enough." See also, Public Citizen Health Research Group v. FCC, 314 F. 3d 143, 158 (3d Cir. 2002). The Court continued that "equally troubling is that nearly a decade has passed since the Commission last completed a review of its broadcast ownership rules," required by Section 202 (h) of the Telecommunications Act of 1996, Pub. L. No 104-104, 110 Stat. 56 (1996).

Enough is enough. Enough of the FCC's unilateral trade concessions and promotion of most favored nation free riding by U.S. trading partners. Well over two decades have passed since the FCC departed from President Wilson's "same footing as regards privileges" standard incorporated by Congress into 47 U.S.C. 34-39 and 47 U.S.C. 310 and used successfully through the Second World War and the Cold War. The FCC's failure to apply the same footing standard even after the explicit adoption of a reciprocity provision by Congress signed by the President in the Trade Act of 2015 represents a grave threat to the privacy of all Americans. We now know that the World Trade Organization (WTO) Agreement on Basic Telecommunications and related agreements were a failure. U.S. common carriers do not have the same footing in any, much less all, of the major U.S. trading partners, including the Japan, the European Union (EU), Canada or any of the BRICs.

The \$8 trillion internet economy is increasingly at risk as a result of the increasingly obvious failure of telecommunications provisions of the WTO General Agreement on Trade in Services (GATS). One in four of the world's online population is now behind the PRC's Great Firewall or what the PRC calls its Golden Shield. The FCC fails to provide any evidence in its NPRM of any PRC-related privacy protection for source or destination IP addresses. While PRC mercantilist approach in the WTO resulted in the observation by the Director of the National Security Agency that PRC cybertheft has resulted in the greatest transfer of wealth in history the FCC NPRM does not address the possibility that predatory PRC protectionism now may result in the purchase (rather than theft) of strategic internet assets in the United States or abroad using some or all of the \$3.5 trillion in PRC foreign currency reserves.

The FCC NPRM also fails to address the new privacy threat to all Americans from the transfer of control of the North American Numbering Plan administration to a Swedish company and the

transfer of control of the IANA administration to a Swedish President. In addition, the FCC fails to address the possible threat to the \$5 trillion in transatlantic investment identified by the United States Trade Representative in the 2016 National Trade Estimate and 1377 Telecom Trade Report from the *Schrems* decision of the European Court of Justice, C-362-14, Oct. 6, 2015. Neither the Department of Commerce Privacy Shield nor the USTR proposed Transatlantic Trade and Investment Partnership (TTIP) texts have been published in the Federal Register as required by the Trade Act of 1974, see USTR FR Notice, April 1, 2013, or Section 553 of the APA, see *D.C.P.S.C. v. FCC*, 906 F. 2d 718 (1990). Nor has NTIA published its proposed approval of the ICANN IANA transition in the Federal Register. FCC approval of its proposed privacy rules in the absence of such public notice would not only be premature, but unlawful. Indeed, FCC approval of its privacy proposal in the absence of the completion and publication of the proposed NTIA ICANN IANA transition and the USTR TTIP and TiSA texts (and the Transpacific Partnership (TPP) text) in the Federal Register would be unlawful and inconsistent with Executive Order 13, 526 Section 1.7(a)(1) that provides that in no case shall information be classified, or fail to be declassified, in order to conceal a violation of law, inefficiency or administrative error. Should the FCC adopt its proposed rules, the TTIP and TiSA texts must be declassified. See, e.g. Interagency Security Classification Appeals Panel request 2016-136 and USTR 16021746.

The FCC failure to modernize its rules to apply modern, streamlined, technology neutral, agency neutral, regulation to new and legacy facilities-based and resale providers of telephone and data communications services under Titles I, II and III of the Communications Act and the Communications Assistance for Law Enforcement Act (CALEA), 47 U.S.C. 1001-1010, even after the Paris and Brussels attacks, is at the heart of the problem. See, e.g. FCC FOIA 2016-514. APA 706(1) and mandamus appear to be the only available options under *Oil, Chemical and Atomic Workers Union v. Occupational Safety and Health Administration*, 145 F. 3d 120, 123 (3d Cir. 1998) citing *Telecommunications Research and Action Ctr.*, 750 F. 2d 70, 75 (D.C. Cir. 1984). In light of the Prometheus Court's clear concern that allows a Circuit Court to "compel agency action unlawfully withheld or unreasonably delayed" I request that the FCC issue a Further Notice of Proposed Rulemaking after the declassification of the TTIP and TiSA texts, the publication in the Federal Register of the TPP, TTIP, TiSA and Privacy Shield texts and the NTIA IANA proposal, and the re-establishment of the "same footing" standard.

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**From:** William Kirsch <email>  
**Sent:** Monday, July 11, 2016 7:09 AM  
**To:** eo-commission; cybercommission  
**Subject:** Open Meeting of the Commission on Enhancing National Cyber-security, Texas  
**Attachments:** cpnicann.rtf

Please include my reply comments in the record of the Open Meeting in Texas of the Commission on Enhancing National Cyber-security.

Thank you.

William J. Kirsch

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION

PROTECTING THE PRIVACY OF  
CUSTOMERS OF BROADBAND AND  
OTHER TELECOMMUNICATIONS SERVICES

WC DOCKET 16-106  
FCC 16-39

REPLY COMMENTS OF WILLIAM J. KIRSCH

In *Self-Reliance* (1841) Ralph Waldo Emerson wrote that a foolish consistency is the hobgoblin of little minds, adored by little statesmen. The Federal Communications Commission (FCC) is seeking to demonstrate its high-mindedness by proposing a privacy regime for Customer Proprietary Network Information (CPNI) that is inconsistent with what a judge from the U.S. Circuit Court for the District of Columbia referred to as an "anomalous" FCC forbearance from regulation of so-called "edge providers" or common carrier resellers of data services. The FCC forbearance extends to any regulation of the Internet Corporation for Assigned Names and Numbers (ICANN) despite the statement of Chairman Wheeler, under oath, at a Senate Judiciary subcommittee hearing that the Internet is a successor network to the telephone network and the statement of Assistant Secretary Strickling that NTIA has no statutory authority or legal responsibility for ICANN.

The FCC has failed to ensure nondiscriminatory access to an adequate nationwide and worldwide network at just and reasonable rates despite the clear statutory direction of the Communications Act of 1934 and the time-tested principles applied to common carriers under common law since Magna Carta era Thames ferries. The issue of trust of the Internet arises again and again in a way that U.S. consumers never experience with regard to telegraph, telex, telephone or television services. Nevertheless, the FCC has proposed an assymmetrically intrusive and burdensome regulatory approach for broadband providers, like AT&T, Comcast and Verizon, that account for only \$600 billion in market capitalization. The Commission would not apply ANY regulation to resellers, such as Amazon, Facebook and Google that have a market cap of \$1.2 trillion, nor would it require them to contribute to a broadband universal service fund that benefits them as much or more than legacy providers.

While the perfect must not be the enemy of the good, Supreme Court precedent, which rejected the right to privacy formulated by Justice Brandeis in 1928, permits privacy regulation only for real harm. Unfortunately, the FCC proposal does not rise to the standard of a good approach and, in fact, does more harm than good.

Until the FCC's 2015 *Open Internet* order re-classified broadband providers as common carriers the Federal Trade Commission (FTC) provided a privacy standard that focused on the harm associated with sensitive information, such as financial and medical information, shared with third parties. The FTC approach often permits an implied consent or opt-out approach. This has given the United States a comparative trade advantage in advertising. Today, advertising accounts for as much as one in six of U.S. sales annually. In contrast, Europe faces a Brexit and possible dissolution of the European Union.

The FCC's proposed opt-in approach, already used in Europe, led to a drop there in advertising effectiveness by almost two-thirds. And although touted as a move to protect data security, the FCC proposal does not protect consumers from unscrupulous interconnectors stealing social security numbers from the Office of Personnel Management or engaging in identity theft from safe havens in places like Russia or Nigeria. Advertising is an essential element of future economic growth.

Simply put, the FCC has failed to provide for encrypted email and domains and therefore failed to provide for an adequate network under the Communications Act of 1934, as amended. The FCC failure puts us all at risk. The FCC proposal treats U.S. broadband access providers as more of a threat to privacy than foreign governments and criminals.

Rather than promoting the U.S. comparative advantage in advertising and making improvements in security, including information sharing that would improve network management and management of protective firewalls, the FCC proposes new burdens on broadband facilities providers that individually account for only a third of the U.S. market rather than common carrier resellers that command market shares of fifty to ninety percent of their advertising supported markets.

The Communications Workers of America note in comments to the FCC that the three largest regulated providers of broadband have 600,000 workers, but that the three unregulated big three resellers or "edge providers" have only 77,000. The FCC approach is not only an assault on our personal and national security, but also is an assault on the working class.

Experts filing comments note that information sharing critical to protecting users from abusive, fraudulent and other unlawful acts means that the privacy proposals fall far short of protecting children, teens and the elderly. These experts also note that the FCC failed to consider less burdensome solutions, such as encryption, de-identification of individually identifiable information, and a nutrition label-like format for privacy disclosure. This is odd, perhaps, given that the FCC cannot be unfamiliar with the legendary late Jack Valenti's enduring PG solution for the motion picture industry.

Nor can the FCC be unfamiliar with industry and consumer concerns with the potential monetary losses and loss of privacy and reputation associated with criminals fraudulently taking over a customer's mobile devices. Congress has already publicized security flaws associated with the use of mobile numbers. This makes the FCC indifference to the Department of Commerce's deregulation of ICANN all the more baffling despite clear Senate interest in a more cautious approach. The FCC cannot protect consumers' broadband privacy and wave goodbye to oversight of U.S. telephone and internet numbers.

The FCC ignores emerging best practices, such as two factor authentication, when almost two-thirds of all data breaches result from weak, default or stolen passwords. The FCC failed to make the case that by the FTC's own standard of real harm regulation of domain name queries, which are almost never encrypted, requires regulatory oversight. For that would require FCC regulation of politically favored Silicon Valley and of ICANN. And it risks bursting the dotcom bubble 2.0.

The Department of Commerce, which has stated that it has no statutory authority or legal responsibility for internet numbering has just announced that it will nevertheless de-regulate the already privatized ICANN. The FCC, which does have statutory authority and legal responsibility proposes to forbear from regulation of ICANN despite the transfer of control to a Swedish President. Sweden, while a member of the European Union, is not a full member of the North Atlantic Treaty Organization (NATO) and there is no legal basis for a transfer of control that would include a national security exception under the World Trade Organization (WTO) General Agreement on Trade in Services (GATS). Therefore, both the ICANN transfer of control and the control of the administration of telephone numbers from Neustar to Swedish owned Telcordia mean that the United States may be required to transfer control in the future to state owned enterprises from the People's Republic of China, or Russia, or Saudi Arabia, or be subject to trade sanctions under the WTO dispute resolution proceedings.

The United States Trade Representative (USTR) which negotiated a TransPacific Partnership (TPP) text in secret ostensibly to protect an open internet failed to address the security issues in TPP and instead focused on a Silicon Valley agenda associated with a concern about data localization requirements. That issue, however, cuts both ways. As the PRC and the oil states meet in Dubai to discuss possible future purchases related to the \$3.5 trillion in PRC foreign currency reserves and a new Saudi-Aramco-related \$2 trillion Saudi sovereign wealth fund, the TPP opens the door for a flag of convenience approach by Brunei that might subject U.S. data to sharia law.

The magnificent *Wizard of Oz* warned us of the dangers that New Deal era corruption posed to a heartland home.

Absent the re-establishment of President Wilson's "same footing as regards privileges" standard used successfully through the Second World War and the Cold War and market access for U.S. broadband providers and U.S. allies in the TPP, the Trans-Atlantic Trade and Investment Partnership (TTIP) and the Trade in Services Agreement (TiSA), the most likely legacy of ObamaTrade appears to be a Brexit and a dissolution of the European Union. It is not too late, however, for TPP side letters or for the publication of the draft TTIP and TiSA agreements to make much needed improvements required by the Trade Act of 2015.

Otherwise, like the wicked witch, TPP, TTIP and TiSA are not only dead on arrival, but most sincerely dead. This would be a tragedy of the commons that is avoidable through mid-course corrections now that would promote new digital trade in the Pacific and an expansion of the successful post-war European economic integration essential to future global peace and prosperity.

As the emerging record in the FCC's privacy proceeding already makes clear, however, the promise of future Information Age innovation, including the Internet of Things that make possible enormous savings in areas such as home energy management, will only be possible with a secure and trusted Internet subject to minimal, but essential, regulation. To make that happen the FCC will have to do a Presidential year pivot and make it clear that although its intentions are good, Emerson was correct. To be great is to be misunderstood.

William J. Kirsch  
June 12, 2016

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**From:** William Kirsch <email>  
**Sent:** Monday, July 11, 2016 7:13 AM  
**To:** eo-commission; cybercommission  
**Subject:** Open Meeting of the Commission on Enhancing National Cyber-security-Texas  
**Attachments:** ntia16-21page1.jpg; ntia16-21page2.jpg; ntia16-21page3.jpg; ntia16-21page4.jpg; ntia16-21page5.jpg; ntia16-24page1.jpg; ntia16-24page2.jpg; ntia16-25page1.jpg; ntia16-25page2.jpg; ntia16-26page1.jpg; ntia16-26page2.jpg; ntia16-26page3.jpg; ntia16-27page1.jpg; ntia16-27page2.jpg; ntia16-28page1.jpg; ntia16-28page2.jpg; ntia16-36page1.jpg; ntia16-36page2.jpg; ntia16-36page3.jpg; ntia16-38page1.jpg; ntia16-38page2.jpg; ntia16-38page3.jpg; ntia16-38page4.jpg; ntia16-38page5.jpg; ntia16-38page6.jpg; ntia16-38page7.jpg; ntia16-38page8.jpg; ntia16-38page9.jpg; ntia16-38page10.jpg; ntia16-38page11.jpg; ntia16-38page12.jpg; ntia16-45page1.jpg; ntia16-45page2.jpg; ntia16-58page1.jpg; ntia16-58page2.jpg; ntia16-64page1.jpg; ntia16-64page2.jpg; ntia16-64page3.jpg

Please include the Freedom of Information Act responses from the National Telecommunications and Information Administration attached below in the record of the Open Meeting of the Commission on Enhancing National Cyber-security in Texas.

Thank you.

William J. Kirsch



UNITED STATES DEPARTMENT OF COMMERCE  
National Telecommunications and  
Information Administration  
Washington, D.C. 20230

February 25, 2016

Mr. William Kirsch  
[REDACTED]

RE: NTIA FOIA 016-021

Dear Mr. Kirsch:

On February 1, 2016, the National Telecommunications and Information Administration (NTIA), Office of the Chief Counsel, received a request under the Freedom of Information Act (FOIA), as amended (5 U.S.C. § 552). In this request, you sought:

- Any and all information associated with the opportunity provided by the U.S. participation in the Council of Europe Convention on Cybercrime or the "Budapest Convention" to address the concerns of the European Court of Justice in the Schrems case and establish a so-called US-EU Safe Harbor 2.0.

On that same date, NTIA acknowledged receipt of this FOIA and sought clarification regarding the scope of this request. NTIA also requested additional contact information as this request did not contain a physical address and the previous mail sent to the address on file had been returned by the Post Office.

After several conversations via email, NTIA agreed to proceed on February 3, 2016 with your modified request as follows for all records from January 1, 2016 through February 3, 2016:

1. Any and all information concerning "new," if any, sources of authority of the Commission of the European Community to address the national security and law enforcement concerns of the European Court of Justice in the Schrems case given the traditional absence of authority under the Treaty of Rome over transfers of law enforcement data (subject to bilateral agreements and the Council of Europe Budapest Convention) and national security data (subject to the North Atlantic Treaty Organization (NATO) oversight) and the apparent narrow focus of the ECJ on Ireland in the Schrems request related to Facebook.
2. Please provide Commerce information on the current negotiations concerning so-called Safe Harbor 2.0 only to the extent that it is information related to: (1) a possible solution to the Schrems case by his consent to his continued use of the Facebook service; (2) Irish data protection authority statements, if any, on national security transfers in the absence of Irish participation in NATO; and (3) Irish data protection authority statements related to law enforcement data transfers under Schrems including any statements that demonstrate U.S. compliance with the ECJ Schrems standard under the Budapest Convention.

3. Please also include under 3 above any and all information associated with European Union assertion, if any, of authority over law enforcement- or national security-related data transfers and the "delegation" of such authority, if any, to Member States under any EU directive that would justify a "suspension," if any, of data flows to the United States.
4. Please also include any and all information whether any such suspension would exceed the EU authority and infringe upon NATO and Council of Europe authority.

As a part of this request, you also sought a fee waiver by asserting the following:

Please waive any and all fees in the public interest in protecting the \$4 trillion in U.S.-E.U. investment and \$1 trillion in U.S. – E.U. services trade.

Under the Department of Commerce's FOIA regulations, NTIA is required to charge fees for processing FOIA requests. 15 C.F.R. § 4.11(a). However, these regulations permit a fee waiver when the requester has demonstrated that (i) disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and (ii) disclosure of the requested information is not primarily in the commercial interest of the requester. 15 C.F.R. § 4.11(k)(1). To determine whether these elements are met, the agency reviews the information submitted by the requester against the following factors: whether the subject of the requested records concerns the operations or activities of the government; whether the disclosure is "likely to contribute" to an understanding of government operations or activities; whether disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject; whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities; and whether the requester has a commercial interest that would be furthered by the requested disclosure. 15 C.F.R. § 4.11(k). The requester bears the burden of establishing these elements in the administrative record.<sup>1</sup>

NTIA finds that you have not met your burden for this request, and therefore, your request for a fee waiver is denied. First, NTIA finds that you have not provided enough information as to how this request for a fee waiver concerns the operations or activities of NTIA.<sup>2</sup> While this generally is a low threshold your statement regarding the fee waiver request does not support this point as you only attempt to argue that there is a public interest in protecting certain funds. You do not connect that in any to NTIA and its operations. Since this is your argued basis for the fee waiver and the public interest for this request fails without further explanation and details. You do not tie the records you are requesting to any effort or mission required for NTIA. Therefore, while you are seeking records from NTIA for their informative value you have failed to tie those activities specifically to NTIA's operations or activities and therefore cannot meet this threshold factor for a public interest fee waiver.

<sup>1</sup> *Clemente v. FBI*, 741 F.Supp.2d 64, 75 (D.D.C. 2010) (the FOIA requester bears the burden of demonstrating statutory standard is satisfied).

<sup>2</sup> See *Brown v. US Patent and Trademark Office*, 445 F. Supp. 2d 1347, 1359 (M.D. FL 2006) (The Court held that a request for lawsuits against the USPTO and the names of the parties bringing those suits was not a request regarding its operations.).

NTIA finds that you have not met your burden regarding the second factor as well as the remaining public interest factors. For this factor you have not demonstrated how the requested information is "likely to contribute" to an increased understanding by the public of NTIA's operations. In other words, the disclosable portions of the requested information must be meaningfully informative in relation to the subject matter of the request.<sup>3</sup> Therefore, to qualify for a fee waiver, it is incumbent upon the requester to demonstrate how disclosure of the requested information is likely to contribute to the public's understanding of NTIA's operations on this matter – more than is already publicly available.<sup>4</sup> Your statement that this is in the "public interest" does not adequately address this point and therefore you have not met your burden on this prong. Simply mentioning the phrase "public interest" is not sufficient to meet this standard especially when such a statement does not also include evidence that the records that would be responsive to this request, if any, are in the public interest. In fact, it is well settled law that conclusory statements regarding the public interest do not satisfy the statutory requirements, but must be reasonably specific and detailed.<sup>5</sup> Even where circumstances may suggest that there may be a public interest in the records sought, but where a requester only quotes the statutory language cannot satisfy this part of the test.<sup>6</sup> It is incumbent upon the requester to provide a specific and detail explanation as to why release of certain records would be in the public interest. The requester has not argued and must do so, that the additional information not already public, if any, requested here will add to the public's understanding.<sup>7</sup>

As to the third prong, the requester must demonstrate that the disclosure of the requested records must contribute to "public understanding" as opposed to the individual understanding of the requester or a narrow segment of interested persons.<sup>8</sup> The focus of this part of the analysis is on the benefit to be derived by the public and whether the requester has the ability and intention to disseminate the information to the public and not some personal interest in the subject matter.<sup>9</sup> Further it is incumbent upon the requester to describe in reasonably specific and non-conclusory

<sup>3</sup> 15 C.F.R. §4.11(k)(2)(ii); *AFGE v. US Dep't of Commerce*, 632 F.Supp. 1272, 1278 (D. D.C. 1986) (holding union allegations of malfeasance in its FOIA request were too "ephemeral" or remote in order to justify the search without a fee without further reason to suppose that the corruption suspected will be found).

<sup>4</sup> See *Klein v. Toupin*, 2006 U.S. Dist. LEXIS 32478, at 11-12 (D. D.C. May 24, 2006) (the Court found that bare assertions of misconduct without supporting evidence are not meaningfully informative of government operations and cannot satisfy this prong.).

<sup>5</sup> *Judicial Watch, Inc. v. US Dep't of Justice*, 185 F. Supp.2d 54, 60 (D.D.C. 2002) (in this case the requester simply restated its own mission which the court found insufficient and stated that the requester "has the burden of explaining with reasonable specificity how and why the disclosure of this particular information will serve the public interest . . . .")

<sup>6</sup> *Sloman v. US Dep't of Justice*, 832 F.Supp. 63, 68 (D.D.C. 1993).

<sup>7</sup> See e.g. *Sloman* at 68; see also, *Marino v. US Dep't of Justice*, 993 F.Supp. 2d 14, 21 (D.D.C. 2014).

<sup>8</sup> See *Forest Guardians v. U.S. Dep't of the Interior*, 416 F.3d 1173 (10th Cir. 2005).

<sup>9</sup> See *Brunsilus v. DOE*, 2008 US App. LEXIS 15314, at 2 (D.C. Cir. July 16, 2008)(emphasizing the requester's personal interests are not relevant to fee waiver inquiry such as his indigence and private litigation).

terms his ability to disseminate the requested information.<sup>10</sup> The requester must therefore demonstrate whether the public would benefit from disclosure through his dissemination of the records, including his analysis, ability to extract information and synthesize the data and then effectively convey the information to the public. Requesters who make no showing of how the information would be disseminated do not meet the burden required under this factor.<sup>11</sup> The key point here is that a fee waiver is not for one individual's benefit, but for the entire community. It appears here that the records are sought for your own interest and for your research. You only mention that the public would be interested in protecting certain funds, but you fail to tie this general idea to the records requested and to mention anything about your intention to disseminate the records and your analysis to benefit the public. Without more you have not satisfied this factor.

For the fourth factor, the disclosure of agency records must contribute "significantly" to public understanding of agency operations or activities. In other words, the public's understanding of the subject matter in question, as compared to the level of public understanding that exists prior to the disclosure, must be likely to be enhanced by the disclosure to a significant extent.<sup>12</sup> Here, your succinct assertion provides no evidence that these records, if any, will contribute significantly to the public's understanding of NTIA's activities and operations regarding this matter.

Finally, under prongs five and six, the agency must weigh the requester's commercial interest versus the public's interest in the information. In this case, as the requester has not met the demonstrated public interest in the information, it is very difficult for NTIA to balance the public interest against this commercial interest, if any. While you do not argue that you do not have any commercial interest in this information, and NTIA has no reason to believe that you do, NTIA finds, based upon the information provided to date, that a fee waiver is not in the public interest for this request. *Please note that you may provide additional information regarding your fee waiver request and NTIA will reconsider your request.*

Nevertheless, NTIA has categorized your request as "other," which is a discounted fee. As such, you must pay only for the duplication and search costs for processing this FOIA request, excluding any review costs and the cost to duplicate 100 pages and two hours of search.<sup>13</sup> NTIA has estimated the fee for this request to be \$274.54. NTIA anticipates that this may only be a portion of the total fee. If NTIA has reason to believe that the processing of your request will exceed the cost estimate, NTIA will notify you at that time. Department of Commerce regulations permit you to contact NTIA to discuss modifying your FOIA request to meet your needs at a lower cost. 15 C.F.R. § 4.11(e).

<sup>10</sup> *Perkins v. U.S. Dep't of Veterans Affairs*, 754 F.Supp.2d 1, 8 (D.D.C. 2010) (the requester did not qualify under this factor because he did not say more than that he had an intention to disseminate the information, but provided no real details of how he intended to do so.).

<sup>11</sup> *Marino*, at 18 (holding that because the requester's vague statements about dissemination are tenuous, the court upheld a determination that he did not meet this requirement).

<sup>12</sup> 15 C.F.R. § 4.11(k)(2)(iv). See *Larson v. Cent. Intelligence Agency*, 843 F.2d 1481, 1483 (D.C. Cir. 1988).

<sup>13</sup> 15 C.F.R. § 4.11(c).

Should you wish to proceed, please remit the estimated total fee of \$274.55. A check should be made out to the "U.S. Department of the Treasury." Once NTIA receives your payment, we will begin the search and processing of documents responsive to this request. The check should be sent to:

National Telecommunications and Information Administration  
Office of the Chief Counsel  
1401 Constitution Avenue, N.W., Room 4713  
Washington, DC 20230

You have the right to appeal an adverse determination (partial denial or denial) of your FOIA request. An appeal must be received within 30 calendar days of the date of this response letter by the Assistant General Counsel for Administration (Office), Room 5898-C, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230. Your appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to 202-482-2552, or by FOIAonline, if you have an account in FOIAonline, at <https://foiaonline.regulations.gov/foia/action/public/home#>.

The appeal must include the following: a copy of the original request; this response to the request; a statement of the reason why the withheld records should be made available; and the reason why denial of the records was in error. The submission (including e-mail, fax, and FOIAonline submissions) is not complete without the required attachments. The appeal letter, the envelope, the e-mail subject line, and the fax cover sheet should be clearly marked "Freedom of Information Act Appeal." The e-mail, fax machine, FOIAonline, and Office are monitored only on working days during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next normal business day.

Should NTIA not receive a response to this correspondence within 30 days, NTIA will close this matter administratively. If you have any questions regarding the processing of your request, please contact Stacy Cheney, Senior Attorney Advisor, at 202-482-1864 or via email at [stcheney@ntia.doc.gov](mailto:stcheney@ntia.doc.gov).

Sincerely,



Kathy D. Smith  
Chief Counsel



UNITED STATES DEPARTMENT OF COMMERCE  
National Telecommunications and  
Information Administration  
Washington, D.C. 20230

March 22, 2016

Mr. William Kirsch  
[REDACTED]

RE: NTIA FOIA 016-024

Dear Mr. Kirsch:

On February 10, 2016, the National Telecommunications and Information Administration (NTIA), Office of the Chief Counsel, received your request under the Freedom of Information Act (FOIA), as amended (5 U.S.C. § 552). In this request, you sought a copy of the following:

- Any and all information concerning NTIA's position with regard to transfer of control of a non-profit organization associated with changes in board membership, including with regard to telecommunications services, information services, and non-commercial broadcasting, including FM stations.

NTIA acknowledged receipt of this request on February 11, 2016 and sought clarification. After several emails exchanges and modifications from you regarding the scope of this request, NTIA agreed to proceed with this request on February 29, 2016. The new modified request is as follows:

- Any and all information concerning NTIA's position, including those that were filed with the FCC, that are not publicly available, with regard to transfer of control of a non-profit organization associated with changes in board membership, including with regard to telecommunications services, information services, and non-commercial broadcasting, including FM stations for the past 60 days. (Dec. 10, 2015 – Feb. 25, 2016). This includes NTIA's review of non-commercial broadcasting and including whether NTIA disagrees with the recent FCC decision on this issue. This also includes any NTIA comments or positions regarding non-commercial broadcasting. This includes any ICANN related filings at the FCC, including the docket number and name of the filing.
- Any NTIA review of written comments, including email, regarding ICANN's announcement of a new President and include any NTIA review that might affect the government's view of the ICANN transfer of control with respect to the IANA functions transfer process. This should include a review of ICANN's so-called cross community working group on accountability. The relevant search period is Dec. 10, 2015 – Feb. 25, 2016.

You also originally sought a fee waiver for this request. In doing so you asserted:

- Please waive any and all fees in the public interest in ensuring compliance with U.S. law, including 47 U.S.C. 34-39, 151, 152, 201, 202, 205, 222, 251, and 310.

NTIA conducted a thorough search for records responsive to this request and discovered no responsive records. Under the Department of Commerce's FOIA regulations, NTIA is required to charge fees for processing FOIA requests. 15 C.F.R. § 4.11 (a). NTIA has categorized your request as "other," which is a discounted fee. As such, you must pay only for the duplication and search costs for processing this FOIA request, excluding any review costs and the cost to duplicate 100 pages and two hours of search. However, NTIA the fee for processing this request is less than \$20.00 and therefore, there is no charge for this request. Hence, your request for a fee waiver is moot.

This letter concludes the Department's initial response. You have the right to appeal an adverse determination (partial denial or denial) of your FOIA request. An appeal must be received within 30 calendar days of the date of this response letter by the Assistant General Counsel for Litigation, Employment, and Oversight (Office), Room 5898-C, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230. Your appeal may also be sent by e-mail to [FOIAAppeals@doc.gov](mailto:FOIAAppeals@doc.gov), by facsimile (fax) to 202-482-2552, or by FOIAonline, if you have an account in FOIAonline, at <https://foiaonline.regulations.gov/foia/action/public/home#>.

The appeal must include the following: a copy of the original request; this response to the request; a statement of the reason why the withheld records should be made available; and the reason why denial of the records was in error. The submission (including e-mail, fax, and FOIAonline submissions) is not complete without the required attachments. The appeal letter, the envelope, the e-mail subject line, and the fax cover sheet should be clearly marked "Freedom of Information Act Appeal." The e-mail, fax machine, FOIAonline, and Office are monitored only on working days during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next normal business day.

If you have any questions, please contact Stacy Cheney, Senior Attorney Advisor, at 202-482-1864 or via email at [scheney@ntia.doc.gov](mailto:scheney@ntia.doc.gov).

Sincerely,



Kathy D. Smith  
Chief Counsel



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Telecommunications and**  
**Information Administration**  
Washington, D.C. 20230

March 23, 2016

Mr. William Kirsch

[REDACTED]

RE: NTIA FOIA 016-025

Dear Mr. Kirsch:

On February 10, 2016, the National Telecommunications and Information Administration (NTIA) received your requests pursuant to the Freedom of Information Act (FOIA). In this request you sought the following:

- Any and all information concerning NTIA policy with regard to the recusal of ICANN Board Members associated with current or future employment including any and all information associated with the dates of resignation associated with offers of employment that may involve a conflict of interest.

After several email conversations and modifications, NTIA agreed to proceed with this request on March 7, 2016. The modified request is as follows:

- Any and all information or NTIA statements/positions/written documents that discuss the IANA transition as specifically relates to the recusal of ICANN Board Members associated with current or future employment including any and all information associated with dates of resignation associated with offers of employment that may involve a conflict of interest created within the last 30 days [January 24, 2016 through February 24, 2016].

For this request, you also sought a fee waiver. In doing so you asserted the following:

- Please waive any and all fees in light of the public interest in obtaining a better understanding of the integrity of the proposed IANA transition process and of the differing cultural approaches to recusal in light of the statement made to me during my tenure at the ITU that there is or may be no translation for "recusal" in one or more of the official languages of the United Nations. If you have any contrary information concerning the word "recusal" in other languages used by ICANN Board Members please include the word or words in other languages in your response.

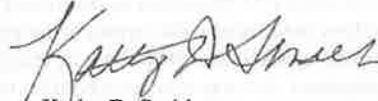
NTIA has conducted a thorough search for responsive records within its possession and control and found no records responsive to your request. Under the Department of Commerce's FOIA regulations, NTIA is required to charge fees for processing FOIA requests. 15 C.F.R. § 4.11 (a). However, the fee for processing this request is below the minimum fee threshold of \$20.00, and therefore, there is no charge for this request. See 15 C.F.R. § 4.11(d)(4). As a result, your fee waiver request is moot.

This concludes the Departments initial response. You have the right to appeal an adverse determination (partial denial or denial) of your FOIA request. An appeal must be received within 30 calendar days of the date of this response letter by the Assistant General Counsel for Litigation, Employment, and Oversight (Office), Room 5898-C, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230. Your appeal may also be sent by e-mail to [FOIAAppeals@doc.gov](mailto:FOIAAppeals@doc.gov), by facsimile (fax) to 202-482-2552, or by FOIAonline, if you have an account in FOIAonline, at <https://foiaonline.regulations.gov/foia/action/public/home#>.

The appeal must include the following: a copy of the original request; this response to the request; a statement of the reason why the withheld records should be made available; and the reason why denial of the records was in error. The submission (including e-mail, fax, and FOIAonline submissions) is not complete without the required attachments. The appeal letter, the envelope, the e-mail subject line, and the fax cover sheet should be clearly marked "Freedom of Information Act Appeal." The e-mail, fax machine, FOIAonline, and Office are monitored only on working days during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next normal business day.

If you have any questions regarding your request, please contact Stacy Cheney, Senior Attorney Advisor, at 202-482-1864 or via email at [scheney@ntia.doc.gov](mailto:scheney@ntia.doc.gov).

Sincerely,



Kathy D. Smith  
Chief Counsel



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Telecommunications and**  
**Information Administration**  
Washington, D.C. 20230

April 1, 2016

Mr. William Kirsch  
[REDACTED]

RE: NTIA FOIA 016-026

Dear Mr. Kirsch:

On February 10, 2016, the National Telecommunications and Information Administration (NTIA) received your requests pursuant to the Freedom of Information Act (FOIA). In this request you sought the following:

- Please provide me with any and all information concerning any government analysis of the ICANN announcement of the selection of a Swedish President for ICANN.
- Please include the analysis of the following:
  1. Whether the selection of a Swedish President involves a de jure or de facto transfer of control of a non-profit organization. See, for example, David Oxenford, Changes in the Board of Non-profit Corporation Down FCC Application For New FM Station, Broadcast Law Blog, Feb. 6, 2016;
  2. Whether the selection of a Swedish President voids, or makes voidable, the ICANN contract with NTIA;
  3. Whether, in light of the TTIP discussions, and the previous failure documented in the GAO Report concerning the absence of coordination between NTIA and USTR on ICANN issues, NTIA and USTR are coordinating on any such de jure or de facto transfer of control, including whether it involves a unilateral trade concession in advance of a TTIP conclusion; and
  4. Whether failure of NTIA to void the ICANN contract would violate the statutory budget prohibition on using government funding for a transfer of control of the IANA function overseas.

On March 1, 2016, NTIA acknowledged receipt of this request and sought some clarification regarding the scope of the request. After several exchanges, NTIA accepted your modified request and agreed to proceed on March 7, 2016. The modified request added the following: "Provide all records created or in NTIA's possession and control

from February 1, 2016 through March 1, 2016. All records include any writing on this topic including email, memo, notes, etc.”

For this request, you also sought a fee waiver. In doing so you asserted the following:

- Please waive any and all fees in the public interest in ensuring the stability of the Internet through growth from market liberalization in the face of protectionism overseas and in promoting peaceful economic integration, including with the European Union in the context of TTIP, as well as addressing the need to dismantle the Great Firewall brick by brick, and thereby peacefully bring glasnost as well perestroika to the People’s Republic of China.

NTIA has conducted a thorough search for responsive records within its possession and control and found no records responsive to your request. Under the Department of Commerce’s FOIA regulations, NTIA is required to charge fees for processing FOIA requests. 15 C.F.R. § 4.11 (a). However, the fee for processing this request is below the minimum fee threshold of \$20.00, and therefore, there is no charge for this request. See 15 C.F.R. § 4.11(d)(4). As a result, your fee waiver request is moot.

This concludes the Departments initial response. You have the right to appeal an adverse determination (partial denial or denial) of your FOIA request. An appeal must be received within 30 calendar days of the date of this response letter by the Assistant General Counsel for Litigation, Employment, and Oversight (Office), Room 5898-C, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230. Your appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to 202-482-2552, or by FOIAonline, if you have an account in FOIAonline, at <https://foiaonline.regulations.gov/foia/action/public/home#>.

The appeal must include the following: a copy of the original request; this response to the request; a statement of the reason why the withheld records should be made available; and the reason why denial of the records was in error. The submission (including e-mail, fax, and FOIAonline submissions) is not complete without the required attachments. The appeal letter, the envelope, the e-mail subject line, and the fax cover sheet should be clearly marked "Freedom of Information Act Appeal." The e-mail, fax machine, FOIAonline, and Office are monitored only on working days during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next normal business day.

If you have any questions regarding your request, please contact Stacy Cheney, Senior Attorney Advisor, at 202-482-1864 or via email at [scheney@ntia.doc.gov](mailto:scheney@ntia.doc.gov).

Sincerely,

A handwritten signature in cursive script that reads "Kathy D. Smith".

Kathy D. Smith  
Chief Counsel



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Telecommunications and**  
**Information Administration**  
Washington, D.C. 20230

April 1, 2016

Mr. William Kirsch  
[REDACTED]

RE: NTIA FOIA 016-027

Dear Mr. Kirsch:

On February 16, 2016, the National Telecommunications and Information Administration (NTIA) received your requests pursuant to the Freedom of Information Act (FOIA). In this request you sought the following:

The NTIA analysis, if any, of whether any express or implied antitrust immunity for ICANN would survive an IANA transition and/or Court affirmation of FCC forbearance from regulation of ICANN in light of the ruling *PGMedia, Inc. v. Network Solutions, Inc.*, 51 F. Supp. 2d 389, 405 (S.D. N.Y. 1999), *aff'd sub. nom. Name Space, Inc. v. Network Solutions, Inc.*, 202 F.3d 575 (2d Cir. 2000) entitling Network Solutions to implied antitrust immunity for the conduct at issue in the case as such conduct was expressly directed by the government, and the terms of the cooperative agreement, and because it was in furtherance of the government's policy with respect to the management of the domain name system.

On February 24, 2016, NTIA acknowledged receipt of this request and sought some clarification regarding the scope of the request. NTIA received your reply and modifications on the same date. Subsequently, NTIA sought confirmation regarding the new modified request. NTIA received this confirmation on March 21, 2016. The following is the modified request:

The NTIA analysis, if any, of whether any express or implied antitrust immunity for ICANN would survive an IANA transition and/or Court affirmation of FCC forbearance from regulation of ICANN in light of the ruling *PGMedia, Inc. v. Network Solutions, Inc.*, 51 F. Supp. 2d 389, 405 (S.D. N.Y. 1999), *aff'd sub. nom. Name Space, Inc. v. Network Solutions, Inc.*, 202 F.3d 575 (2d Cir. 2000) entitling Network Solutions to implied antitrust immunity for the conduct at issue in the case as such conduct was expressly directed by the government, and the terms of the cooperative agreement, and because it was in furtherance of the government's policy with respect to the management of the domain name system. The relevant search period is March 14, 2014 through March 1, 2016.

For this request, you also sought a fee waiver. In doing so you asserted the following:

- Please waive any and all fees in the public interest in promoting non-discriminatory access to a Nation-wide telecommunications network with adequate facilities at just and reasonable rates.

NTIA has conducted a thorough search for responsive records within its possession and control and found no records responsive to your request. Under the Department of Commerce's FOIA regulations, NTIA is required to charge fees for processing FOIA requests. 15 C.F.R. § 4.11 (a). However, the fee for processing this request is below the minimum fee threshold of \$20.00, and therefore, there is no charge for this request. See 15 C.F.R. § 4.11(d)(4). As a result, your fee waiver request is moot.

This concludes the Departments initial response. You have the right to appeal an adverse determination (partial denial or denial) of your FOIA request. An appeal must be received within 30 calendar days of the date of this response letter by the Assistant General Counsel for Litigation, Employment, and Oversight (Office), Room 5898-C, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230. Your appeal may also be sent by e-mail to [FOIAAppeals@doc.gov](mailto:FOIAAppeals@doc.gov), by facsimile (fax) to 202-482-2552, or by FOIAonline, if you have an account in FOIAonline, at <https://foiaonline.regulations.gov/foia/action/public/home#>.

The appeal must include the following: a copy of the original request; this response to the request; a statement of the reason why the withheld records should be made available; and the reason why denial of the records was in error. The submission (including e-mail, fax, and FOIAonline submissions) is not complete without the required attachments. The appeal letter, the envelope, the e-mail subject line, and the fax cover sheet should be clearly marked "Freedom of Information Act Appeal." The e-mail, fax machine, FOIAonline, and Office are monitored only on working days during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next normal business day.

If you have any questions regarding your request, please contact Stacy Cheney, Senior Attorney Advisor, at 202-482-1864 or via email at [scheney@ntia.doc.gov](mailto:scheney@ntia.doc.gov).

Sincerely,



Kathy D. Smith  
Chief Counsel



UNITED STATES DEPARTMENT OF COMMERCE  
National Telecommunications and  
Information Administration  
Washington, D.C. 20230

April 1, 2016

Mr. William Kirsch  
[REDACTED]

RE: NTIA FOIA 016-028

Dear Mr. Kirsch:

On February 19, 2016, the National Telecommunications and Information Administration (NTIA) received your requests pursuant to the Freedom of Information Act (FOIA). In this request you sought the following:

Any and all information concerning the tariff treatment of the proposed set top box broadband equipment contained in February 18, 2016 FCC Notice of Proposed Rulemaking under the Information Technology Agreement, the Information Technology Expansion Agreement (ITA II), the Trans-Pacific Partnership Agreement, and U.S. proposals in the Trans-Atlantic Trade and Investment Partnership.

On February 23, 2016, NTIA acknowledged receipt of this request and sought some clarification regarding the scope of the request. NTIA received these modifications on February 24, 2016. Thereafter, NTIA sought further clarification of these modifications and then after further discussion, we sought confirmation on agreed to text of the request. NTIA received this confirmation on March 21, 2016. The following is the modified request:

To determine NTIA's level of interest and whether or not NTIA follows this process, please provide any and all NTIA records concerning the tariff treatment of the proposed set top box broadband equipment contained in February 18, 2016 FCC Notice of Proposed Rulemaking under the Information Technology Agreement, the Information Technology Expansion Agreement (ITA II), the Trans-Pacific Partnership Agreement, and U.S. proposals in the Trans-Atlantic Trade and Investment Partnership. The relevant search period is from October 1, 2014 through March 1, 2016. Do not include press items or forwarded press on this topic unless it includes NTIA commentary or analysis on the subject.

For this request, you also sought a fee waiver. In doing so you asserted the following:

- Please waive any and all fees in ensuring non-discriminatory access to adequate telecommunications and information networks and services at just and reasonable rates.

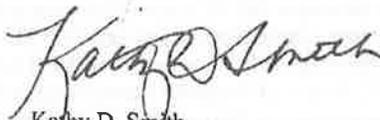
NTIA has conducted a thorough search for responsive records within its possession and control and found no records responsive to your request. Under the Department of Commerce's FOIA regulations, NTIA is required to charge fees for processing FOIA requests. 15 C.F.R. § 4.11 (a). However, the fee for processing this request is below the minimum fee threshold of \$20.00, and therefore, there is no charge for this request. See 15 C.F.R. § 4.11(d)(4). As a result, your fee waiver request is moot.

This concludes the Departments initial response. You have the right to appeal an adverse determination (partial denial or denial) of your FOIA request. An appeal must be received within 30 calendar days of the date of this response letter by the Assistant General Counsel for Litigation, Employment, and Oversight (Office), Room 5898-C, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230. Your appeal may also be sent by e-mail to [FOIAAppeals@doc.gov](mailto:FOIAAppeals@doc.gov), by facsimile (fax) to 202-482-2552, or by FOIAonline, if you have an account in FOIAonline, at <https://foiaonline.regulations.gov/foia/action/public/home#>.

The appeal must include the following: a copy of the original request; this response to the request; a statement of the reason why the withheld records should be made available; and the reason why denial of the records was in error. The submission (including e-mail, fax, and FOIAonline submissions) is not complete without the required attachments. The appeal letter, the envelope, the e-mail subject line, and the fax cover sheet should be clearly marked "Freedom of Information Act Appeal." The e-mail, fax machine, FOIAonline, and Office are monitored only on working days during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next normal business day.

If you have any questions regarding your request, please contact Stacy Cheney, Senior Attorney Advisor, at 202-482-1864 or via email at [scheney@ntia.doc.gov](mailto:scheney@ntia.doc.gov).

Sincerely,



Kathy D. Smith  
Chief Counsel



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Telecommunications and**  
**Information Administration**  
Washington, D.C. 20230

March 30, 2016

Mr. William Kirsch

RE: NTIA FOIA 016-036

Dear Mr. Kirsch:

On February 26, 2016, the National Telecommunications and Information Administration (NTIA) received your requests pursuant to the Freedom of Information Act (FOIA). In this request you sought the following:

- Any and all information from Feb. 1, 2016 that has been created by, or come into the possession of your agency, concerning the proposed ICANN Internet Assigned Numbers Authority (IANA) transition.

Please include any and all of the following:

1. Any assessment of the classification of IANA service providers under 47 U.S.C. 230 under U.S. law in light of the inclusion by Congress of this section under Title II and the common carrier-like immunity from liability;
2. Any assessment of the classification of IANA functions under the General Agreement on Trade in Services (GATS), the Trans-Pacific Partnership (TPP), the Trade in Services Agreement (TiSA) and the Transatlantic Trade and Investment Partnership (TTIP) or IANA-related equipment under the Information Technology Agreement (ITA) or ITA Expansion (ITA II) agreement;
3. Any assessment of the ITA or ITA II classification of equipment related to IANA functions of an alternative to the FCC's set top box proposal, i.e. a next generation smartphone-like big screen or other television;
4. Any assessment of whether the Taiwanese or South Korean proposals for inclusion in the ITA Expansion agreement that were opposed by the People's Republic of China (PRC) would have included the possibility of a next generation smartphone-like big screen television and if so, whether amendments to the ITA Expansion agreement or the TPP have been contemplated that would include such Taiwanese or South Korean reductions in tariffs;

5. Any assessment of whether the United States government will require a separation of the fiduciary role of the ICANN President from the contract role of the ICANN Chief Executive Officer (CEO) in the context of the IANA transition in order to comply with the principles established by NTIA;
6. Any assessment of plans, given NTIA's assertion to Congress of an absence of statutory authority or legal responsibility for the IANA function, to transfer the U.S. government oversight role either (a) to USTR under the Trade Act of 2015 or (b) the Federal Communications Commission under the Communications Act of 1934 or the Telecommunications Act of 1996;
7. If ICANN were to proceed with a reported reckless and irresponsible course associated with a transfer of control to a European President, the possible loss of antitrust immunity from a continued effort to deregulate itself, and the voiding of its contract as a result of apparent Senate concern about facilitating the building by the PRC of a Great Firewall rather than assisting in the removal of that firewall brick by brick, please provide any assessment concerning planned compliance with the Government Corporation Control Act, 31 U.S.C. 9102 (see footnote 19, Department of Commerce: Relationship with the Internet Corporation for Assigned Names and Numbers, United States General Accounting Office, July 7, 2000) prior to the transfer of the USG oversight role to USTR or the FCC; and
8. An assessment of plans, if any, to make the TiSA and TTIP texts public to review the impact on the IANA transition, including the possibility of an unintended unilateral trade concession, in light of the possibility that the PRC already has copies of these texts given the transmission over "unsecured lines" (See, e.g., USTR 16101307 and 1627299).

On March 1, 2016, NTIA acknowledged receipt of this request and sought some clarification regarding the scope of the request. NTIA received your reply and modifications on March 2, 2016. Subsequently, NTIA sought confirmation regarding the new modified request. You confirmed the modified request on March 9, 2016. This modified request contained the following changes to the preface paragraph, while the subsequent eight numbered paragraphs remained the same:

- Any and all information from February 1, 2016 – February 26, 2016 that has been created by or come into the possession of NTIA concerning the proposed ICANN IANA Transition, if any, and discusses or contemplates the following topics. These records, if any, must contain a reference or analysis related to the ICANN or the IANA transition.

For this request, you also sought a fee waiver. In doing so you asserted the following:

- Please waive any and all fees in the public interest in promoting free trade, clean economic growth and global peace and prosperity under the Trade Act of 2015

and other laws and non-discriminatory access to adequate facilities at just and reasonable rates under 47 USC 34-39, 151, 152, 201, 202, 205, 214, 230, 251, 252, 310, 901, 902.

NTIA has conducted a thorough search for responsive records within its possession and control and found no records responsive to your request. Under the Department of Commerce's FOIA regulations, NTIA is required to charge fees for processing FOIA requests. 15 C.F.R. § 4.11 (a). However, the fee for processing this request is below the minimum fee threshold of \$20.00, and therefore, there is no charge for this request. See 15 C.F.R. § 4.11(d)(4). As a result, your fee waiver request is moot.

This concludes the Departments initial response. You have the right to appeal an adverse determination (partial denial or denial) of your FOIA request. An appeal must be received within 30 calendar days of the date of this response letter by the Assistant General Counsel for Litigation, Employment, and Oversight (Office), Room 5898-C, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230. Your appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to 202-482-2552, or by FOIAonline, if you have an account in FOIAonline, at <https://foiaonline.regulations.gov/foia/action/public/home#>.

The appeal must include the following: a copy of the original request; this response to the request; a statement of the reason why the withheld records should be made available; and the reason why denial of the records was in error. The submission (including e-mail, fax, and FOIAonline submissions) is not complete without the required attachments. The appeal letter, the envelope, the e-mail subject line, and the fax cover sheet should be clearly marked "Freedom of Information Act Appeal." The e-mail, fax machine, FOIAonline, and Office are monitored only on working days during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next normal business day.

If you have any questions regarding your request, please contact Stacy Cheney, Senior Attorney Advisor, at 202-482-1864 or via email at [scheney@ntia.doc.gov](mailto:scheney@ntia.doc.gov).

Sincerely,



Kathy D. Smith  
Chief Counsel



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Telecommunications and**  
**Information Administration**  
Washington, D.C. 20230

April 18, 2016

Mr. William Kirsch  
[REDACTED]

RE: NTIA FOIA 016-038

Dear Mr. Kirsch:

On March 1, 2016, the National Telecommunications and Information Administration (NTIA), Office of the Chief Counsel, received your request under the Freedom of Information Act (FOIA), as amended (5 U.S.C. § 552). In this request, you sought a copy of the following report:

- Please me with any and all information in your agency's possession concerning the amount of money ICANN has spent on the following during Mr. Chehade's tenure:
  - Its core mission of administering names, numbers, and protocols for the Internet;
  - The proposed IANA transition; and
  - Promoting the growth of the Internet including by advocating the market liberalization of the Internet services globally including through the Trans-Pacific Partnership, the Transatlantic Trade and Investment Partnership and the Trade in Services Agreement.

NTIA acknowledged receipt of this request on March 3, 2016 and asked for clarification, noting that ICANN publishes all of its financial information on its website and provided a link to that information. After several conversations, NTIA agreed to proceed on March 7, 2016. After these modifications your request is as follows:

- All records in NTIA's possession concerning the amount of money ICANN has spent on the following during Mr. Chehade's tenure (from October 13, 2012 through March 1, 2016). This should include any NTIA assessment of these expenditures. Including on the following areas:
  - Its core mission of administering names, numbers and protocols for the internet;
  - The proposed IANA transition; and
  - Promoting the growth of the internet including by advocating the market liberalization of internet services globally including through the Trans-Pacific Partnership, the Transatlantic Trade and Investment Partnership and the Trade in Services Agreement.
- This includes copies of any ICANN financial information that NTIA has printed and has in its possession, regardless of whether it is on ICANN's website, which NTIA has used for its review and oversight. This is regardless of whether NTIA

printed and then NTIA has provided or created an assessment or review of the materials, but simply printed the materials for review and oversight purposes.

In your request you also sought expedited processing and a fee waiver as follows:

- Please waive any and all fees in the public interest in ensuring adequate Nationwide and world-wide facilities at just and reasonable rates and compliance with the Trade Act of 2015.

NTIA conducted a thorough search for the records requested. Enclosed please copies of three records released in their entirety and without redaction. This letter concludes the Department's initial response. Under the Department of Commerce's FOIA regulations, NTIA is required to charge fees for processing FOIA requests. 15 C.F.R. § 4.11(a). In this case, the fee for processing this request is below the minimum fee threshold of \$20.00, and therefore, there is no charge and your fee waiver request is moot. See 15 C.F.R. § 4.11(d)(4). This response concludes the initial determination by the Department and closes this request.

NTIA has extended the number of days to process this request to 30 due to unusual circumstances. If you have any questions, please contact Stacy Cheney, Senior Attorney Advisor, at 202-482-1864 or via email at [scheney@ntia.doc.gov](mailto:scheney@ntia.doc.gov).

Sincerely,



Kathy D. Smith  
Chief Counsel

**From:** [accountability-cross-community-bounces@icann.org](mailto:accountability-cross-community-bounces@icann.org) on behalf of [Xavier J. Cabez](#)  
**To:** [Dr Eberhard W Lisse](#); [accountability-cross-community@icann.org](mailto:accountability-cross-community@icann.org); [directors@ornadhlina.net](mailto:directors@ornadhlina.net)  
**Cc:** [Recky Nash](#); [ICANN Constituency Travel](#); [Taryn S. Presley](#); [Susanna Bennett](#); [BEC](#); [Duncan Burns](#)  
**Subject:** [CCWG-ACCT] CCWG / Responses to requests for information made by Dr Eberhard Lisse on 24 November 2015  
**Date:** Friday, December 04, 2015 7:40:30 PM  
**Attachments:** [USG Transition - Personnel - FY15 Act - FY16 Bud - Draft 151204.pdf](#)  
[ATT00001.txt](#)

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Dear Eberhard,  
Dear members of the CCWG,

As indicated last week, I wanted to provide feedback by the end of this week on the requests that Eberhard made in the email below. I have repeated below the requests from Eberhard's email, adding numbering and a title for ease of reference. I have also retitled this email to refer specifically to the content of Eberhard's email.

1. Meeting's travel support report, in CSV Format

Full text of the request: "The Constituency Travel Support group publishes a PDF report after each meeting detailing the flight costs. I would like to have the data uses to prepare these already published reports in a format amenable to further analysis, such as CSV."<sup>2</sup>

Response: We have produced the reports in a CSV format for the meeting's reports provided since the beginning of 2014, and have published them on the Community Wiki. Please see at <https://community.icann.org/display/trvlconstit/Travel+Report>. We will produce this report in both PDF and CSV formats going forward. If there would be earlier meeting's reports that you would specifically like to obtain in CSV format in addition, please provide a list and we will consider also adding those to the wiki page, dependent upon feasibility and workload.

2. USG Transition travel costs, in CSV Format

Full text of the request: "I would then like to have all travel costs related to Transition in the same format."<sup>2</sup>

Response: We can and will produce this information in the requested format. This information has not been compiled into 1 document until now, and we have started working on producing a similarly laid out document to be published on the USG Transition costs page (<https://www.icann.org/resources/pages/iana-stewardship-project-costs-2015-10-16-en>). Considering the current level of workload, I expect that we could finalize the document and published it by 18 December. I will notify this group when publication will have occurred.

3. Staff hours

Full text of the request: "I would like to have the workload of staff in hours, including time spent in transit."<sup>2</sup>

Response: I have assumed that this request is in relation to the USG Transition project. If this is not correct, please let me know. ICANN does not identify by activity or project the time spent by its employees on an on-going basis. On an as-needed basis, ICANN may estimate staff time spent on specific activities or projects. For the USG Transition project, ICANN has identified staff members

involved in the project in a <sup>3</sup>significant<sup>2</sup> fashion. <sup>3</sup>Significant<sup>2</sup> is determined on the basis of an estimated percentage of time spent on the project at or exceeding 10% and above, provided by these staff members or their managers. It can be as a result of an on-going activity carried out on a partial basis, or a dedicated full time during a limited period. It is intended that management involvement is excluded from this list, in order to limit the information to specific involvement rather than general involvement. In other words, not every staff member who spends time on the project is listed, to be conservative in this assessment exercise.

This approach is not intended to provide precise information but a reasonable itemized information that gives a directional quantification of the resources involved.

The list of staff members for FY15 (actual data) and FY16 (Budget data), as well as the percentages of estimated time spent on the project is displayed in the attached document, which will be published shortly on the USG Transition project webpage.

#### 4. Consulting fees

Full text of the request: <sup>3</sup>I would like to have the consulting fees (not necessarily by name) and the fees for experts.<sup>2</sup>

Response: I have assumed that this request is in relation to the USG Transition project. If this is not correct, please let me know. We believe that a comprehensive view of the professional services expenses (equivalent to the notion of consulting fees) has been provided in 2 documents appearing in the paragraph <sup>3</sup>Professional Services Expenses Breakdown<sup>2</sup> that can be found at <https://www.icann.org/resources/pages/iana-stewardship-project-costs-2015-10-16-en>. This section of the page, along with the personnel and travel cost items, subject to your questions above, represent the entire set of costs of the USG Transition project, meaning that there is no other costs in relation to this project. If you believe there is information relative to consulting fees that you would like to see and would not appear in the documents referenced above, please let me know.

As a general comment, the information referenced above, that can be found on the following page [\[https://www.icann.org/resources/pages/iana-stewardship-project-costs-2015-10-16-en\]](https://www.icann.org/resources/pages/iana-stewardship-project-costs-2015-10-16-en), is intended to be updated on a quarterly basis, with the next update planned after the end of the the 2nd quarter of ICANN's fiscal year 2016 (Oct to Dec 2015).

I trust this addresses the requests for now and I will follow up as indicated above where relevant.

Thank you.  
Best,

Xavier

Xavier Calvez  
CFO  
ICANN  
12025 Waterfront Drive, Suite 300

Los Angeles, CA 90094

Office: +1 (310) 301-5838

Fax: +1 (310) 957-2348

Cell: +1 (805) 312-0052

On 11/24/15, 5:58 AM, "Dr Eberhard W Lisse" <el@lisse.NA> wrote:

>Dear Xavier,

>

>The Constituency Travel Support group publishes a PDF report after each  
>meeting detailing the flight costs.

>

>I would like to have the data uses to prepare these already published  
>reports in a format amenable to further analysis, such as CSV.

>

>I have asked Travel Support but can not find a response thereto in my  
>in tray.

>

>

>I would then like to have all travel costs related to Transition in the  
>same format.

>

>I would like to have the workload of staff in hours, including time  
>spent in transit.

>

>I would like to have the consulting fees (not necessarily by name) and  
>the fees for experts.

>

>The legal costs seem to have been published in a reasonable format  
>already.

>

>greetings, el

>

>

>On 2015-11-06 01:15, Xavier J. Calvez wrote:

>[...]

>> \* I am unfamiliar with the request that Dr Eberhard Lisse is  
>> referring to below.

>[...]

>--

>Dr. Eberhard W. Lisse \ / Obstetrician & Gynaecologist (Saar)

>el@lisse.NA / \* | Telephone: +264 81 124 6733 (cell)

>PO Box 8421 \ /

>Bachbrecht, Namibia ; \_/

ICANN  
USG Transition Project - Personnel Cost Allocation  
FY15 Actuals and FY16 Budget

FY15 Actuals - Based on actual compensation and budgeted allocation % (with adjustments for new hires and transfers)

DEPT	Position	Last Name	USG Alloc %	Accountability	IAMA Transition	Relations with policy/governance bodies	Root zone updates	Total
0972	Strategic Reviews & Initiatives	Jensen	25%	50%	50%	0%	0%	100%
0121 - Strategic Reviews & Initiatives	Strategic Initiatives Manager	Abshamad	100%	50%	50%	0%	0%	100%
0121 - Strategic Reviews & Initiatives	Public Policy Manager	Swinhart	50%	50%	50%	0%	0%	100%
0121 - Strategic Reviews & Initiatives	Sr. Advisor to the President on Strategy	Swinhart	50%	50%	50%	0%	0%	100%
0121 - Strategic Reviews & Initiatives	Director of Strategy Operations	Park	100%	100%	0%	0%	0%	100%
0121 - Strategic Reviews & Initiatives	Senior Manager, Accountability	Middleton	33%	33%	33%	0%	0%	100%
0121 - Strategic Reviews & Initiatives	Executive Assistant	Trengrove	40%	33%	33%	0%	0%	100%
0210 - Communications	Sr Director Communications	Ballin	100%	33%	33%	0%	0%	100%
0210 - Communications	Communications Coordinator	Ballin	33%	33%	33%	0%	0%	100%
0210 - Communications	Regional Counsel, APAC	Eisner	50%	25%	25%	0%	0%	100%
0210 - Legal	Assistant General Counsel	Conrad	20%	25%	25%	0%	0%	100%
0210 - Legal	Sr. Dir. IPAND	Benford	33%	0%	100%	0%	0%	100%
0960 - Online Community Services	Senior Product Manager		\$ 473,355	0%	445,032	\$ 384,401	\$ 13,523	\$ 1,113,312

FY16 Budget - Based on budgeted compensation and budgeted allocation %

DEPT	Position	Last Name	USG Alloc %	Accountability	IAMA Transition	Relations with policy/governance bodies	Root zone updates	Total
0972	Strategic Reviews & Initiatives	Abshamad	50%	50%	50%	0%	0%	100%
0121 - Strategic Reviews & Initiatives	Strategic Initiatives Manager	Jensen	20%	70%	0%	0%	0%	70%
0121 - Strategic Reviews & Initiatives	Sr. Advisor to the President on Strategy	Swinhart	70%	0%	70%	0%	0%	70%
0121 - Strategic Reviews & Initiatives	Senior Manager, Accountability	Park	100%	100%	0%	0%	0%	100%
0121 - Strategic Reviews & Initiatives	Strategic Initiatives Director 2	TBD - Sr Director 2	25%	25%	25%	0%	0%	50%
0121 - Strategic Reviews & Initiatives	Director of Strategy Operations	TBD - Sr Director 1	13%	13%	13%	0%	0%	26%
0121 - Strategic Reviews & Initiatives	Social Media Coordinator	Schoer	10%	0%	10%	0%	0%	10%
0210 - Communications	Latin America Communications	Burns	30%	0%	30%	0%	0%	30%
0210 - Communications	VP Global Communications	Coia	10%	0%	10%	0%	0%	10%
0210 - Communications	Global Media Coordinator	Trengrove	50%	0%	50%	0%	0%	50%
0210 - Communications	Sr. Director Communications	White	10%	0%	10%	0%	0%	10%
0210 - Communications	Director, North America Communications	Tea	10%	0%	10%	0%	0%	10%
0210 - Communications	Head of Communications, APAC	Ward	10%	0%	10%	0%	0%	10%
0210 - Communications	Communications Coordinator	Pfeiffer	100%	0%	100%	0%	0%	100%
0210 - Communications	Director of Communications	Babin	25%	25%	25%	0%	0%	50%
0210 - Communications	Regional Counsel, APAC	Eisner	10%	30%	10%	0%	0%	30%
0210 - Legal	Assistant General Counsel	Halloran	10%	0%	10%	0%	0%	10%
0210 - Legal	Deputy General Counsel	Jeffrey	10%	5%	5%	0%	0%	10%
0210 - Legal	General Counsel & Secretary	Regional Counsel, EMEA	17%	3%	3%	0%	0%	3%
0210 - Legal	Regional Counsel, EMEA	Policy Support Counsel	56%	0%	0%	0%	0%	56%
0210 - Legal	Policy Support Counsel	Technical Services Sr. Manager	13%	0%	0%	0%	0%	13%
0933 - Office of CTO	Technical Services Sr. Manager	Leeds	13%	0%	0%	0%	0%	13%
0210 - Finance & Procurement	Chief Financial Officer	Chavez	17%	17%	17%	0%	0%	34%
			\$ 685,838	\$ 1,424,354	\$ 342,060	\$ 38,020	\$ 38,020	\$ 2,501,372

The amounts at bottom of each of the tables above result from applying the percentages to the total compensation costs for each of the positions and adding together the resulting amount by position. The total compensation costs by individual are not disclosed for confidentiality.

**From:** [accountability-cross-community-bounces@icann.org](mailto:accountability-cross-community-bounces@icann.org) on behalf of Xavier J. Calvez  
**To:** Drazek, Keith; [accountability-cross-community@icann.org](mailto:accountability-cross-community@icann.org)  
**Subject:** Re: [CCWG-ACCT] For information: example of community interaction during the planning process - Dublin's planning workshop  
**Date:** Thursday, November 05, 2015 6:19:00 PM  
**Attachments:** [ATT00001.txt](#)

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To clarify:

- the information I provided in my earlier email illustrates one of the activities that happen during the annual planning/budget process, which has been commented upon in the discussions on the budget veto power. It does not contribute to the remaining transition work, and was not intending to respond to a specific request or question of anyone in the CCWG. If you are not interested in the annual planning/budget process, just ignore my email.
- I am unfamiliar with the request that Dr Eberhard Lisse is referring to below.
- Regarding the transition costs, if that is the object of the request, here is a link to the information that we have published so far: <https://www.icann.org/resources/pages/iana-stewardship-project-costs-2015-10-16-en>, where there is an entire section on legal costs, invoice by invoice. We are also working on providing additional information, following questions received in Dublin, which will be posted on the same page as the one linked to above, and that should address a portion of the topics that Dr Lisse has listed below. I will provide an update when available.

Thank you.

Best,

Xavier

Xavier Calvez

CFO

ICANN

12025 Waterfront Drive, Suite 300

Los Angeles, CA 90094

Office: +1 (310) 301-5838

Fax: +1 (310) 957-2348

Cell: +1 (805) 312-0052

---

**From:** "Drazek, Keith" <[kdrazek@verisign.com](mailto:kdrazek@verisign.com)>

**Date:** Thursday, November 5, 2015 at 2:45 PM

**To:** Dr Eberhard W Lisse <[el@lisse.na](mailto:el@lisse.na)>

**Cc:** Xavier Calvez <[xavier.calvez@icann.org](mailto:xavier.calvez@icann.org)>, Lisse Eberhard <[directors@omadhina.NET](mailto:directors@omadhina.NET)>, "[accountability-cross-community@icann.org](mailto:accountability-cross-community@icann.org)" <[accountability-cross-community@icann.org](mailto:accountability-cross-community@icann.org)>

**Subject:** Re: [CCWG-ACCT] For information: example of community interaction during the planning process - Dublin's planning workshop

How is this request relevant to the remaining work of the CCWG? I'd support receipt of these figures after

our work is finished, but it seems irrelevant now, and would be an incomplete snapshot at best.

Regards,  
Keith

On Nov 5, 2015, at 5:29 PM, Dr Eberhard W Lisse <[el@lisse.na](mailto:el@lisse.na)> wrote:

Xavier,

I would prefer much more to just get the figures we requested.

All cost relating to the transition in a simple format, not some financials.

And I have requested the raw data used to produce the published ICANN meeting related travel costs a while ago, followed up once and not received a response from constituency travel support.

I want the same CSV/XLS data for all transition related travel.

I want the (wo)man hours put in by staff into the transition (at least ICG, CWG and CWG).

I want the consulting fees (not by names of course), and same for experts.

I want all legal fees.

You, the CFO, engaging us now, means we now have the right person to ask.

Can you please provide us, in the spirit of accountability and transparency, with all the figures in an easily manageable format? And a timeline by when this will happen?

greetings, el

Sent from Dr Lisse's iPad mini

On 5 Nov 2015, at 23:14, Xavier J. Calvez <[xavier.calvez@icann.org](mailto:xavier.calvez@icann.org)> wrote:

To illustrate a number of comments made in the past weeks/months on the positive developments of community input/interaction mechanisms embedded over the past 2 years into ICANN's planning process, you can find attached an example of communication on the workshop that was held on Sunday night 18 October in Dublin, with the active participation of 15 community members, including remotely, and 4 board members from the Finance Committee. This workshop is the second one held (the 1st was in Singapore at ICANN 52),

and is confirming to be a valuable exercise of interactive exchange, allowing for direct input that can effectively be taken into account. We will definitely repeat such workshop experience and welcome further participation to them. This is an open type of interaction, there is no set requirement for participation. It is helpful that participants have a basic knowledge of ICANN's planning process or another organization's planning process, in order to have a more effective participation, but participating to these workshops is also a good way to catch up.

The email attached is addressed to a list of participants that has been built over the past 3 years, by adding anyone interested in the planning process to it. We use the list to send materials, notifications of upcoming milestones, invitations to webinars, and feedback after workshops or webinars. There is no limitation of any kind to be added to this distribution list and we invite anyone interested to provide my team or I with an email address to be added. Being on the list does not create any specific work requirement, but simply allows to participate if desired.

I am happy to answer any questions on this or any aspect of the planning process.

Thank you.

Best,

Xavier

Xavier Calvez

CFO

ICANN

12025 Waterfront Drive, Suite 300

Los Angeles, CA 90094

Office: +1 (310) 301-5838

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Accountability-Cross-Community mailing list

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<https://mm.icann.org/mailman/listinfo/accountability-cross-community>

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**From:** [accountability-cross-community-bounces@icann.org](mailto:accountability-cross-community-bounces@icann.org) on behalf of [Xavier J. Calvez](#)  
**To:** [vidushi@cis-india.org](mailto:vidushi@cis-india.org)  
**Cc:** [Becky Nash](mailto:Becky.Nash@icann.org); [cwi-stewardship@icann.org](mailto:cwi-stewardship@icann.org); [accountability-cross-community@icann.org](mailto:accountability-cross-community@icann.org); [icann-board@icann.org](mailto:icann-board@icann.org); [Sunil Abraham](mailto:Sunil.Abraham@icann.org); [community-finance@icann.org](mailto:community-finance@icann.org); Senior Management Team; [Eugene Grinberg](#); [Tarin S. Presley](#); [global leadership](#)  
**Subject:** Re: [CCWG-ACCT] Updated IANA Stewardship Transition Expenses Information as of 31 December 2015  
**Date:** Wednesday, March 02, 2016 3:17:17 AM  
**Attachments:** [ATT00001.txt](#)

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Dear Vidushi,  
I acknowledge receipt of your email questions and will provide a fuller response to your substantive questions which require further analysis to be adequately answered. I can not yet assess how long it will take us to answer all received questions, but I will keep everyone updated once we will have assessed the amount of analysis required and associated time to complete.  
For your information, I have not yet responded to or acknowledged all emails received on this topic, as I have been traveling and just landed.  
Irrespective, you should feel free to file any DIDP request that you deem useful, which we welcome as always.

Thank you.  
Best,

Xavier

On Mar 2, 2016, at 06:56, "[vidushi@cis-india.org](mailto:vidushi@cis-india.org)" <[vidushi@cis-india.org](mailto:vidushi@cis-india.org)> wrote:

Dear Xavier,

Could you please acknowledge the receipt of my email and also indicate when I can expect to get an answer to the questions (in the thread below). Since you have responded to all other comments apart from mine, I'm wondering whether you have missed my email or will not be responding at all? In the absence of any response whatsoever, I will need to file a DIDP to get the answers I am looking for. I have also copied my colleagues from the Centre for Internet and Society, Sunil Abraham and Pranesh Prakash.

Thanks for reading this and hope to get an update soon,

Vidushi.

----- On Mar 1, 2016, at 2:56 PM, <[vidushi@cis-india.org](mailto:vidushi@cis-india.org)> wrote:

Dear Xavier,

Thanks for sharing this.

I'm a Programme Officer with the Centre for Internet and Society, and had a few follow up questions to this report:

1. Under the expenses breakdown for Professional Services, what is the exact breakdown for "travel support including visas"?
2. Under the same head, what constitute "other miscellaneous services"?
3. Under the head of "US Government Affairs (Lobbying)" - could you provide us with details of what the lobbyists did, what was said, and who they spoke to? In case you are not in a position to provide these details, could you kindly refer me to somebody who can?
4. Under the head of "Education/Engagement/Advice", I can't help but notice that perhaps some of the most powerful lobbyists are named. In the absence of a detailed report explaining their work with and for ICANN, we cannot make an informed distinction between their work and that of the lobbyists. Please provide us with details of their work, or direct me to somebody who may be able to provide me with this information?

+1 to Sean's comment about hoping we are more strategic in our engagement with professional services in WS2, and also more transparent.

Thank you for this and I hope to hear from you soon,

Vidushi Marda

----- On Mar 1, 2016, at 12:43 PM, Xavier J. Calvez  
<[xavier.calvez@icann.org](mailto:xavier.calvez@icann.org)> wrote:

Dear all,

Please find below a link to the quarterly update as of 31 December 2015 of the IANA Stewardship transition projects expenses. This update provides for the project's costs from 1 July 2014 until 31 December 2015 (18 months).

<https://www.icann.org/resources/pages/iana-stewardship-project-costs>

Please let me know if you have any questions.

Thank you.  
Best,  
Xavier  
Xavier Calvez  
CFO  
ICANN  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094  
Office: +1 (310) 301-5838  
Fax: +1 (310) 957-2348  
Cell: +1 (805) 312-0052

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**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Telecommunications and**  
**Information Administration**  
Washington, D.C. 20230

March 29, 2016

Mr. William Kirsch

RE: NTIA FOIA 016-045

Dear Mr. Kirsch:

On March 14, 2016, the National Telecommunications and Information Administration (NTIA) received your requests pursuant to the Freedom of Information Act (FOIA). In this request you sought the following:

- Any and all written reaction by your agency to the speech by Deputy U.S. Trade Representative Robert Holleyman noted in USTR FOIA 15070273 [*Digital Economy and Trade: A 21<sup>st</sup> Century Leadership Imperative*] including with regard to the re-establishment of the "same footing as regards privileges" standard established by President Woodrow Wilson, incorporated by Congress into the Submarine Cable Landing License Act, 47 U.S.C. 34-39, and included in the Communications Act of 1934, 47 U.S.C. 310.

On March 15, 2016, NTIA acknowledged receipt of this request and sought some clarification regarding the scope of the request. On March 16, 2016, you promptly provided NTIA with clarification and NTIA agreed to proceed with this request on the same date. The modified request added the following: the relevant search period is May 1, 2015 through June 1, 2015.

For this request, you also sought a fee waiver. In doing so you asserted the following:

- Please waive any and all fees in the public interest in ensuring non-discriminatory access to adequate nationwide and world-wide telecommunications and information services and facilities at just and reasonable rates and compliance with the Trade Act of 2015.

NTIA has conducted a thorough search for responsive records within its possession and control and found no records responsive to your request. Under the Department of Commerce's FOIA regulations, NTIA is required to charge fees for processing FOIA requests. 15 C.F.R. § 4.11 (a). However, the fee for processing this request is below the minimum fee threshold of



UNITED STATES DEPARTMENT OF COMMERCE  
National Telecommunications and  
Information Administration  
Washington, D.C. 20230

March 29, 2016

Mr. William Kirsch

[REDACTED]  
RE: NTIA FOIA 016-045

Dear Mr. Kirsch:

On March 14, 2016, the National Telecommunications and Information Administration (NTIA) received your requests pursuant to the Freedom of Information Act (FOIA). In this request you sought the following:

- Any and all written reaction by your agency to the speech by Deputy U.S. Trade Representative Robert Holleyman noted in USTR FOIA 15070273 [*Digital Economy and Trade: A 21<sup>st</sup> Century Leadership Imperative*] including with regard to the re-establishment of the "same footing as regards privileges" standard established by President Woodrow Wilson, incorporated by Congress into the Submarine Cable Landing License Act, 47 U.S.C. 34-39, and included in the Communications Act of 1934, 47 U.S.C. 310.

On March 15, 2016, NTIA acknowledged receipt of this request and sought some clarification regarding the scope of the request. On March 16, 2016, you promptly provided NTIA with clarification and NTIA agreed to proceed with this request on the same date. The modified request added the following: the relevant search period is May 1, 2015 through June 1, 2015.

For this request, you also sought a fee waiver. In doing so you asserted the following:

- Please waive any and all fees in the public interest in ensuring non-discriminatory access to adequate nationwide and world-wide telecommunications and information services and facilities at just and reasonable rates and compliance with the Trade Act of 2015.

NTIA has conducted a thorough search for responsive records within its possession and control and found no records responsive to your request. Under the Department of Commerce's FOIA regulations, NTIA is required to charge fees for processing FOIA requests. 15 C.F.R. § 4.11 (a). However, the fee for processing this request is below the minimum fee threshold of



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Telecommunications and**  
**Information Administration**  
Washington, D.C. 20230

May 25, 2016

Mr. William Kirsch  
[REDACTED]

RE: NTIA FOIA 016-058

Dear Mr. Kirsch:

On May 5, 2016, the National Telecommunications and Information Administration (NTIA) received your requests pursuant to the Freedom of Information Act (FOIA). In this request you sought the following:

- Any and all information in your agency's possession concerning the relationship of the proposed ICANN IANA transition to the ICANN management of the Internet names and the ICANN relationship to the World Intellectual Property Organization (WIPO).

On May 11, 2016, NTIA acknowledged receipt of this request and sought some clarification regarding the scope of the request. On May 12, 2016, you provided NTIA with clarification modifying your request and NTIA agreed to proceed with this request on the same date. The modified request is now the following:

- Any all information on the ICANN relationship to WIPO and any and all information on the consideration of the ICANN-WIPO relationship to the proposed IANA transition from January 1, 2016 through May 11, 2016.

For this request, you also sought a fee waiver. In doing so you asserted the following:

Please waive any and all fees in promoting the public interest in a better understanding of the initial, preliminary ICANN proposal for self-deregulation and the U.S. concerns over the possible takeover of the Internet by the United Nations of the Internet including in the context of the relationship of ICANN to WIPO and possible damage, if any, to intellectual property rights including in WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS), other international agreements or under U.S. law. See Alexander J. Martin, 'Toxic' WIPO catches flak as U.S. Congressmen call for Gurry's head, The Register, 4 May 2016.

NTIA has conducted a thorough search for responsive records within its possession and control and found no records responsive to your request. Under the Department of Commerce's FOIA regulations, NTIA is required to charge fees for processing FOIA requests. 15 C.F.R. § 4.11 (a). However, the fee for processing this request is below the minimum fee threshold of \$20.00, and therefore, there is no charge for this request. See 15 C.F.R. § 4.11(d)(4). As a result, your fee waiver request is moot.

This concludes the Departments initial response. You have the right to appeal an adverse determination (partial denial or denial) of your FOIA request. An appeal must be received within 30 calendar days of the date of this response letter by the Assistant General Counsel for Litigation, Employment, and Oversight (Office), Room 5898-C, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230. Your appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to 202-482-2552, or by FOIAonline, if you have an account in FOIAonline, at <https://foiaonline.regulations.gov/foia/action/public/home#>.

The appeal must include the following: a copy of the original request; this response to the request; a statement of the reason why the withheld records should be made available; and the reason why denial of the records was in error. The submission (including e-mail, fax, and FOIAonline submissions) is not complete without the required attachments. The appeal letter, the envelope, the e-mail subject line, and the fax cover sheet should be clearly marked "Freedom of Information Act Appeal." The e-mail, fax machine, FOIAonline, and Office are monitored only on working days during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next normal business day.

If you have any questions regarding your request, please contact Stacy Cheney, Senior Attorney Advisor, at 202-482-1864 or via email at [scheney@ntia.doc.gov](mailto:scheney@ntia.doc.gov).

Sincerely,



Kathy D. Smith  
Chief Counsel



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Telecommunications and**  
**Information Administration**  
Washington, D.C. 20230

June 22, 2016

Mr. William Kirsch  
[REDACTED]

RE: NTIA FOIA 016-064

Dear Mr. Kirsch:

On May 17, 2016, the National Telecommunications and Information Administration (NTIA) received your requests pursuant to the Freedom of Information Act (FOIA). In this request you sought the following:

- Any and all information concerning your agency's assessment, if any, of the positive and negative implications of the privatization of Saudi Aramco and the possibility of the subsequent privatization of providers of basic telecommunications or broadband service providers in Saudi Arabia or in the Arabic speaking world. Please include any and all information concerning the planning, if any, of your agency for representation as observers at any current or new regional Arabic speaking telecommunications standardization body, including any budget requests to Congress, in light of the intense interest of the Arabic speaking world in hosting global conferences and other events of the International Telecommunication Union during this century, include at Tunis for the World Summit on the Information Society and at Dubai in 2012 (and 2018?) and the positive effects that an Arabic-speaking world focus on a regional or linguistic-related telecommunications standards body similar to the European Telecommunications Standards Institute (ETSI) might have on telecommunications in the region and globally.

On May 19, 2016, NTIA acknowledged receipt of this request and sought some clarification regarding the scope of the request. On May 20, 2016, you provided NTIA with clarification modifying your request and NTIA agreed to proceed with this request. The new modified request included a time frame in which to conduct the search from March 1, 2016 through May 19, 2016.

For this request, you also sought a fee waiver. In doing so you asserted the following:

Please provide for two free hours of search time and 100 free pages of duplication based on a search by the office/bureau most likely to have such information. Please waive any and all fees based on the public interest in better understanding any planned, proposed or possible unilateral free trade concessions to the European Union (EU) in light of the obvious failure of the WTO General Agreement on Trade in Services and the Agreement on Basic Telecommunications and the need to correct the most favored nation free rider problem in the context of the Trade Act of 2015, 47 U.S.C. 34-39, 151, 152, 201, 202, 205, 214, 230, 251, 310 and the proposed Trans-Atlantic Trade and Investment Partnership and the proposed Trade in Services Agreement to obtain new market access and other trade concessions for U.S. telecommunications and information services providers and equipment manufacturers seeking to compete in the EU which appears, according to published reports, to be under-represented in the \$8 trillion internet economy as a result of EU protectionism resulting not only in the possibility of a Brexit, but a dissolution of the EU due to stagnating economic growth in the most important sectors of the Information Age economy essential to clean and sustainable economic growth and the threat that such EU short-sightedness poses to the continuation of the successful process of European integration supported by the United States for more than half a century.

NTIA has conducted a thorough search for responsive records within its possession and control and found no records responsive to your request. Under the Department of Commerce's FOIA regulations, NTIA is required to charge fees for processing FOIA requests. 15 C.F.R. § 4.11 (a). However, the fee for processing this request is below the minimum fee threshold of \$20.00, and therefore, there is no charge for this request. See 15 C.F.R. § 4.11(d)(4). As a result, your fee waiver request is moot.

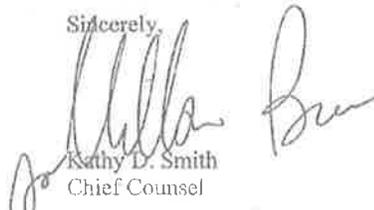
This concludes the Department's initial response. You have the right to appeal an adverse determination (partial denial or denial) of your FOIA request. An appeal must be received within 30 calendar days of the date of this response letter by the Assistant General Counsel for Litigation, Employment, and Oversight (Office), Room 5898-C, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230. Your appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to 202-482-2552, or by FOIAonline, if you have an account in FOIAonline, at <https://foiaonline.regulations.gov/foia/action/public/home#>.

The appeal must include the following: a copy of the original request; this response to the request; a statement of the reason why the withheld records should be made available; and the reason why denial of the records was in error. The submission (including e-mail, fax, and FOIAonline submissions) is not complete without the required attachments. The appeal letter, the envelope, the e-mail subject line, and the fax cover sheet should be clearly marked "Freedom of Information Act Appeal." The e-mail, fax machine, FOIAonline, and Office are monitored only on working days during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next normal business day.

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If you have any questions regarding your request, please contact Stacy Cheney, Senior Attorney Advisor, at 202-482-1864 or via email at [scheney@ntia.doc.gov](mailto:scheney@ntia.doc.gov).

Sincerely,



Kathy D. Smith  
Chief Counsel

---

**From:** William Kirsch <email>  
**Sent:** Monday, July 11, 2016 7:17 AM  
**To:** eo-commission  
**Subject:** Open Meeting of the Commission on Enhancing National Cyber-security-Texas  
**Attachments:** euttipjuly2015.jpg; euttiparticle3-1.2.jpg; berceropage1.jpg; berceropage2.jpg; iscap.jpg; mullaneypage1.jpg; mullaneypage2.jpg; tisapage1.jpg; tisapage2.jpg; tppage1.jpg; tpppage2.jpg; ustr15080381page1.jpg; ustr15080381page2.jpg; ustr16021746page1.jpg; ustr16021746page2.jpg; ustr16030352page1.jpg; ustr16030352page2.jpg

Please include the United States Trade Representative Freedom of Information Act replies and information obtained from USTR replies in the record of the Texas Open Meeting of the Commission on Enhancing National Cyber-security.  
Thank you.

William J. Kirsch

*This document is the European Union's proposal for services, investment and e-commerce text. It was tabled for discussion with the US in the negotiating round of 12 -17 July 2015 and made public on 31 July 2015. The actual text in the final agreement will be a result of negotiations between the EU and US.*

*DISCLAIMER: The EU reserves the right to make subsequent modifications to this text and to complement its proposals at a later stage, by modifying, supplementing or withdrawing all, or any part, at any time.*

## **Transatlantic Trade and Investment Partnership**

### **TRADE IN SERVICES, INVESTMENT AND E-COMMERCE**

#### **Contents**

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## CHAPTER III - CROSS BORDER SUPPLY OF SERVICES

### Article 3-1

#### Scope

1. This Chapter applies to measures of the Parties affecting the cross-border supply of services in all services sectors.
2. The provisions of this Chapter shall not apply to audio-visual services.
3. Subsidies shall be dealt with by Chapter [X (on competition and state aid)] and the provisions of this chapter shall not apply to subsidies granted by the Parties.
4. Government procurement shall be dealt with by Chapter [X (on public procurement),] and nothing in this Chapter shall be construed to limit the obligations of the Parties under Chapter X on public procurement or to impose any additional obligation with respect to government procurement.

### Article 3-2

#### Market Access

In sectors or subsectors where market access commitments are undertaken, neither Party shall adopt or maintain with regards to market access through the cross-border supply of services, either on the basis of its entire territory or on the basis of a territorial sub-division, measures that impose:

- (a) limitations on the number of services suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in the terms of designated numerical units in the form of quotas or the requirement of an economic needs test.

### Article 3-3

#### National Treatment<sup>13</sup>

1. Each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the cross-border supply of services, treatment no less

<sup>13</sup> For greater certainty, Article 2-3 (National Treatment) shall also be interpreted in accordance with paragraphs 2, 3 and 4 with respect to economic activities performed through establishment.



**EUROPEAN COMMISSION**  
Directorate-General for Trade

Directorate E Neighbouring countries, USA and Canada  
**The Director**

Brussels, 5 July 2013  
LDC

L. Daniel Mullaney  
Assistant United States Trade  
Representative For Europe and the  
Middle East  
Chief US negotiator for TTIP

**Subject: Arrangements on TTIP negotiating documents**

Dear Mr. Mullaney:

In preparation for the initiation of negotiations on a Transatlantic Trade and Investment Partnership (TTIP) Agreement, I would like to inform you of the arrangements that the EU has in place for the protection of negotiating documents, given the sensitive nature of their content. While the EU holds dear to the principles of transparency, a certain level of discretion and special care in handling these documents is in our view necessary in order to allow mutual trust between negotiators and for each side to preserve positions taken for tactical reasons against third countries with which we are or could be negotiating in the future.

EU institutions must comply with Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents under which all documents of the institutions of the EU are accessible to the public. Article 4 of this regulation, however, sets out certain exceptions to the general policy of providing access to documents, which are applied in specific circumstances when justified notably for the protection of public interest as regards, for example, international relations. Following discussions with the U.S. side, in the case of the negotiations for a TTIP Agreement:

a) All documents related to the negotiation or development of the TTIP Agreement, including negotiating texts, proposals of each side, accompanying explanatory material, discussion papers, emails related to the substance of the negotiations, and other information exchanged in the context of the negotiations, are provided and will be held in confidence, in accordance with EU law and relevant procedures.

b) As regards the handling of the documents referred to above we consider that, in so far as they are not classified within the meaning of that term in the EU, such documents (which would be marked as "Limited") must be held in confidence, but can normally be mailed, e-mailed, faxed, or discussed over unsecured lines with the groups of people mentioned in paragraph (d) and the U.S. side. Persons in possession of these documents can store them in a locked file cabinet or within a secured building; that is, the documents do not need to be stored in safes. These documents can be created and stored on computer systems that are not subject to special security measures. However, depending on the sensitivity of their content,

we may choose to increase the level of protection of particular documents when they are circulated on the EU side between the persons identified in paragraph (d) below, notably by classifying them as "RESTREINT UE", in accordance with Commission rules on classification and handling of classified information (Decision 2001/844) and apply more secure handling requirements on our side.

c) Under these procedures, we will appropriately mark or, where appropriate, classify the documents in a manner that makes clear that the documents are sensitive, must be held in confidence and handled according to the rules and guidelines applicable to such documents.

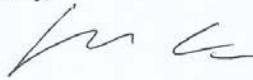
d) On the EU side, documents related to the negotiations may be provided only to (1) officials, or Members of the European Commission, Council of the European Union, European Parliament and officials of the EU Member States, and (2) persons outside these EU institutions who are entitled to be fully informed of the state of play of the negotiations. Anyone provided access to the documents will be informed that they are not permitted to share the documents with persons who are not authorized to see them. Depending on the sensitivity of the document, we may limit circulation of certain documents to a more restricted number of persons.

(e) Finally, when persons or groups other than those specified above, seek access to documents described in paragraph (a), the exceptions to public access set out in Article 4 of Regulation 1049/2001 apply as long as the protection is justified on the basis of the content of a document, up to 30 years. While the application of any exception, including its continued application over time, shall be assessed on a case-by-case basis, depending on the content of the documents, the European Commission when using the exception for foreign relations will consult with the third-party, in this case the United States, regarding release of information described in paragraph (a) in order to assist it in coming to a view on the (continuing) sensitivity of the document.

(f) I take this opportunity to inform you that the European Commission may decide to make public certain documents that will reflect exclusively the EU position on these negotiations, after consulting the U.S. side. To the extent that such documents have been shared with the US side as set out in the previous paragraphs, we would not expect the US to hold them in confidence as of the date of their publication.

I would be grateful if you could inform us of the procedures to protect sensitive information applicable on your side. The content of the present letter will be shared with the other EU institutions and made public.

Sincerely,



Mr. Ignacio Garcia Bercero  
Director, Neighboring Countries, USA and Canada  
Directorate-General for Trade, European Commission  
Chief EU negotiator for TTIP

PPSFSW 2720

**Interagency Security Classification Appeals Panel**

c/o Information Security Oversight Office  
700 Pennsylvania Avenue, N.W., Room 100  
Washington, D.C. 20408  
Telephone: (202) 357-5250  
Fax: (202) 357-5907  
E-mail: [iscap@nara.gov](mailto:iscap@nara.gov)

**EXECUTIVE SECRETARY**

William A. Cira  
Acting Director  
INFORMATION SECURITY  
OVERSIGHT OFFICE

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COUNCIL STAFF  
John P. Fitzpatrick, Chair

May 12, 2016

Reference: ISCAP No. 2016-136  
Reference: USTR Case File #16021746

Mr. William A. Kirsch  


Dear Mr. Kirsch:

The Interagency Security Classification Appeals Panel (ISCAP) received your correspondence on May 10, 2016. Your ISCAP appeal reference number is 2016-136. I have determined that your appeal does not meet the requirements of the Executive Order 13526, "Classified National Security Information" (the Order).

Your request, Case File #16021746, was filed as a Freedom of Information Act (FOIA) request. The ISCAP may only accept appeals filed under the Order as Mandatory Declassification Review (MDR) requests. You must first file an MDR request to the United States Trade Representative before the ISCAP can accept your appeal.

Copies of the Order, its Implementing Directive, and the ISCAP Bylaws 32 C.F.R. Part 2001 and 2003 respectively, are available to you on the Information Security Oversight Office (ISOO) website [www.archives.gov/isoo/policy-documents](http://www.archives.gov/isoo/policy-documents). If you have any questions regarding this, please contact Meredith Wagner (202) 357-5250 and reference ISCAP Appeal No. 2016-136.

Sincerely,

*William A. Cira*

WILLIAM A. CIRA  
Executive Secretary

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

July 5, 2013

Mr. Ignacio Garcia Bercero  
Director, Neighboring Countries, USA and Canada  
Directorate-General for Trade  
European Commission

Dear Mr. Garcia Bercero:

As we prepare for the initiation of negotiations on a Transatlantic Trade and Investment Partnership (TTIP) Agreement, I would like to thank you for your letter of July 5, 2013, describing the arrangements that the European Union (EU) has in place for the protection of negotiating documents, given the sensitive nature of their content and that apply in the context of negotiations for a TTIP Agreement. I take this opportunity to inform you of the arrangements that the United States will apply for the protection of TTIP negotiating documents, given the sensitive nature of their content. Transparency is an important principle for the Obama Administration, just as it is for the EU. However, given the sensitive nature of the content of the documents related to the negotiations for a TTIP Agreement, the United States also shares the EU's view that a certain level of special care in handling these documents is necessary to enable mutual trust between negotiators and for each side to preserve positions taken for tactical reasons with regard to third countries with which we are or could be negotiating in the future.

The U.S. Government must comply with the Freedom of Information Act (FOIA) with regard to providing the public access to information. FOIA includes exemptions from providing the public with access to certain information, for example information classified pursuant to Executive Order 13526 of December 29, 2009, which authorizes confidential treatment of foreign government information.

To that end and in light of arrangements described in your letter, the United States is implementing the following procedures:

- (a) All documents related to the negotiation or development of the TTIP Agreement, including negotiating texts, proposals of each side, accompanying explanatory material, discussion papers, e-mails related to the substance of the negotiations, and other information exchanged in the context of the negotiations, are shared in confidence and will be held in confidence, in accordance with Executive Order 13526.
- (b) While the documents specified in paragraph (a) are to be held in confidence the documents can be mailed, e-mailed, faxed, or discussed over unsecured lines with the groups of people mentioned in paragraph (d) and the EU side. Persons in possession of these documents can store them in a locked file cabinet or within a secured building; that is, the documents do not need to be stored in safes. These documents can be created and stored on computer systems that are not subject to special security measures.

Mr. Ignacio Garcia Bercero  
Page Two

- (c) Documents will be marked in a manner that makes clear that the documents will be held in confidence and treated as specified in paragraph (a). The United States will mark documents as "Confidential, Foreign Government Information—Modified Handling Authorized" and include a brief instruction on handling the documents.
- (d) For the U.S. side, this means that documents containing such information may be provided only to (1) U.S. government officials, and (2) persons outside the U.S. Government who participate in its internal consultation process and who have a need to review or be advised of the information in these documents. Anyone provided access to the documents will be informed that they are not permitted to share the documents with persons who are not authorized to see them.
- (e) The United States will hold the TTIP documents in confidence for five years after entry into force of the TTIP Agreement, or if no agreement enters into force, for five years after the last round of negotiations. If the United States seeks to release documents described in paragraph (a) in advance of these dates, for example, in response to a request for access under the FOIA, the United States will consult with the European Commission regarding the continued sensitivity of the document. The United States will also notify the European Commission in the event the United States extends the period before the document is released.

Even as we outline the confidentiality procedures for these vital negotiations, certainly we are both aware of the concurrent need for public engagement and transparency to the fullest extent consistent with our efforts to successfully reach an agreement. Recognizing this, the procedures outlined in this letter should be subject to review and possible change, pursuant to discussion in advance of the implementation of any adjustments to confidentiality provisions.

I look forward to working with you towards the conclusion of a strong TTIP agreement that will realize the high objectives set out in the Final Report of the High Level Working Group to our respective leaders.

Sincerely,



L. Daniel Mullaney  
Assistant United States Trade Representative  
For Europe and the Middle East

September 16, 2013

**MEMORANDUM FOR ALL TRADE IN SERVICES AGREEMENT NEGOTIATORS**

**From:** AMBASSADOR MICHAEL PUNKE  
Deputy United States Trade Representative

**Subject:** Classification of Trade in Services Negotiating Documents

The United States and fellow participants are entering into negotiations on a Trade in Services Agreement (TISA). At the first round of negotiations in April 2013, participants in the TISA negotiations informed each other of their respective intent to hold documents exchanged in the course of those negotiations in confidence.

As an original classifying authority, I have determined that the negotiating text, proposals of the participants in the TISA negotiations, accompanying explanatory material, emails related to the substance of the negotiations, and other information exchanged in confidence in the context of the negotiations, are to be classified as Confidential Foreign Government Information pursuant to section 1.4(b) of Executive Order 13526.

The documents should be marked as TISA- US CONFIDENTIAL INFORMATION - Modified Handling Authorized. Unless a determination is made to declassify the documents at an earlier date, the document will be declassified five years after the agreement enters into force or five years after the last round of the negotiations, if the agreement has not entered into force by that date. The documents should cite this memorandum as the authority for classification and contain a short description of the modified handling which is authorized. A sample of this marking is enclosed.

Emails and similar electronic documents should include the follow signature block: *This email contains TISA US Confidential Information, modified handling authorized. Pursuant to classification guidance of September 16, 2013, it must be handled in a manner to avoid unauthorized disclosure or five years after entry into force of the TISA.*

U.S. Notification.

- (a) The United States will hold TISA documents in confidence in accordance with Executive Order 13526.
- (b) The United States will mark documents as "TISA – U.S. Confidential Information— Modified Handling Authorized" and include a brief instruction on handling the documents.
- (c) While TISA documents are to be held in confidence, the documents can be mailed, e-mailed, faxed, or discussed over unsecured lines with the groups of people mentioned in paragraph (d). Persons in possession of these documents can store them in a locked file cabinet or within a secured building; that is, the documents do not need to be stored in safes. These documents can be created and stored on computer systems that are not subject to special security measures.
- (d) For the United States, this means that TISA documents, including documents received from participants in the TISA negotiations may be provided only to (1) U.S. Government officials, and (2) persons outside the U.S. Government who participate in its internal consultation process and who have a need to review or be advised of the information in these documents. Anyone provided access to the documents will be informed that they are not permitted to share the documents with people who are not authorized to see them.
- (e) The United States will hold the TISA documents in confidence for five years after entry into force of the TISA, or if no agreement enters into force, for five years after the last round of negotiations. If the United States seeks to release TISA negotiating documents in advance of these dates, for example, in response to a request for access under the Freedom of Information Act, the United States will consult with the relevant participant(s) regarding the continued sensitivity of the document. The United States will also notify the relevant participant in the event the United States extends the period before the document is released.

As we proceed with these negotiations, the procedures outlined in this notification may change, but we would inform participants of such changes in advance of implementing them.



MINISTRY OF  
**FOREIGN AFFAIRS & TRADE**  
MANATŪ AORERE

195 Lambton Quay     x 64 4 439 8000  
Private Bag 18 901     x 64 4 472 9596  
Wellington 5045  
New Zealand

13 March 2009

TND/NSC/CEP/12

Barbara Weisel  
Assistant USTR for Southeast Asia and the Pacific  
Office of the USTR  
Washington DC

Dear Barbara

As depository for the Trans-Pacific Partnership Agreement, we have been asked to remind participants of important points regarding the handling of the documents we exchange during these negotiations and seek confirmation that you agree with this approach.

- First, all participants agree that the negotiating texts, proposals of each Government, accompanying explanatory material, emails related to the substance of the negotiations, and other information exchanged in the context of the negotiations, is provided and will be held in confidence, unless each participant involved in a communication subsequently agrees to its release. This means that the documents may be provided only to (1) government officials or (2) persons outside government who participate in that government's domestic consultation process and who have a need to review or be advised of the information in these documents. Anyone given access to the documents will be alerted that they cannot share the documents with people not authorized to see them. All participants plan to hold these documents in confidence for four years after entry into force of the Trans Pacific Partnership Agreement, or if no agreement enters into force, for four years after the last round of negotiations.
- Second, while the negotiating documents are confidential, each participant may mail, e-mail, fax, or discuss these documents over unsecured lines with the groups of people mentioned above (i.e., government officials and persons who participate in the domestic consultation process). The participants may also store these documents in a locked file cabinet or within a secured building; that is, the

documents do not need to be stored in safes. Each participant can also create and store these documents on unclassified computer systems.

Lastly, the participants will mark the documents they create in a manner that makes clear that the documents will be held in confidence.

The policy underlying this approach is to maintain the confidentiality of documents, while at the same time allowing the participants to develop their negotiating positions and communicate internally and with each other. We look forward to your confirmation that you agree with this approach.

Yours sincerely



Mark Sinclair  
Ministry of Foreign Affairs and Trade, New Zealand

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

August 4, 2015

VIA EMAIL

Mr. William Kirsch  


Dear Mr. Kirsch:

This letter is our response to your request under the Freedom of Information Act (FOIA), 5 U.S.C. §552, dated August 3, 2015, for a copy of the joint agreement requiring that the draft chapters of the TPP agreement be held in confidence.

A copy of that agreement is enclosed with this letter. This constitutes a complete response to your request. Pursuant to 15 C.F.R. §2004.6(d), if you are not satisfied with this decision, then within sixty (60) days you may appeal it in writing to:

USTR FOIA Appeals Committee  
GSD/RDF: Jacqueline Caldwell  
Anacostia Naval Annex  
Bldg. 410/Door 123  
250 Murray Lane, S.W.  
Washington, D.C. 20509

Phone number: 202-395-3419

Both the letter and the envelope should be clearly marked: "Freedom of Information Act Appeal" and should include a reference to the FOIA Case File number listed below. Heightened security in force may delay mail delivery; therefore we suggest that you also email any such appeal to [foia@ustr.eop.gov](mailto:foia@ustr.eop.gov). In the event you are dissatisfied with the results of any such appeal, judicial review will thereafter be available to you in the United States District Court for the judicial district in which you reside or have your principal place of business, or in the District of Columbia, where we searched for the records you requested.

Should you have any questions, please feel free to contact the FOIA office at (202) 395-3419

Sincerely,

  
Melissa Keppel  
Associate General Counsel

Enclosure

Case File#15080381

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

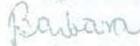
March 13, 2009

The Honorable Mark Sinclair  
Ministry of Foreign Affairs  
New Zealand

Dear Mark:

Thank you for your letter dated March 13, 2009 outlining the confidentiality of documents and their treatment. The United States confirms that it agrees with the approach outlined in your letter (attached).

Sincerely,



Barbara Weisel  
Assistant US Trade Representative for  
Southeast Asia and the Pacific



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON DC 20508

April 26, 2016

VIA EMAIL

William J. Kirsch  
[REDACTED]

Re: Case File # 16021746

Dear Mr. Kirsch:

This letter is the response of the Office of the United States Trade Representative (USTR) Freedom of Information Act (FOIA) Appeals Committee to your appeal dated March 25, 2016, of our March 24<sup>th</sup> response to your FOIA request for "any and all information concerning the USTR position with regard to 47 U.S.C. 222 concerning customer propriety network information associated with the provision by facilities-based or resale common carriers of data communications services, including current and successor services to telegraph, telex and facsimile services, under the Trans-Pacific Partnership, the Trans-Atlantic Trade and Investment Partnership, and the Trade in Services Agreement and the extent to which the USTR position(s) may differ from the U.S. commitments in the World Trade Organization (WTO) General Agreement on Trade in Services or the Agreement on Basic Telecommunications Services (ABT)."

In response to your FOIA request, we provided the text of the telecommunications chapter of the Trans-Pacific Partnership (TPP). We did not locate any other responsive documents.

Please be advised that our September 29, 2015 decision, which included a declassification review and found that the draft Trans-Atlantic Trade and Investment Partnership documents are properly classified, concluded the administrative appeal process on this question. Please be advised that our March 10, 2016 decision, which included a declassification review and found that the draft Trade in Services Agreement documents are properly classified, concluded the administrative appeal process on this question.

Moreover, as we provided the responsive documents we located, there is no issue ripe for appeal with regard to this Case File. You can access the full text of the TPP on the USTR website: [www.ustr.gov](http://www.ustr.gov).

If you are dissatisfied with our adjudication of this appeal, you may seek judicial review in the United States District Court for the judicial district in which you are located or have your principal place of business, or in the District of Columbia, as provided in 5 U.S.C. § 552(a)(4)(B).

You also may seek mediation services from the Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, which offers mediation services to FOIA requesters. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road - OGIS  
College Park MD 20740-6001  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Web: <https://ogis.archives.gov>  
Telephone: 202-741-5770  
Fax: 202-741-5769  
Toll-free: 1-877-684-6448

Sincerely,



Fred L. Ames  
Freedom of Information Act Appeals Committee

You also may seek mediation services from the Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, which offers mediation services to FOIA requesters. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services  
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8601 Adelphi Road - OGIS  
College Park MD 20740-6001  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Web: <https://ogis.archives.gov>  
Telephone: 202-741-5770  
Fax: 202-741-5769  
Toll-free: 1-877-684-6448

Sincerely,



Fred L. Ames  
Freedom of Information Act Appeals Committee

William Kirsch  
Page 2

After, a search of our files, we have not located any records in response to your request. This constitutes a complete response to your request. Pursuant to 15 C.F.R § 2004.6(d), if you are not satisfied with this decision, then within sixty (60) days you may appeal it in writing to:

USTR FOIA Appeals Committee  
GSD/RDF; Jacqueline Caldwell  
Anacostia Naval Annex, Bldg. 410/Door 123  
250 Murray Lane SW  
Washington DC 20509  
Phone number: 202-395-3419

Both the letter and the envelope should be clearly marked: "Freedom of Information Act Appeal" and should include a reference to the FOIA Case File number. Heightened security may delay mail delivery. Therefore we suggest that you also email any appeal to [foia@ustr.eop.gov](mailto:foia@ustr.eop.gov). If you are dissatisfied with the results of an appeal, you can seek judicial review in the United States District Court for the judicial district in which you reside or have your principal place of business, or in the District of Columbia, where we searched for the records you requested.

Should you have any questions, please feel free to contact the FOIA office at 202-395-3419.

Sincerely,

  
Melissa Keppel  
Associate General Counsel

Case File#:16030352

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**From:** William Kirsch <email>  
**Sent:** Monday, July 11, 2016 7:29 AM  
**To:** eo-commission; cybercommission  
**Subject:** Open Meeting of the Commission on Enhancing National Cyber-security-Texas  
**Attachments:** gn15-236fcc15-137.jpg

Please include my comments in GN Docket No. 15-236 Review of Foreign Ownership Policies For Broadcast, Common Carrier and Aeronautical Radio Licenses, Federal Communications Commission in the hearing record.

Thank you.

William J. Kirsch

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

REVIEW OF FOREIGN OWNERSHIP POLICIES  
FOR BROADCAST, COMMON CARRIER AND  
AERONAUTICAL RADIO LICENSES

GN Docket No. 15-236

COMMENTS OF WILLIAM J. KIRSCH

The Commission should not proceed with the proposed rule changes. The proposals amount to a unilateral trade concession that may subject the United States to future complaints by trading partners, including the PRC and Russia, at the World Trade Organization. This unilateral concession would also deny U.S. broadcasters an important opportunity provided by the Trade Act of 2015 to expand their operations abroad. U.S. broadcasters have extraordinary expertise that could be shared with our trading partners with the successful conclusion of new trade agreements, for example, with Africa in connection with AGOA or Europe with TTIP. Therefore, rather than the proposed approach, U.S. broadcasters that are interested in greater foreign ownership should participate in the trade advisory committees of the U.S. trade and other agencies to obtain trade agreements under the Trade Act of 2015 that provide for the "same footing as regards privileges" for U.S. broadcasters abroad that the Commission's proposed rules would provide for foreign investors in the United States.

The proposed approach would exacerbate the tragedy of the commons with regard to common carrier services, harm our security and inevitably create enormous problems later that would be a bureaucratic nightmare to correct. A better approach would be to focus on the use of advanced information technology to facilitate easier compliance with existing law and lift the paperwork burden on small and medium sized enterprises. The Commission departure from a successful policy used on a bi-partisan basis for three quarters of a century from the conclusion of the First World War through the Second World War to the end of the Cold War helped create the cybersecurity crisis that is the greatest unresolved threat to our national security. Should the Commission proceed with its unwise and unlawful action the President should revoke the delegation of authority under 47 U.S.C. 34-39.

William J. Kirsch