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**MPAA Comments on the Cross Community Working Group (CCWG)
Accountability Initial Draft Proposal for Public Comment**

The Motion Picture Association of America¹ appreciates the opportunity to comment on the initial draft proposal of the Cross Community Working Group on Accountability. We thank CCWG-Accountability participants for their hard work and dedication toward building a comprehensive and significant accountability framework upon which all stakeholders can rely.

The MPAA and its member companies are actively engaged in ICANN's bottom-up, multi-stakeholder policy development process and are committed to supporting the organization's continued evolution and improvement. On June 5th 2014, almost one year ago, [MPAA filed our initial set of comments](#) on how to best enhance ICANN's accountability. In it we expressed our support for the U.S. Government's decision to transition its legacy role as the administrator of the IANA Functions contract to the global multi-stakeholder community with caveat that a comprehensive accountability framework, developed, agreed to and approved by the multi-stakeholder community be in place in advance of finalizing any IANA transition recommendations.

In our previous comments we asserted that several core principles should guide and inform the development of the new accountability framework and the process that is used to create it. We have framed our comments to the CCWG-Accountability initial draft proposal using these core principles.

¹ The Motion Picture Association of America, Inc. (MPAA) serves as the voice and advocate of the American motion picture, home video and television industries from its offices in Los Angeles and Washington, D.C. Its members include: Walt Disney Studios Motion Pictures; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Twentieth Century Fox Film Corporation; Universal City Studios LLC; and Warner Bros. Entertainment Inc.

Independence

MPAA supports the proposed enhancements to the Independent Review Process including the call for a fully independent judicial/arbitral function and the intent that IRP decisions are not only binding on ICANN but will set precedent for future decisions. However we feel greater clarity is needed on several points.

First, the Standard of Review (p. 32) currently places the burden to demonstrate a violation on the party challenging an action or inaction. More clarity around the level of evidence required by the offended party is needed. A set of requirements should exist that ensure the standard of evidence is not unnecessarily high, but high enough to ensure an effective IRP.

Second, the MPAA supports the CCWG proposal that any person/group/entity, including 3rd parties, has standing to participate in the IRP process however to ensure an IRP that is truly accessible to the community we suggest that continued discussion is needed to define exactly what constitutes “material harm” (p.31).

Third, we suggests that the CCWG clarify if the notion of a right-of-review is available in the current plan, ensuring an independent and objective review of all parties in the IRP process.

Lastly, we strongly supports the membership model as proposed. The membership model is the most effective way to cement these accountability reforms into the DNA of ICANN and to ensure true accountability of ICANN to the global multi-stakeholder community.

Stability

The MPAA fully supports the concept of making certain bylaws Fundamental Bylaws that enjoy special protection and can only be changed based on prior approval by the Community. The five items proposed to have the status of Fundamental Bylaws (p. 5) will ensure a stable, autonomous and self-governing ICANN that is not easily altered or swayed by the Board or any external forces.

MPAA suggests that the existing ICANN bylaw requiring the principal office of ICANN be in the State of California, USA, also be designated as a Fundamental Bylaw. See additional comment on this topic in the Nexus section below.

Transparency

In our previous comments we stressed the importance of transparency and believe the ICANN community must receive fair, complete and timely access to all materials relevant to the ICANN decision-making process.

Specifically we believe that additional transparency of ICANN's dealing with governments is required to prevent government capture or undue ICANN influence on public policies unrelated to ICANN's core mission. Governments could seek to control ICANN decision making processes by providing quid pro quos for actions taken by ICANN or governments could try to use intimidation. This situation could cause ICANN to make policy decisions that are not based on what is in the best interest of the ICANN community, but what would benefit ICANN as a corporation. In addition, ICANN could use its tremendous resources and clout to interfere with Internet governance public policies that are outside the scope of ICANN's technical obligations.

Therefore, we suggest that an additional bylaw be added that requires ICANN or any individual acting on ICANN's behalf to make periodic public disclosure of their relationship with any government official, as well as activities, receipts and disbursements in support of those activities on behalf of ICANN. Disclosure of the required information facilitates evaluation by the multi-stakeholder community of the statements and activities of such persons in light of their function as representatives of ICANN.

Regarding transparency in the proposed IRP process, the MPAA believes it will be important for the community to be aware of the filing of IRPs in an open and timely manner. This will allow parties "materially affected" by the IRP process and eventually decisions to fully participate.

Nexus

The US Courts provide a de facto check on ICANN's adherence to its bylaws and the rule of law. Litigation represents a last resort to be used only in the event of a catastrophic failure of the multi-stakeholder process, but the mere existence of that option has a stabilizing effect. As such, and as mentioned above, MPAA suggests that current ICANN bylaw Article 18, Section 1 be made a Fundamental Bylaw, e.g.

"OFFICES. The principal office for the transaction of the business of ICANN shall be in the County of Los Angeles, State of California, United States of America. ICANN may also have an additional office or offices within or outside the United States of America as it may from time to time establish."

Making this a Fundamental Bylaw, requiring 75% community voting approval for any change, would go a long way to ensure a stable and accountable ICANN post transition.

Prerequisite

MPAA fully supports the views of the CCWG-Accountability team requiring Work Stream 1 accountability changes must be committed to and implemented before any transition of IANA stewardship from NTIA can occur.

Additional Comments

On Page 59, paragraph 337 notes that the language in paragraph 336 will be added to the Bylaw Core Values, however this language doesn't appear in the proposed Bylaw Core Values updates proposed by the CCWG. MPAA supports the obligation reference in 336 and we suggest the language, in its entirety, be added.

The MPAA believes that the proposed language in paragraph 60 is too broad. While we strongly support the notion that ICANN must not attempt to regulate non-contracted parties, we also assume it is not the intent to constrain ICANN's ability to enter into, interpret or enforce contractual obligations. The new accountability mechanisms must not minimize ICANN's ability to enforce contractual obligations and these obligations should be negotiated as they have been in the past, with ample input from the global multi-stakeholder community.

Thank you again for the opportunity to comment.

Respectfully Submitted,

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