

COALITION FOR ONLINE ACCOUNTABILITY

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Comments of the Coalition for Online Accountability (COA) June 6, 2014

The Coalition for Online Accountability (COA) appreciates this opportunity to comment on “Enhancing ICANN Accountability.” See the public comment notice at <https://www.icann.org/public-comments/enhancing-accountability-2014-05-06-en>, and the ICANN paper on this topic at <https://www.icann.org/en/news/in-focus/accountability/enhancing-accountability>.

COA consists of eight leading copyright industry companies, trade associations and member organizations of copyright owners. They are the American Society of Composers, Authors and Publishers (ASCAP); Broadcast Music, Inc. (BMI); the Entertainment Software Association (ESA); the Motion Picture Association of America (MPAA); the Recording Industry Association of America (RIAA); the Software and Information Industry Association (SIIA); Time Warner Inc.; and the Walt Disney Company. COA and its predecessor organization, the Copyright Coalition on Domain Names, have participated actively in ICANN since 1999, including through the Intellectual Property Constituency of the GNSO.

COA commends ICANN for launching this process to examine “how ICANN’s broader accountability mechanisms should be strengthened to address the absence of its historical contractual relationship to the U.S. government.” Enhancing ICANN accountability is vital, both as a necessary complement to the effort to transition oversight of the IANA functions, and in its own right. Indeed, since 2009 ICANN has carried out many of its most significant functions without a binding contract with the U.S. government. These activities have included ICANN’s most ambitious single project to date: the launch of hundreds and ultimately thousands of new generic Top Level Domains.

Throughout the past five years, the question of whether ICANN is adequately accountable to its stakeholders and to the broader community in the exercise of these functions has stimulated considerable debate. COA is pleased that ICANN recognizes that the existing mechanisms to provide this accountability must be strengthened; and we look forward to participating actively in the process of strengthening them.

At this early stage of the process we offer brief comments on three aspects of the public notice and the accompanying ICANN paper. Of course we hope to supplement these comments as the process moves forward.

American Society of Composers
Authors & Publishers (ASCAP)

Entertainment Software Association (ESA)

Software & Information Industry Association (SIIA)

Broadcast Music Inc. (BMI)

Motion Picture Association of America (MPAA)

Time Warner Inc.

Recording Industry Association of America (RIAA)

The Walt Disney Company

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(1) Process/timetable concerns

The main vehicle ICANN proposes for developing a stronger accountability framework is an ICANN Accountability Working Group. The ICANN paper is rather unclear about how this Working Group will be populated. It states that “the leaders of ICANN’s Supporting Organizations and Advisory Committees will be responsible for appointment of community members to the Working Group.” In the case of the Generic Names Supporting Organization, the ICANN entity with which COA participants are most consistently involved, it is not clear whether this responsibility will fall to the leadership of the various constituencies and stakeholder groups making up the GNSO, or whether this role will be carried out by the GNSO Council, which manages the policy development process within the GNSO. This uncertainty will help make it impossible to achieve the exceptionally ambitious timetable set forth in the paper, under which all Working Group members will be identified “before the end of the comment and reply period” (now June 27)¹, and the activities of the Working Group “will commence in time for the ICANN 50 meeting,” which is scheduled to begin June 22. A more realistic timetable would call for the Working Group to get started after the London meeting and to meet in person later in the year, perhaps in connection with the Los Angeles ICANN Annual Meeting.

(2) Subject matter experts

ICANN is certainly correct that the Working Group would benefit from the input of experts in relevant subject matters, and that the ICANN staff (presumably with input from the community) is in a position to identify these experts and integrate them into the Working Group. COA suggests two additional areas of expertise that should be added to the list on page 6 of the ICANN paper: (1) intellectual property rights, and (2) the rule of law on the Internet. These are both areas where ICANN’s acts or omissions manifestly can have a significant impact, positively or negatively, and which the strengthened accountability framework needs to take into consideration.

(3) “Evolution” of the Affirmation of Commitments (AoC)

ICANN’s public notice and its accountability paper both refer to “evolving the Affirmation of Commitments as a strengthened accountability mechanism” as a central element to be addressed in this process. A review of the AoC would certainly be timely. In the four and one-half years since the US government and ICANN both endorsed this documentation of the terms of their relationship, a record has been developed that illustrates both the strengths and the shortcomings of the AoC.

As one important entry on the positive side of the ledger, ICANN’s commitment in the AoC to remain a not-for-profit corporation headquartered in the United States and organized

¹ The timetable would have been too ambitious even with the original comment closing date of June 18. In that regard, COA appreciates the extension of the initial comment period to May 30 (later extended to June 6), to account for the fact that during most of the previous week, many users were unable to access from the new ICANN website the materials on which comments were being solicited.

under U.S. law has contributed significantly to the stability of the Domain Name System. It has enabled the maintenance and growth of a contractual framework among domain name registrants, registrars, registries, and ICANN that is both far more predictable, and far more flexible, than would otherwise be the case. This cornerstone commitment must be strengthened, not weakened or diluted, if the AoC is to “evolve” in a manner that serves the best interests of all stakeholders in the DNS, including the general public of Internet users. COA looks forward to providing further input later in the process to ensure that the AoC evolves in a healthy direction.

Thank you for considering the views of COA.