

# COALITION FOR ONLINE ACCOUNTABILITY

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## Comments of the Coalition for Online Accountability (COA) September 26, 2014

The Coalition for Online Accountability (COA) appreciates this opportunity to comment on “Enhancing ICANN Accountability Process.” See the public comment notice at <https://www.icann.org/public-comments/enhancing-accountability-2014-09-05-en>.

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.

We are mindful that the scope of this public comment period is limited to “addressing questions about the design of the Enhancing ICANN Accountability Process – not about the potential solutions or outcomes of the review.” We look forward to contributing actively to discussion about those solutions and outcomes as the process moves forward.

In the process proposed by ICANN, external subject matter expert advisors play a significant role, constituting as many as a third of the members of the proposed Coordination Group. As this group will, under ICANN’s proposal, categorize and prioritize the issues, build solution requirements, and issue the final report and recommendations, it is critical that the group have access to expertise on all the crucial legal, policy and technical issues where ICANN’s acts or omissions manifestly can have a significant impact, positively or negatively. As noted in our June 6 comments on “Enhancing ICANN Accountability,” two additional areas of expertise should be added to the existing list of thirteen topics: (1) intellectual property rights, and (2) the rule of law on the Internet. While we believe the identified area of expertise relating to “Internet Consumer Protection (including privacy, human rights and property rights)” properly encompasses both intellectual property rights and the rule of law, these particular areas are sufficiently unique, specialized and important that they ought to be separately identified to ensure participation by someone with actual expertise in these areas. We understand and support that these expert advisors will now be chosen by the Public Experts Group, rather than by the ICANN staff; but regardless of how they are selected, the omission of a separate entry for these crucial issues from the list of topics which advisors should address ought to be remedied. We

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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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also appreciate and support the clarification, provided in ICANN's September 18 responses to questions posed by a broad leadership group on September 4, that these advisors will not include anyone "under contract with ICANN," currently or "within a reasonable time frame prior to the initiation of this work."<sup>1</sup>

Finally, regarding one of the "questions that could be helpful to answer" as set forth in the public comment notice, COA does not believe that the Cross Community Group should have any role in the confirmation of stakeholder experts selected by Supporting Organizations, Advisory Committees, or Stakeholder Groups to serve on the Coordination Group. For example, the Commercial Stakeholder Group, of which the Intellectual Property Constituency forms a part, should be free to choose the person from within its ranks to serve on the Coordination Group that it feels will contribute most constructively to the process, without being second-guessed or overruled by the Cross Community Group.<sup>2</sup>

Thank you for considering the views of COA.

Respectfully submitted,

Steven J. Metalitz, counsel to COA

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<sup>1</sup> We find it confusing that the same list of thirteen subject matter areas that appears in ICANN's "Process and Next Steps" paper posted August 14 as "areas identified for expertise" in the selection of external advisors by the Public Experts Group also appears in identical form in the FAQs dated August 22 (question 12) as "areas of expertise that should be considered as identifying SO/AC and SG selection of stakeholder expert members to the Coordination Group." We hope that there will be people on the Coordinating Group in both subsets – those chosen by the Supporting Organizations, Advisory Committees and Stakeholder Groups, and those chosen by the Public Experts Group – who will have expertise in intellectual property rights and the rule of law on the Internet. Accordingly we ask that these two topics be added to this list in both contexts.

<sup>2</sup> This statement should not be construed as agreement that the Commercial Stakeholder Group is the appropriate level in the ICANN structure at which a delegate to the Coordination Group should be chosen. In fact, each constituency within the CSG should have the ability to place a person on the Coordination Group. ICANN's reflexive resort to the CSG as the confining mechanism for channeling the interests of commercial entities not under contract to it is fundamentally misguided, and does not take into account a representative range of ICANN-relevant business interests, including intellectual property interests.