

IFPI and RIAA Comments

on the Second CCWG-Accountability Draft Proposal

September 12, 2015

The International Federation of the Phonographic Industry (IFPI) represents the recording industry worldwide, and has some 1,300 record company members in 61 countries around the world. IFPI has affiliated industry organisations in 57 countries. Part of our work is to act on behalf of record producers in matters involving the protection of their intellectual property rights on the Internet. Our membership includes the major international recording companies (Universal, Sony and Warner music groups) and hundreds of independent record companies of all sizes throughout the world.

The Recording Industry Association of America (RIAA) is the trade organization that supports and promotes the creative and financial vitality of the major music companies. Its members comprise the most vibrant record industry in the world. RIAA members create, manufacture and/or distribute approximately 85% of all legitimate recorded music produced and sold in the United States. In support of this mission, the RIAA works to protect the intellectual property and First Amendment rights of artists and music labels; conduct consumer, industry and technical research; and monitor and review state and federal laws, regulations and policies. As such, we and our members are key stakeholders in the digital ecosystem.

The members of IFPI and RIAA have a substantial interest in ensuring that the digital marketplace evolves into a mature, innovative and safe environment for the legitimate creation and dissemination of music and cultural exchange. To create this environment, it is important that all players in the Internet ecosystem abide by the rule of law, in a manner that is consistent with international norms and the principles of a free and democratic society.

In the ICANN multi-stakeholder environment, it means, among other things, that once policies are adopted in the form of public contractual commitments, those commitments must be followed and enforced in a manner that is in the public interest and in support of the rule of law. This is necessary to meet the stated principles for the accountability proposal, among which include ensuring ICANN compliance with its own rules and policies. Conversely, failure to abide by such commitments, or to only selectively enforce them, is contrary to these principles, and undermines both ICANN and the multi-stakeholder model.

In light of this, we believe that any accountability proposal must include a commitment to contractual enforcement as a core value of ICANN. Specifically, the proposal should require that ICANN amend its bylaws to make it clear that consistent and transparent contract enforcement, consistent with the public interest and in support of the rule of law is a core ICANN value. This is, in fact, one of the main mechanisms ICANN has to enforce the policies it has adopted, and to ensure some consistency as there are changes in ICANN leadership, and ICANN's relationship with the U.S. government.

It also means that any ICANN accountability proposal, and any of its stress tests, cannot and should not conflate issues about theoretically questionable content regulation with sound contractual enforcement to prevent illegal conduct and other abuse. Just because some digital transmissions may involve free speech does not mean that all digital transitions are therefore speech, much less

protected, free speech, and completely ignores the conduct in question. This flawed logic, taken to extremes, would suggest that ICANN commitments to deter malware and other security threats are inappropriate because the malware is, at some level, digital content. Yet stress tests 29 and 30 precisely suggest such inappropriate conflation of these issues.

With this in mind, we believe that the accountability proposal must be amended to require clarifications that contract enforcement is not an act of “regulating services or content”, and that stress tests 29 and 30 are improper and should be rejected entirely.

Respectfully Submitted,

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