

**INTA Internet Committee Comment on:**

**Enhancing ICANN Accountability**

**June 25, 2014**

The Internet Committee of the International Trademark Association (INTA) is pleased to respond to ICANN’s call for public input on the process to develop a community-based working group tasked with producing a proposal to enhance ICANN’s accountability in conjunction with the transition of the counterparty party role on the IANA functions contract, now vested in the U.S. government, to a new multistakeholder entity.

INTA appreciates the fact that, in reaction to initial comments on the IANA transition process, ICANN recently published on June 6<sup>th</sup> a revised document<sup>1</sup> that makes meaningful changes to the composition and manner of selecting the members of the relevant Coordination Group. However, we are concerned that the allocation of only three representatives to the Generic Names Supporting Organization (GNSO) may not ensure effective representation of trademark and other intellectual property interests. One of those seats is certain to go to the registrars, as gTLD registries have been separately provided with two seats. A second will likely go to non-commercial interests within the GNSO. That leaves but a single seat to be shared among the three entities comprising the Commercial Stakeholder Group – IPC, BC, and ISPC. We believe that the makeup and total number of representatives on this Group should be left to the community and not predetermined by ICANN.

The Internet Committee is pleased to provide the following specific comments on the accountability process materials that have been posted for review:

- We question the separation of the IANA transition and ICANN accountability processes on the basis that the former involves global multistakeholders but the latter only involves the ICANN community. To a significant extent this appears to be a distinction without a difference as all parties are free to participate within ICANN. Further, ICANN itself has noted that the two processes are interrelated and will inform one another.
- We are also concerned that the process may become even more multifaceted and therefore burdensome to the ICANN community and pose substantial difficulty in coordinating multiple responses on closely related and interdependent matters. In this regard, we note CEO Fadi Chehade’s recent blog post, “Transition from U.S. Government has Four Work Tracks” (<https://www.icann.org/news/blog/transition-from->

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<sup>1</sup> <https://www.icann.org/resources/pages/process-next-steps-2014-06-06-en>

[u-s-government-has-four-work-tracks](#) ) in which he stated that, in addition to IANA transition and enhanced ICANN accountability, there are also the related issues of maintaining the security and stability of root zone updates plus strengthened bilateral relationships with other Internet policy bodies. We believe that these additional issues should be addressed within the existing proposed two-track process in a coordinated manner as they are integral components of the IANA transition and enhanced ICANN accountability processes.

- The community, and not ICANN, should control the scope and speed of the accountability effort as well as determine the composition of the Working Group (WG). The WG should adopt a clear and comprehensive Charter upon its formation. The overall process must be deliberative, with no artificial deadlines keyed to ICANN meetings or the September 2015 expiration of the initial IANA functions contract term. Both Mr. Chehade and the head of the NTIA recently testified before two committees of Congress that September 2015 was a goal and not a deadline, and that it was more important to get to get the accountability process done right than fast.
- So called “experts” should not be placed on the WG by ICANN as this would constitute a conflict of interest in violation of the neutral facilitator role that the NTIA has requested ICANN to assume. To the contrary, ICANN should make supportive resources, including impartial experts, available to the WG at its initiative and request.
- We are concerned that the ICANN Board has proposed to reserve to itself the authority to only partially adopt a comprehensive accountability plan developed by the community. At a minimum, the Board should be required to provide a detailed rationale for any rejection or modification of any part of the community-developed accountability plan, and a meaningful appeals process must be provided to allow for the overriding of any such Board action if the community believes that a rejected or modified element is critical to the assurance of an acceptable level of future accountability.
- A central question of the enhanced accountability process is what will replace the current Affirmation of Commitments (AOC) between ICANN and the U.S. in the likely event that ICANN decides to abrogate that document following the completion of the IANA functions transition. The AOC helps assure acceptable levels of accountable and transparency, but permits either party to terminate it by providing 120 days’ advance notice of such intent. In the absence of the AOC what entity will ICANN be accountable to, and what dependable enforcement mechanisms will exist?

- There is a need to assure that the role and voice of the business sector is heard as it will be integral to ensure governmental support of any new ICANN framework resulting from the accountability process.
- The enhanced accountability process should include, if necessary for accountability concerns, consideration of significant alterations of the Board's composition and functions, along with accompanying changes to ICANN's Bylaws.

Thank you for considering our views on these important issues. Should you have any questions regarding our submission, please contact INTA External Relations Coordinator Kate Badura at: [kbadura@inta.org](mailto:kbadura@inta.org).

### **About INTA and the Internet Committee**

INTA is a 136 year-old global not for profit association with more than 5,700 member organizations from over 190 countries. One of INTA's goals is the promotion and protection of trademarks as a primary means for consumers to make informed choices regarding the products and services they purchase. During the last decade, INTA has also been the leading voice of trademark owners within the Internet community, serving as a founding member of the Intellectual Property Constituency of the Internet Corporation for Assigned Names and Numbers (ICANN).

INTA's Internet Committee is a group of over 200 trademark owners and professionals from around the world charged with evaluating treaties, laws, regulations and procedures relating to domain name assignment, use of trademarks on the Internet, and unfair competition on the Internet, whose mission is to advance the balanced protection of trademarks on the Internet.