

**Comments of the Internet Committee
of the International Trademark Association (INTA)
on the Draft GNSO Working Group Guidelines**

March 22, 2010

Introduction

The Internet Committee (the Committee), on behalf of the International Trademark Association (“INTA”), has prepared the following comments on the Proposed GNSO Working Group Guidelines document posted for comment by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on February 5, 2010.

ICANN established a Working Group (“WG”) Working Team (“WT”) to improve the structure and operations of the Generic Names Supporting Organization (“GNSO”). As part of its mission to enhance the policy development process by making it more inclusive, representative, effective and efficient, the WG WT developed a document entitled “Working Group Guidelines” to: (1) address what should be considered in creating, purposing, funding, staffing, and instructing/guiding a WG to accomplish the desired outcome (the “chartering process”); and (2) provide guidance to a WG on elements such as structuring, norms, tasking, reporting, and delivering its outcomes as chartered (the “working group process”).

The Committee appreciates the efforts of the WG WT and ICANN in preparing this draft proposal. The Committee provides the following general and specific recommendations – listed by Section and Subsection – to further advance ICANN’s goals of clarity, transparency and inclusiveness. Importantly, the Committee strongly recommends that a number of actions, identified herein, be taken **prior** to implementation, specifically to enhance predictability and cooperation in advancing these important goals of clarity, transparency and inclusiveness.

Discussion and Recommendations

Section I – General

Section I is straightforward and easy to read and understand. The Committee believes this section could be enhanced if the following general recommendations were implemented: (1) provide information about the timing of the creation of the Charter, including the identity, role and responsibility of the “Chartering Organization”; (2) take precautions to ensure that the Statement of Intent (“SOI”) and Disclosure of Interest (“DOI”) do not inadvertently contain sensitive personal information; (3) discuss in more detail the steps between the acceptance of the applications, and the first meeting – in particular the selection of the Working Group and distribution of information (Charter, Biographies of nominated Chairs) – prior to the First Meeting; and (4) consider the creation of supplemental materials, such as a “Frequently Asked Questions” page on the website where supplemental information could be posted in between

the annual updates. The Committee provides specific suggestions for some of the subsections of Section I below.

I.3. Intended Audience

The Committee recommends that if this document will be translated into different languages, then this could be noted in this section (e.g. “to ensure that we reach the broadest possible audience, this document will be translated into the following languages: _____”).

I.4. Revisions

The Committee supports the WT recommendation that these documents be reviewed on an annual basis to help ensure that the materials are up-to-date.

In addition, resources permitting, ICANN should consider having a website that will list “Frequently Asked Questions” or other means to supplement, update and/or clarify this document. For instance, a website could clarify what to include/not include when filling out the SOI, so as to limit the risk that someone would inadvertently disclose sensitive information that would then be broadcast on the Internet (see below).

Section 2 – Roles and Responsibilities

Also, as a general comment, the use of the term “Team” in several section headings is confusing (as to whether there is any distinction between the “team” and the Working Group). The Committee suggests changing “Team” to “Working Group” in the titles of sections 2.1, 2.2, and 2.3 for consistency.

2.1.1. Announcement of a Working Group

The Committee commends the ICANN staff for providing a “Call for Volunteers.” This “Call” will be a very helpful way to ensure that the maximum number of constituencies will have the opportunity to participate in Working Groups.

2.1.2. Membership Applications

The Committee understands that the GNSO Secretariat will collect the expressions of interest to participate, verify that the submission was from a “real person,” and then send a confirmation of receipt with a SOI (a DOI form may also be required). Therefore, the Committee recommends:

- Taking precautions to ensure that these SOIs and DOIs do not inadvertently contain confidential personal information. It appears that the SOI and DOI will be posted on the Internet. (“The GNSO Secretariat shall post all SOIs, DOIs, any other self-selection disclosures or other related team member documents that have been received to the WG’s workspace (or alternate).”)
- making the following changes to the Template for the SOI (bearing in mind that this proposed template is being developed by the OSC GNSO Operations WT):

- **“Current vocation, employer and position”**
 - Add country/location of the individual.
- **With regard to the requirement that the interested person “Identify any financial ownership or senior management/leadership interest in registries, registrars or other firms that are interested parties...” and “Describe any arrangements/agreements between you and any other group, constituency or person(s) regarding your nomination/selection as a work team member.”**
 - State, if accurate, that this information will be kept confidential, and/or provide examples of recommended language to prevent individuals from disclosing sensitive information that could potentially expose ICANN to additional burdens to protect that information. Consider that these submissions will come from people in many different jurisdictions with different regulations (some quite onerous) regarding the protection of sensitive information. Existing SOIs demonstrate that this information can be and has been provided in general terms.
- Providing a “checklist” that individuals fill in to ensure that a “no” response is tracked. A review of existing SOIs shows that not everyone will confirm “they have no financial ownership interest”. <http://gnso.icann.org/issues/transfers/soi-irtp-a-pdp-oct08.shtml>

2.1.3. Planning the First Meeting

The Committee recommends that information be circulated regarding the selected members of the WG *prior* to the first meeting, especially if members will be voting on selection of the Chair or making other substantive decisions during that first meeting. Perhaps that information could be provided with the “Acceptance” email notifying WG Applicants that their application has been accepted and that they will be a part of the WG. That email could also set out the roles and responsibilities and expectations of the selected members in more detail.

2.1.4. First Meeting of the Working Group

2.1.4.1. Introductions

The Committee recommends:

- Circulating introductory information regarding the selected members of the WG prior to the first meeting (instead of at the first meeting). This will help ensure that WG members are prepared to make substantive decisions at that time (e.g. electing a Chair).
- advising participants well in advance of the first meeting that the meeting minutes, mailing lists, and SOIs will be available to the public. This will help safeguard their information and help them decide whether to participate in the WG.

2.1.4.2. Election of the WG Leaders

This subsection permits flexibility in determining how the WG leaders will be elected or appointed, allowing for different Chartering Organizations (COs) to tailor the leadership according to the needs of the WG. However, the Committee suggests circulating information regarding the nominated Chairs *prior* to the meeting.

2.1.4.3. Items for Review

The Committee recommends providing references (i.e., hyperlinks) to sample work products and providing additional details regarding the WG Charter earlier in this document (e.g., when is the WG Charter created? Who drafts it?, etc.).

Section 3 – Norms

3.1. Participation

The Committee agrees that the process for participation set forth in this subsection provides flexibility, but is concerned that the lack of definition of what constitutes a "quorum" could create a lack of consistency between operations and results of different WGs and could also result in a failure to include the viewpoints of various constituencies (e.g., if for some reason several members of a particular constituency are not able to make a particular meeting and a vote on a critical issue is taken). Therefore, the Committee recommends:

- Amending this subsection to define what constitutes a “quorum” with specificity.

3.2. Representativeness

The Committee applauds the statement in this subsection that “a Working Group should mirror the diversity and representativeness of the GNSO community by having representatives from most, if not all, GNSO Stakeholder Groups and/or Constituencies.” The Committee also appreciates that this subsection requires that the Chair, GNSO Secretariat and ICANN Staff to assess whether the WG has sufficiently broad representation and requires the Chair to inform the Chartering Organization if the Chair believes there is overrepresentation of a particular constituency to the point of “capture.” In the continued spirit of transparency and insuring inclusiveness, the Committee recommends:

- Amending this subsection to provide some sort of formal mechanism to ensure that the Chair affirmatively confirm that there is inclusive representation and not overrepresentation.

3.6. Standard Methodology for Making Decisions

The Committee believes that it is helpful to provide a specific methodology for WG decision making and handling of disagreements about the “designation” of level of consensus to be given to any position reached by the WG. However, the Committee recommends:

- That the process be amended to **require** that the WG Chair ensure that the minority viewpoints are stated and recorded (rather than simply state that the “WG Chair is encouraged to facilitate that the minority viewpoint(s) are stated and recorded.”)
- that the designations attached to the label’s “Unanimous Consensus” “Rough Consensus” “Strong support” and “No consensus” be revised slightly. The term “consensus” suggests unanimity, or at least a lack of opposition (perhaps with some abstentions), so we recommend revising the label “Unanimous Consensus” to simply “Consensus” to avoid redundancy. On the same basis, the designation “Rough consensus” (i.e. only a small minority in opposition) appears self-contradictory, so we recommend revising it to: “Super Majority Support” to reflect this understanding. The label “Strong support but significant opposition” does not adequately convey the concept that seems to be intended: that there is a position with an identifiable preponderance or majority of support, but a significant minority of opposition. In other words, “strong support” does not indicate that the position is a majority position, so that term should be replaced with “Majority support but significant opposition.” Likewise, in this context, “No consensus” does not appear intended to reflect a mere lack of unanimity, but a lack of any identifiable view having a preponderance or majority of support, so it should be replaced with a label such as “No majority position,” or “Divergent positions.”

Section 4 – Logistics and Requirements

The Committee applauds the considerable thought ICANN has put into developing logistics to run the WG meetings. The Committee is pleased to offer the following comments to assist ICANN:

- For WG conference calls, ICANN proposed providing toll-free dial-in numbers for most countries. The Committee recommends that such toll-free dial-in numbers should be provided for **all** WG participants, unless doing so would be extraordinarily unfeasible, so that no WG member is barred from participating in WG conference calls due to cost (See Section 4.1, paragraph 2).
- it is only natural that a WG, given ICANN’s Internet origins, use online services to share documents and other communications relating to its activities. Due to the sensitive nature of some of the WG activities, such services must be secure to protect the confidentiality of any sensitive information (See Section 4.1, paragraph 2).
- the Committee applauds advance circulation of WG meeting agendas, but circulating the agendas 24 hours before meetings provides insufficient lead time for WG members to review the agendas in light of the other professional and personal obligations of WG members. Also, in order to be better able to accommodate changes to the agenda, the Committee recommends allowing WG members to propose additions or changes to the agenda before, as well as at the start of, each WG meeting. Allowing additions and changes to the agenda before each meeting may increase the likelihood that those items can be discussed at the meeting and that such discussions can be meaningful, since advance notice of agenda changes may lead to more informed discussions (See Section 4.1, paragraph 6).

- as an international organization, the Committee applauds ICANN’s commitment to provide translations into multiple languages. The Committee recommends that, when feasible, translations be provided into some or all of the following languages, mirroring the languages on ICANN’s website: Arabic, Chinese, English, French, German, Italian, Japanese, Korean, Portuguese, Russian and Spanish (See Section 4.3, paragraph 2, second bullet point).
- as an active and frequent participant in consultations concerning government and non-government organizations that impact brand owners, the Committee applauds ICANN’s foresight to have WGs seek input from groups and individuals in order to further inform WG members about matters concerning the working group and which are of interest to the ICANN community. The Committee respectfully submits that the WGs should also consult, depending on the WG’s subject matter, groups and individuals with technical expertise in preserving the Internet’s stability, security and interoperability as well as groups and individuals representing brand owners (See Section 4.3, paragraph 2).

Section 6 – Charter Guidelines

The introduction to Section 6 states that this section is intended to assist any CO in its effective implementation of a WG by providing a set of guidelines, etc. that the CO “can consider and/or utilize as appropriate.” The Committee recommends:

- More strongly encouraging adherence to at least certain of the key guidelines, including those promoting the solicitation of input and participation from all stakeholders and those requiring disclosures of interest from working group members.

6.1.1. Announcement of a Working Group

While there is language in this subsection recognizing the importance of circulating the “Call for Volunteers” as widely as possible, the subsection goes on to state that publication on the GNSO and/or ICANN site, and the distribution to stakeholder groups, etc. “should be explored...depending upon the scope of the Working Group and its intended subject matter.” The Committee recommends that:

- Publication and distribution be required as the default rule, subject to exceptions only in extraordinary circumstances.

6.1.2. Transparency and Openness

This subsection reiterates ICANN’s goals by stating that all WGs are expected to operate under the principles of transparency and openness, followed by a few examples that do not necessarily – on their face – further these principles. The Committee recommends:

- That the subsection be modified to either delete the examples or explain how the examples promote the principles of transparency and openness;
- that the word “perspective” in the second sentence of this subsection should be “prospective.”

6.1.4. Other Important Roles

The Committee recommends, in the first line, replacing “could” with “should.”

6.2. Working Group Charter Template

Introduction

The disclaimer makes explicit that not all charters need to contain the sections specified in the Template and, in fact, specifically states that the charter drafters should feel “unconstrained” in skipping or adding sections. However, the Committee recommends:

- That at least some of the sections in the Template should generally be required [e.g., 6.2.1 (Working Group Identification), 6.2.2. (Mission, Purpose, and Deliverables), and 6.2.3.4 (Statements of Interest and Disclosures of Interest)].

Template 6.2.3.4. Statements of Interest and Disclosures of Interest

The difference between the “Statement of Interest” and “Disclosure of Interest” is not entirely clear (even after reviewing footnotes 1 and 2). To avoid confusion, the Committee recommends:

- That these terms either be combined into a single term and concept, or the distinction between them should be made more clear throughout (perhaps through eliminating the use of the word “interest” in both labels, which is confusing given that the intended meaning of the word is different in each context).
- some additional information should be required from potential WG members in this regard, including disclosure of other committees, organizations, working groups, etc. that the prospective member serves on (or has served on) within the same field, as well as any relevant publications that the person has authored or been involved in.
- in the “Disclosure of Interest” section, specifically requesting information about any interests that could present, or give the appearance of presenting, a conflict of interest in connection with the member’s work as part of the Working Group, and possibly provide some examples.
- specifying consequences of a member’s failing to provide a complete or accurate disclosure.

Conclusion

Overall, this draft proposal is very clearly presented and the Committee concurs with most of the principles and processes outlined herein. The Committee believes that the recommendations set forth in these comments assist in providing further clarity to the language of the document and promotes the goals of consistency, transparency and inclusiveness.

Thank you for considering our views on these important issues. Should you have any questions regarding our submission, please contact External Relations Manager, Claudio DiGangi at: cdigangi@inta.org

About the INTA Internet Committee

The International Trademark Association (INTA) is a more than 131-year-old global organization with members in over 190 countries. One of INTA's key 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 served as a leading voice for trademark owners in the development of cyberspace, including as a founding member of ICANN's Intellectual Property Constituency (IPC).

INTA's Internet Committee is a group of over two hundred 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, and develops and advocates policies to advance the balanced protection of trademarks on the Internet.