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Submitted to public-comments@ianacg.org:

September 8, 2015

Alissa Cooper
Chair, IANA Stewardship Coordination Group
c/o ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Re: IANA Stewardship Transition Proposal

Dear Ms. Cooper:

The International Trademark Association (INTA) is pleased to submit the attached comments regarding the IANA Stewardship Transition Proposal prepared by the IANA Stewardship Coordination Group (ICG).

We have followed the format and answered the questions proposed by the ICG to the extent that the current report contains sufficient information to respond. We are still concerned that critical ICANN accountability mechanisms are not sufficiently articulated to answer affirmatively to some key questions. We have identified those within our comments.

Should you have any questions about our comments, I invite you to contact Lori Schulman, INTA's Senior Director of Internet Policy at 202-261-6588 or at lschulman@inta.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Etienne Sanz de Acedo". The signature is fluid and cursive, with a prominent vertical stroke on the left side.

Etienne Sanz de Acedo

**IANA Stewardship Transition Coordination Group's Proposal
on the IANA Function Transition**

September 8, 2015

The International Trademark Association (INTA) is pleased to respond to the IANA Stewardship Transition Coordination Group (ICG) proposal (Proposal) related to the IANA function transition. INTA thanks the ICG for their diligent work in coordinating the proposals from the names, numbers and protocol communities into the current document. We have followed the suggested format regarding responses to the ICG's questions and our comments are below.

Questions Concerning the Proposal as a Whole.

1. Completeness and clarity: Is the combined proposal complete? Each of the operational community proposals contains aspects to be completed in the future when the proposal is implemented. Is the combined proposal specified in sufficient detail such that it can be evaluated against the NTIA criteria?

INTA's main concern with the IANA transition is that proper accountability protocols and procedures must be identified and adopted by the Internet community and ICANN before the IANA Proposal can be fully evaluated and approved. Along those lines, the finalization of the proposals from CCWG on accountability and enforceability is critically important to the transition and INTA is submitting comments to ICANN on the CCWG proposal on Work Stream 1 concurrently with these comments. Therefore, the proposal is not complete with regard to the NTIA criteria.

2. Compatibility and interoperability: Do the operational community proposals work together in a single proposal? Do they suggest any incompatible arrangements where compatibility appears to be required? Is the handling of any conflicting overlaps between the functions resolved in a workable manner?

INTA has not identified, at this time, any compatibility and interoperability concerns.

3. Accountability: Do the operational community proposals together include appropriate and properly supported independent accountability mechanisms for running the IANA functions? Are there any gaps in overall accountability under the single proposal?

Please see our combined response to questions 3 and 4 below.

4. Workability: Do the results of any tests or evaluations of workability that were included in the operational community proposals conflict with each other or raise possible concerns

when considered in combination? The first question that the ICG seeks input on concerns whether completeness of the Proposal, whether the Proposal is compatible with the Cross Community Working Group on Enhancing ICANN Accountability (CCWG), and whether it has sufficient accountability.

With respect to questions 3 and 4, INTA has identified certain aspects that INTA supports and other aspects that could use further attention to ensure that the proper accountability mechanisms are in place. INTA is pleased that the ICG has worked to harmonize the responses by the three community groups and does not significantly alter the transition proposals contained in the three community responses. The deference given to these individual community groups is important during the transition process, especially given the community model that ICANN uses. Further, INTA notes that the Proposal takes some steps toward independence and accountability by adopting the portions of the Cross Community Working Group (CWG) proposal that would create a Post Transition IANA (PTI) affiliate/subsidiary of ICANN to perform the IANA functions operator in contract with ICANN and the IANA Function Review Process (IFR) to conduct reviews of PTI. The Proposal does not replace the U.S. Department of Commerce's role with another governmental organization that may in the future be less inclined to maintain openness on the Internet. While INTA notes that the Proposal acknowledges the need to ensure accountability and implement the CCWG's response/proposal once the CCWG's process is completed, INTA believes that further work should be done to ensure that the proper accountability mechanisms are in place.

Specifically, key details are not specified in the Proposal. INTA notes that the Names Proposal within the ICG Proposal is contingent on accountability mechanisms outlined in the CCWG's accountability proposal, which is missing key details and the subject of ongoing comments and debate. Indeed, the Proposal raises – but does not answer – the question of what action will ICG take if it determines that the names proposal is not complete.

INTA also notes the following details from the Proposal that need more clarification and additional public comment opportunities:

The Proposal calls for the operational communities to obtain full responsibility for who their IANA functions operator will be. There remains, however, insufficient detail about how the operational communities will exercise that responsibility. Specifically, there is insufficient detail regarding: a) how the numbers and protocols operational communities will contract with ICANN and/or subcontract with PTI; b) how the numbers and protocols operational communities will be able to participate in the PTI accountability measures; and c) how the operational communities will coordinate the IANA functions should one or more initiate separation from ICANN / PTI.

With regard to the PTI, the Proposal fails to provide sufficient detail to support the integral statement that “The separation of PTI as a subsidiary will ensure the independence of that oversight role from the contractor providing the service.” (X021, 51) As footnote 26 correctly states, “a parent and its subsidiaries are affiliates because the parent controls the subsidiaries.” Because ICANN will control PTI, how will having PTI as a subsidiary ensure the independence of that oversight role? The Proposal does not answer this question. In fact, INTA believes that having the PTI entity formed as an affiliate of ICANN removed an important layer of oversight that an arms-lengths transaction would provide. Instead of an affiliated PTI, INTA recommends that a Request for Proposal be issued to serve as PTI provider (PTIP) and that, in addition to service level commitments, the PTIP agree to:

1. Be subject to all ICANN accountability mechanisms in the same manner as ICANN itself;
2. Agree to the governing law of and exclusive jurisdiction for complaints in a U.S. State to ensure accountability and predictability with enforcement; and
3. Agree to neither seek “international organization” status limiting or eliminating liability nor act on or assert any such status if granted by the United States government or any other equivalent by any other sovereign.

In the event that an affiliated PTI is selected instead, the CCWG should provide a more detailed proposal for public comment requiring number three above and providing an answer to the question of “how will having PTI as a subsidiary ensure the independence of that oversight role?”

The Proposal calls for the Names Community to be able to initiate a separation process for the names function in the event it is unsatisfied with the performance of PTI. INTA is concerned, however, that the separation process is too complex and impossible to fully implement, and can be overridden by the ICANN Board, as currently contemplated. INTA recommends a separation process that does not require final approval by the ICANN Board.

The Proposal calls for the multi-stakeholder community to set service level requirements for the IANA functions operator. There remains insufficient detail on what those service level requirements will be. INTA urges the completion of the community’s ongoing work on the new Service Level Agreement to enable their review and public comment and then inclusion in the final proposal before submission to NTIA.

The Proposal calls for ICANN to have an agreement with the Root Zone Maintainer to govern the Root Zone Management process without the participation of NTIA. So far, the transition process and agreement have not been sufficiently specified and subject to the review of the ICANN community. INTA submits that these details and agreement should be part of the final proposal and subject to further public comment before submission to NTIA.

The Proposal identifies the “workability” scores of each of “PTI as an affiliate of ICANN” and “Applying changes to the Root Zone environment” as a barely passable 53%. ICG should provide a further detailed explanation of why such low workability scores for two key elements of the Proposal are acceptable and should be endorsed.

The Proposal calls for the maintenance of the United States as the jurisdiction of IANA. INTA supports that proposal and believes that at all times that ICANN must commit that each IANA function will be subject to the governing law of and exclusive jurisdiction for complaints in a U.S. State to ensure enforceability and predictability with contract compliance. Further, both ICANN and any affiliated or third party provider of IANA functions must agree to neither seek “international organization” status limiting or eliminating liability nor act on or assert any such status if granted by the United States government or any other equivalent by any other sovereign. The IANA functions should be subject to judicial enforcement to ensure accountability.

The Proposal does not contain a harmonized view on the status of the IANA trademarks and domain names. INTA urges the ICG to further coordinate with the operational communities, ICANN and intellectual property counsel to prepare a final and detailed proposal for these important intellectual properties, which should be included in a new proposal to be submitted for review and public comment before submission to NTIA.

Questions Concerning NTIA Criteria

5. *Do you believe the proposal supports and enhances the multistakeholder model? If yes, please explain why. If not, please explain why and what proposal modifications you believe are necessary.*

INTA asserts the Proposal seeks to support the multistakeholder model and that with further clarifications and revisions discussed above that this question could potentially be answered in the affirmative.

6. *Do you believe the proposal maintains the security, stability, and resiliency of the DNS? If yes, please explain why. If not, please explain why and what proposal modifications you believe are necessary.*

INTA asserts the Proposal seeks to maintain the security, stability, and resiliency of the DNS and that with further clarifications and revisions discussed above that this question could potentially be answered in the affirmative.

7. *Do you believe the proposal meets the needs and expectations of the global customers and partners of the IANA services? If yes, please explain why. If not, please explain why and what proposal modifications you believe are necessary. Please indicate if you are a customer or partner of the IANA services.*

INTA, like all users of gTLDs for their website presence, email delivery and a myriad of other mission-critical functions, is ultimately a true customer of IANA services. This includes not only INTA but many of its thousands of members. Our comments regarding the areas where the proposal requires further development in order to meet the needs and expectations of IANA's global customer service base are contained herein.

8. *Do you believe the proposal maintains the openness of the Internet? If yes, please explain why. If not, please explain why and what proposal modifications you believe are necessary.*

INTA asserts the Proposal seeks to maintain openness of the DNS and that with further clarifications and revisions discussed above that this question could potentially be answered in the affirmative.

9. *Do you have any concerns that the proposal is replacing NTIA's role with a government-led or inter-governmental organization solution? If yes, please explain why and what proposal modifications you believe are necessary. If not, please explain why.*

Yes, please see the above response to Questions 3 and 4.

10. *Do you believe that the implementation of the proposal will continue to uphold the NTIA criteria in the future? If yes, please explain why. If not, please explain why and what proposal modifications you believe are necessary.*

As discussed above, the Proposal does not contain sufficient detail to determine whether PTI will continue to uphold the NTIA criteria in the future.

Questions Concerning ICG Report and Executive Summary

11. *Do you believe the ICG report and executive summary accurately reflect all necessary aspects of the overall proposal? If not, please explain what modifications you believe are necessary.*

As illustrated above, the Proposal does not contain sufficient detail to reflect all necessary aspects of the overall proposal.

General Questions

12. Do you have any general comments for the ICG about the proposal?

INTA respectfully requests that the ICG address the issues raised above before submitting its final proposal. As such, INTA urges the CWG-Stewardship to provide another comment period once the following details in the Proposal and additional details in the CCWG proposal are specified in final form before submission to the ICANN Board and then NTIA. Further, while the report is clear in explaining the proposals of the three communities, it does not elaborate on how they will be synthesized where there are discrepancies in approach. It would be helpful for the entire community to understand how that would work.

About INTA

INTA is a 137 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.