Comments of the Internet Committee of the International Trademark Association (INTA) on the Proposed Framework for the Fiscal Year 2012 (FY12) Operating Plan and Budget

April 1, 2011

Introduction

The Internet Committee of the International Trademark Association ("the Committee") is pleased to provide comments on ICANN's Proposed Framework for the FY12 Operating Plan and Budget[1]. Please find below our recommendations and observations.

Executive Summary

The Committee's most significant concerns regarding the FY12 Framework are that the current Proposed Framework does not adequately explain ICANN's proposed activities and deliverables for FY2012, and that ICANN has only budgeted for a minimal increase in compliance staffing, despite the projected launch of approximately 500 new gTLDs. The Committee urges ICANN to adhere to more transparent and accountable budgeting procedures, and reconsider its compliance staffing plan to make a more realistic assessment of the staffing required to meet compliance needs in light of the new gTLD program. In addition, the format of the FY12 Framework presents several concerns. The Committee notes that, for the FY12 Framework, ICANN introduced a new PowerPoint presentation-style format, rather than the discussion-style format used for previous Frameworks. The new style greatly reduces the amount of information available, thus making analysis of the Framework more difficult. We therefore recommend that ICANN return to the discussion style format. Finally, the Committee believes more detailed explanations regarding the significant increase in the Travel & Meetings budget are warranted.

Analysis

First, the Committee notes that the Core Operations projection -- which includes contractual compliance costs -- is identical in the FY12 Framework with *and* without the new gTLD launch. At ICANN's last public meeting in San Francisco, California, ICANN staff indicated that it has committed plans to hire only *two* additional full-time employees (FTE) to its compliance group in connection with the upcoming new gTLD launch. Given that ICANN is projecting 500 additional gTLDs, the understaffing of such a critical function as contract compliance is extremely troubling to the Committee. As of now, eight compliance FTEs manage the current 21 gTLDs. Assuming 500 additional gTLDs are introduced in FY12, ICANN is proposing that two additional compliance FTEs -- for a grand total of ten – would manage a total of 521 gTLDs. In other words, ICANN is proposing a 25% increase in compliance FTEs to match an estimated

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[1] http://www.icann.org/en/planning/ops-budget-framework-fy2012-en.pdf

2,281% increase in the number of gTLDs. If ICANN intends to maintain an acceptable level of contractual compliance activity with 500 gTLDs to be added in FY12, then it must project a prorated number of roughly 200 FTEs or equivalent expenditures, for FY12. Simply put, ten total compliance FTEs cannot acceptably maintain the status quo, let alone ensure ICANN's oft-stated goal of continual improvement of contractual compliance efforts.

The Committee also has strong reservations about ICANN's transition from the helpful discussion-style Framework (http://www.icann.org/en/planning/ops-budget-framework-fy2011-en.pdf) to the new PowerPoint presentation-style Framework. This change is unfortunate for two reasons. First, the current Framework contains a fraction of the information and explanations present in the FY11 Framework. In the FY11 Framework, organizational activities were divided into categories; key activities and deliverables were identified for each category, and forecasts and comparisons to the prior year were very clear -- indeed, a helpful chart summarized much of this information. This transparent organization and explanation allowed the public to properly analyze and comment on ICANN's proposals.   In the current Framework, the forecast and comparisons are painted in very broad strokes. Neither the charts in the presentation, nor the accompanying comments, are detailed enough for even a cursory analysis of the preliminary operating plan and budget. The division of the forecast into what appears to be a new gTLD track and a non-new gTLD track, only further confuses matters. We recommend that, for FY13, ICANN return to the prior Framework format.

As an additional concern regarding the substance of the FY12 Framework, the Committee questions the 36.2% increase to the "Travel & Meetings" operating expenses from the FY11 budget - even without the gTLD launch. In our comments on the FY11 Framework, we expressed concern regarding the projected increase in this area. This year we do not have the additional information necessary to guide the proper analysis, but we again express concern that ICANN is still failing to reach the public in any real way regarding its policy making process and oversight activities.

In Section 7 of the Affirmation of Commitments (AoC), ICANN commits to adhere to transparent and accountable budgeting procedures.[2] The projected increase for the Travel & Meetings budget lacks the sufficient detail necessary to explain the increase in expenditures. We are concerned that this increased travel budget does not reflect a change in policy, but rather increased resources available primarily for ICANN's contracted parties. As ICANN itself acknowledges in the AoC, there is a group of participants that engage in ICANN's processes to a greater extent than Internet users generally. For this expenditure to be justified, ICANN needs to demonstrate that the Travel & Meetings budget increase is designed to accommodate a broader group of constituents to ICANN, such as private sector business or intellectual property owners, rather than just its contractual business partners, such as registries and registrars.

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[2] Affirmation of Commitments by the United States Department of Commerce and the Internet Corporation For Assigned Names And Numbers. September 30, 2009.

Conclusion

Overall, the Committee is concerned that the current Proposed Framework does not adequately explain ICANN's proposed activities and deliverables for FY2012. First, we request that ICANN revisit its compliance staffing plans to ensure that ongoing compliance needs can be met, and compliance improvements continued, in the context of the new gTLDs. We also request that, at a minimum, detailed notes accompany the PowerPoint presentation to ensure the level of information provided is comparable to previous years. Finally, the Committee requests that ICANN provide additional explanation regarding its increased Travel & Meetings budget. These changes would contribute to ICANN's goals of accountability and transparency, as well as ensure that budget and staffing projections are realistic to address the planned expansion of the top-level domain space.

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

About the INTA and the Internet Committee

The International Trademark Association (INTA) is a 133-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 to develop and advocate policies to advance the balanced protection of trademarks on the Internet.