

March 31, 2011

Fiona M. Alexander  
Associate Administrator  
Office of International Affairs  
National Telecommunications and Information Administration  
U.S. Department of Commerce  
1401 Constitution Avenue, N.W.  
Room 4701  
Washington, D.C. 20230  
[IANAFunctions@ntia.doc.gov](mailto:IANAFunctions@ntia.doc.gov)

RE: Request for Comments on the Internet Assigned Numbers Authority Functions

Dear Ms. Alexander:

As a global association of trademark owners and professionals from over 190 countries, the International Trademark Association (INTA) appreciates the opportunity to respond to the Notice of Inquiry (NOI) on this issue of vital importance to the Internet and to the ongoing trust and management of its resources.

### **The Importance of the Internet Assigned Numbers Authority (IANA) Functions Contract**

INTA's response focuses on the broader issues inherent in transitioning management of Internet names and addresses to the private sector, along with the important role the IANA contract serves in ensuring the success of the current model of multi-stakeholder private sector led management of the Domain Name System (DNS) and the stability of the Internet. Notwithstanding whether or not the IANA contract is put out for competitive bid, the appropriate delegation and management of the IANA functions is of vital importance to the public and to the stable coordination of the Internet's unique set of identifiers. INTA strongly supports the efforts of the National Telecommunications and Information Administration (NTIA) to enhance the performance of the functions of the IANA. We also strongly believe for reasons detailed below that to ensure adequate accountability and stability, these responsibilities remain delegated through the development and award of a new IANA functions contract, rather than a cooperative agreement.

As identified in the DNS White Paper over ten years ago, the overarching objective in the management of Internet resources should remain ensuring DNS stability. IANA's current operator, the Internet Corporation for Assigned Names and Numbers (ICANN), has enjoyed a special

relationship in partnering with the NTIA, as currently embodied in the Affirmation of Commitments agreement.<sup>1</sup>

To a large extent, INTA believes the NTIA has played an important role in holding ICANN accountable to the public interest, and keeping ICANN on track when it has strayed off course in its commitments to the public. As ICANN stated in its response to the NTIA's Notice of Inquiry (NOI) on the conclusion of the Joint Project Agreement in 2008:

“Concluding the JPA will not affect existing accountabilities expressed in the IANA contract....”<sup>2</sup>

Now several years later, ICANN's response to the NOI on the IANA functions suggests the contract be amended in various ways, including modifying its form to a cooperative agreement.<sup>3</sup>

### **Internet Stability**

As noted in INTA's previous comments<sup>4</sup>, the principle of “stability” as originally set forth in the DNS White Paper encompassed significantly more than the narrow, self-defined mission of coordinating the management of the technical elements of the DNS. The White Paper's frequent reference to matters other than Internet protocols and root servers, such as the protection of trademarks in the Internet DNS, strongly suggested that stability was never contemplated to be merely technical efficiency, but also should ensure the user's ability to reach his/her intended destination in cyberspace.

The critical role of the Internet in commercial enterprise, academia and everyday communications makes it clear that protection of users of the Internet, including the efforts of trademark owners to protect their brands from misuse and fraud, is inextricably tied to ICANN's responsibilities in this area. Accordingly, INTA believes that ICANN's responsibility to coordinate the technical elements of the DNS also requires ICANN to demonstrate maturity in leadership in instituting decisive policies and processes to protect Internet users from the results of ICANN's technical decisions.

The Internet cannot be a safe, stable and secure place if it is beyond the realm of law. The basic role for ICANN or any DNS management authority includes setting the “rules of the road” and enforcing those rules. If ICANN is to be a fully independent, self-governing entity, it must be willing and capable of setting *and* enforcing those rules. The failure by ICANN and by its accredited registrars to ensure the integrity of domain names and access to accurate Whois data has resulted in significant costs to trademarks owners committed in their efforts to locate companies or individuals responsible for infringing, fraudulent and malicious activities on the Internet in order to protect consumers and users of online content.

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<sup>1</sup> Affirmation of Commitments by the United States Department of Commerce and the Internet Corporation For Assigned Names And Numbers. September 30, 2009.

<sup>2</sup> ICANN 's Submission Letter to Midterm Review of the Joint Project Agreement. January 9, 2008

<sup>3</sup> ICANN's Response to Request for Comments on the Internet Assigned Numbers Authority (IANA) Functions. March 25, 2011.

<sup>4</sup> INTA's Letter Comments to DNS Transition, July 5, 2006; INTA's Letter Comments to JPA Mid-Term Review, February 12, 2008; Comments to JPA Mid-Term Review, June 8, 2009.

Fiona M. Alexander

March 31, 2011

Page 3

Without adequate processes to address the malicious conduct in the DNS such as cybersquatting, phishing, and the proliferation of malware that harms Internet users, the unresolved concerns further support our conclusion that ICANN has not sufficiently matured to complete the transition of DNS management functions to the private sector. The persistence of these issues underscores why ICANN's continued accountability to a regulatory authority is essential.

Another important requisite to the successful privatization of managing DNS resources concerns the appropriate representation of stakeholders in the management functions of coordinating the Internet's unique identifiers. If the Internet is to serve the needs of global commerce, the intellectual property community, along with all stakeholders, should have adequate representation within the private sector model. However, over the course of ICANN's history, the representation of private sector interests not under contract with ICANN has steadily eroded. Far from making progress on this critical issue over the past ten years, ICANN has moved in the wrong direction in fulfilling its responsibilities regarding this core principle of multi-stakeholder representation.

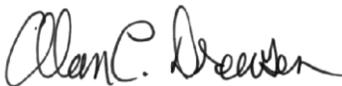
### **Conclusion**

It is INTA's long-held view that Internet stability does not stem from purely technical issues. The definition of a secure and stable Internet DNS requires ICANN to smoothly manage both the technical infrastructure of the DNS as well as the legal and contractual infrastructure governing that system. If ICANN cannot successfully manage the legal and contractual framework governing the components of the DNS, such as the contracts governing the registry operators and registrars, ICANN will not be able to attain institutional confidence in its long-term stability. While ICANN has provided leadership with respect to certain technical matters, its substandard performance on DNS management issues has reduced global confidence in its ability to manage DNS resources.

As the NTIA is aware, ICANN's new gTLD program has yet to be completed, much less implemented, and the outcome of this policy-making exercise will have a significant influence on Internet stability. While INTA acknowledges ICANN's progress and maturation in some areas, including technical coordination, such maturation is unlikely to continue without stewardship, and INTA credits much of ICANN's maturation to date to its relationship with, and oversight by, the NTIA. For these reasons, we encourage NTIA to maintain its current accountability over the IANA functions, as reflected in the development and award of a new IANA functions contract.

Thank you for considering our views on these important issues. If you have any questions regarding our submission, please contact INTA External Relations Manager, Claudio Digangi at: [cdigangi@inta.org](mailto:cdigangi@inta.org)

Sincerely,



Alan C. Drewsen  
Executive Director