



October 20, 2008

COMMENTS ON IMPROVING INSTITUTIONAL CONFIDENCE IN ICANN

The International Trademark Association (INTA) is pleased to respond to the request for comment on the President's Strategy Committee (PSC) document "Improving Institutional Confidence in ICANN." INTA (<http://www.inta.org>) is a not-for-profit membership association of more than 5,500 trademark owners, from more than 190 countries, dedicated to the support and advancement of trademarks and related intellectual property as elements of fair and effective national and international commerce. INTA has served as the leading voice for trademark owners in the development of cyberspace, including as a founding member of the GNSO Intellectual Property Constituency (IPC) of ICANN.

I. Sufficient Safeguarding Against Capture

INTA applauds the PSC for acknowledging the importance of safeguarding against capture and recognizes the PSC's efforts to develop a proposal aimed at doing so. INTA encourages the PSC to expand the proposal to ensure ICANN is safeguarded against capture in a variety of forms. To build institutional confidence, ICANN should undertake a comprehensive organizational review to ensure that no one faction, or set of factions dominates its decision making, structure or processes.

INTA agrees with the PSC suggestion to require a broader range of participants in the ICANN process to provide public statements of interest, and suggests that ICANN develop, in consultation with stakeholders, a standardized statement of interest form. A standardized form will ensure greater consistency and uniformity in the type and amount of information disclosed. It will also eliminate a potential barrier to participation by those persons who would otherwise have to spend unnecessary time determining what information was required.

It is unclear if the PSC proposes to require **all** participants in the SOs and ACs to provide public statements of interest - even if the participant is not a member of a Council, committee, working group, or task force. If so, INTA suggests that the imposition of this requirement on such persons, who may participate only in a constituency's or AC's internal processes, may be overly burdensome and a disincentive to participation. It is also unclear if the PSC would apply such a requirement to all SOs and ACs, including, in particular, the ccNSO and the GAC.

2. Sufficient Accountability to the Multi-Stakeholder Community

INTA encourages ICANN to develop objective methods for measuring its performance and accountability to the full range of the Internet community, and in particular to global trademark and intellectual property owners who are significantly affected by ICANN policies and decisions.

As an initial step, INTA supports the proposed creation of additional accountability mechanisms to allow the community to request that the Board re-examine a decision. The development of clear procedures and short timelines will be essential to the efficacy of such a mechanism. The potential sanction of removing the Board and collectively reconstituting it carries risks of abuse.

Presumably, the support threshold for such an action would be at least the "two thirds of two thirds" of the SO Councils and AC members. The support threshold must be set at a level sufficiently high to ensure that the request reflects the views of the substantial majority of the ICANN community and simultaneously low enough to ensure that the sanction could potentially be levied. Any procedure for reconstituting the Board should, of course, prohibit recently dismissed Board members from being immediately elected again.

While the PSC proposals focuses on the Board's accountability to the multi-stakeholder community it serves, the PSC should take this opportunity to implement additional mechanisms intended to facilitate broader participation in ICANN processes by improving accountability. It is INTA's view that the public comment process requires significant revision.

Participants do not know if their comments will be read, by whom, or for what purpose. In the absence of information to the contrary, participants justifiably assume that their comments will be read, will be read by all relevant persons (e.g., staff, SO Councilors, AC members, and Board members), and will be taken into account and acted upon in the policy development process. The experiences of non-contracted party stakeholders who engaged in ICANN's RAA amendment consultation process exemplifies why institutional confidence in ICANN remains low. Without accountability to stakeholders as to how the public comment process works, there is no incentive for stakeholders to participate in it.

3. Meeting the Needs of the Global Internet Community of the Future

ICANN's current operation is international and we are encouraged by the PSC's firm statement that ICANN remain a California-based not-for-profit corporation. The United States has one of the most highly developed legal systems and body of laws in the world, including, of particular importance to INTA, intellectual property protections. ICANN's registry and registrar contracts are governed by U.S. law and, we believe, it is essential that this continue.

INTA supports continued efforts to reach the global Internet community. The establishment of satellite ICANN offices in countries where there is an objectively demonstrable need or advantage is a reasonable means to meet this goal; provided, however, that ICANN is fiscally responsible in establishing and maintaining these offices. INTA does not support the establishment of "global legal presences". Establishing additional legal entities of other forms in other countries seems likely to unnecessarily further complicate an already complex community.

INTA has expressed its view that ICANN must strengthen and improve its relationship with the business community given the private sector's historic investment in the Internet. The need to improve business user input is clear and unmistakable. Many of the private sectors representatives currently participating in ICANN are employed by or associated with entities that have global footprints. ICANN has an excellent opportunity to leverage the significant expertise of these entities as ICANN continues its global outreach. Doing so would allow ICANN to more easily integrate into various cultures around the globe, while incorporating an important role for private sector entities and institutions in the future growth of the Internet.

Finally, INTA appreciates the importance of including the global community in the continued evolution of the Internet and supports this ongoing effort. This support is not without restriction; it is subject to the budget limitations associated with and fiscal responsibility expected of a not-for-profit public interest company's budgetary limitations.

4. Financial and Operational Security of ICANN

INTA agrees that ICANN must always be financially and operationally secure and that it must continue to maintain business practices that instill confidence, certainty and stability. These fundamental principles are imperative given the substantial role the Internet plays in promoting commerce and fair competition for the world at large. INTA continues to demand transparency with regard to the budgeting mechanisms and overall financial and operational security of ICANN. INTA recommends that ICANN adopt and implement into the budget process measurable objectives for each funded activity.

INTA agrees that ICANN must adopt alternative sources of funding to lessen dependence on current funding channeled through registries and registrars. ICANN has not yet indicated any alternative sources of funding, and INTA urges ICANN to seek public comment on any alternative sources once they are specified.

It is critical that the various revenue streams and/or sources of funding for ICANN always be disclosed and transparent; that ICANN stakeholders have regular, ongoing opportunities for public review of ICANN's financial accounts and subsequent opportunities for criticism and correction of ICANN's actions if there is the potential for a conflict of interest or undue influence due to monetary interests.

5. Continued Security and Stability of the Internet's Unique Identifiers

INTA believes that ICANN's strategic priority of ensuring the stable and secure operation of the Internet's unique identifier systems, to be fully effective, must also focus on, for example, non-technical matters and threats to the security and stability of the Internet's unique identifier system, such as domain tasting, phishing and pharming, and the lack of a global standard for proxy registrations and the release of WHOIS data.

These and other issues, if left unchecked, have the ability to undermine the security and stability of the Internet as a tool for global communication and commerce. ICANN must use its mandate, and work within the framework to individually or collaboratively address these non-technical issues that represent a growing challenge to the overall security and stability of the Internet. Moreover, notwithstanding a number of ICANN actions that suggest to the contrary, security and stability are also not narrowly limited to gTLDs and must include the ccTLDs.

ICANN must be subject to strong ongoing oversight to assure that the security and stability goals are not politicized or compromised. Such oversight must include opportunities for ICANN stakeholders for regular public review, criticism, and correction of ICANN actions. Further, it is important to stress that the not-for-profit status of ICANN as an entity does not immunize it from the potential for undue influence, based on monetary considerations.

INTA believes that ICANN should continue to be headquartered in the United States because of

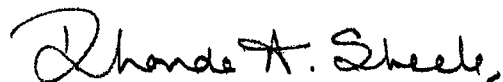
its governmental stability and environment favoring competition and private enterprise. The continued U.S. legal jurisdiction of ICANN contracts is critical to meeting the goals in this key area, not least because substantive U.S. laws are extensive, well developed, and address leading edge issues, not only respecting contracts, but also respecting laws affecting so many ICANN stakeholders. INTA agrees and/or suggests that it is appropriate for ICANN to incorporate the above mandates into its bylaws.

ICANN should start a process to design a plan or system that adequately can review stakeholder criticisms about IANA functions, effectiveness, and efficiency and make corrections accordingly. INTA further believes that the process implemented by ICANN to review IANA efficiencies affecting governments and managers respecting ccTLDs also must allow for the input of other stakeholders, if they were not included in the process. ICANN must make public its discussions with the Department of Commerce regarding the improvement of IANA operational efficiency and allow stakeholders to review and comment on any proposed changes.

Conclusion

ICANN derives its legitimacy from Internet stakeholders who are impacted by its decisions, administration, rules, and practices. INTA believes ICANN should build institutional confidence in its structures and become accountable to stakeholders across the broad range of the Internet community to achieve the vision of becoming a private sector led coordinator of the Internet's unique identifiers. INTA thanks the PSC and ICANN for considering our views and engaging in the Improving Institutional Confidence consultation.

Sincerely,

A handwritten signature in black ink that reads "Rhonda A. Steele," with a stylized, cursive script.

Rhonda Steele
President