INTA Internet Committee Comment on:
Draft Proposal, Based on Initial Community Feedback, of the Principles and Mechanisms and the Process to Develop a Proposal to Transition NTIA's Stewardship of the IANA Functions
May 7, 2014

The Internet Committee of the International Trademark Association (INTA) is pleased to respond to ICANN’s call for public input on the process to develop a proposal to transition NTIA’s stewardship of the IANA functions.

ICANN published this topic for public comment on April 8, 2014, for 30-days. As an initial matter, we believe the thirty-day comment period is too short for meaningful public consultation, especially on a topic of this complexity and importance. If ICANN is to convene global stakeholders in a process that is truly deliberative, the public must be provided with sufficient time to consider issues, deliberate within their communities, develop public positions, and provide recommendations.

The Internet Committee is pleased to provide the following comments on the materials that have been posted for review:

- ICANN’s decisions on various policy matters have substantial impact upon brand owners and consumers, including the cost of monitoring and intervening against trademark violations and malicious conduct in the DNS. That relationship was most recently demonstrated by the attention provided to trademark and consumer protection in ICANN’s new gTLD program, including the development of new Rights Protection Mechanisms (RPMs) that are being tested as that program is launched. It is therefore crucial that there be continued processes and mechanisms to support the principles of representativeness, transparency and accountability.

- We strongly disagree with ICANN’s assertion that operation of the IANA functions has no relationship to “online protection of intellectual property” and other important policy matters, such as "cybersecurity, privacy, content, child protection." While it is true that the IANA functions are fundamentally technical in nature, ICANN’s need to renew the IANA contract on a regular basis has helped assure continued attention to accountability and transparency, including adhering to and periodically reviewing progress with regards to the Affirmation of Commitments (AOC) currently in place between ICANN and the

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United States government. The AOC results in transparency and accountability benefits for the global Internet-using population. The AOC also promotes competition in DNS-related services and specifically references “rights protection” as a matter to which ICANN must devote continued attention.

- As such, we welcome recent statements by ICANN that the processes of the IANA transition and enhancing ICANN accountability are “very interrelated” and that they will run in parallel, inform one another, and should proceed on the same timeline. We support the concept that an acceptable transition plan meeting the US government principles should be coordinated with a broader discussion of ICANN globalization and accountability, and believe that the final proposals for each should be completed and considered in tandem. We generally would be opposed to any approval of an IANA functions transition plan unless it is accompanied by an acceptable globalization and accountability plan that assures continued ICANN accountability at optimal levels. We therefore urge ICANN to initiate and complete that accountability assurance process as a matter of priority.

- With regard to the draft Scoping Document, we generally oppose the pre-determined position that “ICANN’s role as the operator of the IANA functions is not the focus of the transition,” and we further disagree with the suggestion that “the proposal is not about how relevant [IANA functions policy] policies are created, nor the relevant structures in which they are created.” Given the critical role that periodic renewal of the IANA contract has played in ICANN accountability, as well as the uncertainty of which entity will continue to perform the Root Zone Management functions, all options and considerations should remain on the table for public deliberation. The Committee believes it is best to have a transition process that does not make presumptions at the outset about where the IANA functions will ultimately reside. The community may well decide that a multistakeholder group should replace the US government role as the IANA contract counterparty. Therefore, we suggest that final responsibility for determining the scope of this process should be vested in a fully representative convening committee once it has been constituted.

- ICANN’s proposal to designate a “Steering Committee” to oversee the development of an IANA transition plan should be revised, and consideration should be given to designating a Convening or Coordinating Committee. Any such appointments should be made by constituency groups – including, for example, the Intellectual Property Constituency (IPC) – rather than by the ICANN Board and GAC Chairpersons. The limitation of only two hand-picked representatives from the GNSO will leave many stakeholders without a voice. The GNSO is constituted with four different Stakeholder Groups (Commercial, Non-commercial, Registry and Registrar) that often have different views and interests. For this process to maintain the objectivity and credibility required by the NTIA
announcement, ICANN should maintain an entirely neutral role as facilitator. This will permit a community-wide, bottom-up, discussion that is broadly representative and inclusive of all stakeholders to assure a diversity of viewpoints. In this regard, the decision to publish a proposal this detailed - after a single discussion session at the recent Singapore meeting, and based upon comments that were accepted for only three days after that meeting’s conclusion (while many participants were in process of traveling), creates the appearance that ICANN is rushing the process. To ensure a legitimate process, the community must decide the scope, structure, and pace of the transition process.

In conclusion, we implore ICANN to ensure the pace of the transition process moves at an appropriate speed, so that the community can make fully informed decisions within reasonable timeframes that allow for adequate discussion and reflection. After careful review, we find ICANN’s proposed Scoping Document to be overly narrow and restrictive. Since the multi-stakeholder model is a critical aspect of ICANN’s coordination of the DNS, it is critical that all stakeholders meaningfully participate in this process (which is predicated on ICANN’s ability to effectively self-govern). Further, both ICANN and the NTIA have stressed that the September 2015 expiration of the first phase of the current IANA contract was a goal and not a deadline for making final decisions, and that it was critical to take the time necessary to get the process done correctly, and garner broad community support to the benefit of the global multi-stakeholder community.

Thank you for considering our views on these important issues. Should you have any questions regarding our submission, please contact INTA External Relations Coordinator, Kate Badura at: kbadura@inta.org

**About INTA and the Internet Committee**

INTA is a 136 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.