

INTA Internet Committee Comment on the Cross Community Working Group (CWG) on Naming Related Functions Draft Transition Proposal**22 December 2014**

The Internet Committee of the International Trademark Association (“INTA”) is pleased to provide the following comment on the Draft Transition Proposal on Naming Related Functions (“Draft Proposal”) submitted by the Cross Community Working Group (“CWG”). INTA’s comments are directed principally to the specific options and questions that the CWG seeks feedback on including: 1) input on possible modifications to the Independent Review of Board Actions; 2) input on possible modifications to the NTIA’s responsibilities acting as the Root Zone Management Process Administrator; and 3) input on a specific (ICANN) alternative solution.

As an initial matter, INTA thanks the CWG for its thoughtful and diligent Draft Proposal. INTA does, however, object to the short period of time available to review and comment on the CWG’s plan due to the timeline dictated by the IANA Coordination Group (ICG). Moreover, the Draft Proposal is lacking many crucial details while presenting several different options. This comment period is only 21 days long and further, unlike many other ICANN proposals set for comment, no reply period will be available for this important issue. INTA continues to urge ICANN and the ICG to manage the transition at a slower pace to enable all stakeholders to have

an adequate and meaningful opportunity to provide feedback during the planning of the IANA functions' transition.

Input on possible modifications to the Independent Review of Board Actions

INTA supports the concept of an Independent Appeals Panel (IAP) for independent review of Board actions that is binding in all technical matters relating to the IANA functions, including delegation and redelegation decisions. We are generally supportive of the proposed allocation of the NTIA's current functions among Contract Co., the Multistakeholder Review Team (MRT), and Customer Standing Committee (CSC). However, it is important for INTA to point out that the composition of these groups, which has not been determined, will be key to allowing INTA to fully and finally evaluate this proposal.

Finally, with respect to the issue related to key contracting provisions, the very complexity of the "Summary of Key Terms" found on pages 70 – 79 of the CWG report in conjunction with the short comment period makes it extremely difficult to provide considered and comprehensive feedback. We have, however, identified the following issues that deserve further examination.

While we support the functional separation of IANA as a separate division within ICANN, the caveat that this should be done "to the extent possible without undue expense" may undermine its efficacy. In particular, it is not clear whether IANA will dedicate personnel who are not involved to a significant extent in other non-IANA duties. In this regard, we note that the Contractor is to provide IANA with a budget

sufficient to hire independent legal counsel, and we wish to understand how that separation from the existing General Counsel's office will be effectuated.

Additionally, given Verisign's long history of administering the root zone management (RZM) functions, we request greater detail on what factors might require its replacement by a successor organization. Finally, additional information is needed in regard to the process to be followed by the IANA contractor for delegation or redelegation of a ccTLD or gTLD, both as to which entity shall receive such a report and how the relevant policy framework will be considered.

Input on possible modifications to the NTIA's responsibilities acting as the Root Zone Management Process Administrator

INTA generally supports the notion that a mechanism for an affected party to appeal a decision relating to the Root Zone would be beneficial for Internet stakeholders and consumers. With regard to the issue of who should have standing before the Independent Appeals Panel, INTA would support the position that all decisions and actions of the IANA Functions Operator that affect third parties and impact the Root Zone or Root Zone WHOIS database should be subject to an independent and binding appeals process. The WHOIS database in particular is a critical tool for trademark owners in addressing trademark infringement online and no single party should have the ability to amend relevant policy without being held accountable through an appeal mechanism. .

Input on a specific (ICANN) alternative solution

The CWG calls for contributions on a specific alternative option which contemplates all NTIA responsibilities being transferred to ICANN rather than to the multistakeholder community. INTA generally agrees that such an option would require both substantial improvements to ICANN accountability and the implementation of binding arbitration mechanisms executed by an independent arbitration organization. However, such organizational accountability enhancements and a binding arbitration procedure are, in INTA's view, required regardless of whether the IANA functions are transferred to an entity such as Contract Co. or directly to ICANN. The ongoing discussion about such an alternative solution should allow ample participation from the business sector and be guided principally by technical considerations related to operational excellence in root zone management. This issue is interrelated with the Enhancing ICANN Accountability Process and thus is subject to the results of the separate Cross Community Working Group on Enhancing ICANN Accountability ("CWG-Accountability").

INTA recognizes that the Contract Co. approach recommended by the CWG enhances accountability regarding ICANN's technical management of the IANA functions by assuring periodic review of ICANN's performance and simplifying the task of transferring the contract if that performance is deficient. A direct transfer of the IANA functions to ICANN would be simpler in form but raises questions about whether technical performance accountability could be adequately enforced. INTA has no objection to further exploration of such an alternative but, absent a specific and well-developed proposal, is unable to comment further at this time. Again, we

believe that a more elongated and realistic timetable would allow the CWG to more fully develop such an alternative for community consideration.

About INTA and the Internet Committee

INTA is a 136 year-old global not for profit association with more than 6,400 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.