



June 5, 2009

**VIA EMAIL**

*DNSTransition@ntia.doc.gov*

Ms. Fiona M. Alexander  
Associate Administrator  
Office of International Affairs  
National Telecommunications and Information Administration  
U.S. Department of Commerce  
1401 Constitution Avenue, NW Room 4701  
Washington, D.C., 20230

**Re: NTIA-Assessment of the Transition of the Technical Coordination and Management of the Internet's Domain Name and Addressing System**

Dear Ms. Alexander:

The International AntiCounterfeiting Coalition (IACC) welcomes this opportunity to respond to the National Telecommunications and Information (NTIA)'s notice of inquiry (NOI) in connection with its Assessment of the Transition of the Technical Coordination and Management of the Internet's Domain Name and Addressing System under the Joint Project Agreement with ICANN.

The IACC is the largest multinational organization exclusively advocating the interests of companies concerned with product piracy and counterfeiting. Our members consist of approximately 150 corporations, trade associations, and professional firms and collectively earn total revenues of over \$650 billion. The intellectual property owners represent a cross-section of industries, consisting of many of the world's best known companies for the various products that they develop, manufacture and distribute in the

The International AntiCounterfeiting Coalition  
1730 M St. NW  
#1020

Washington, DC 20036  
202.223.6668 (fax)

202.223.6667 (phone)

<http://www.iacc.org>

entertainment, automotive, pharmaceutical, motion picture, consumer goods, personal care, apparel and other product sectors. These members regularly conduct intellectual property enforcement efforts in scores of countries around the world.

The IACC membership is especially interested in transparent commercial activity on the Internet. To the extent that the Internet has enabled global commerce in counterfeit and piratical merchandise, the domain name system (DNS) provides important tools with which to address that activity and through which IACC members can enforce their intellectual property rights. Regrettably, as outlined in greater detail below, ICANN has not yet demonstrated the will and/or ability to insure compliance with certain measures designed to insure some measure of transparency as applied to online commerce.

Notwithstanding these concerns, the IACC acknowledges the significant progress that ICANN has achieved - especially over the past couple of years. Recent developments that evidence this progress include (i) anticipated expansion of the global top-level domain name space; (ii) the allocation of greater resources towards contract compliance; (iii) enabling increasing competition within the DNS; and (iv) managing a system used by millions of Internet users to enable online commerce and free expression without burdensome government intervention.

Unfortunately, this evidence of progress also underscores areas requiring continued vigilance. ICANN's progress towards the implementation of an expanded global top-level domain name space is incomplete and many questions concerning its implementation and operation remain unanswered. Despite increased resources allocated towards contract compliance, ICANN continues to struggle with the enforcement of registrar contract obligations. And increasing competition within the DNS has encouraged questionable if not illegal conduct with which ICANN appears either unconcerned or unable to address.

As delineated in the presentations from the recent March 2009 eCrime Summit at the Mexico City ICANN Meeting, domain name abuse problems are growing both in terms of number of incidents and in the complexity and ingenuity of the attacks perpetrated. Consumers are the ultimate victims of these abuses and they suffer losses of their time, money and even health and safety. Trademark counterfeiting and copyright piracy constitutes a significant area of online consumer harm.

In responding to the NOI, the IACC concentrates its comments on those areas that directly impact the enforcement objectives set forth by its membership:

- 1. Have the core principles as enumerated of stability, competition and representation been integrated into ICANN's existing processes and structure?**

The International AntiCounterfeiting Coalition  
1730 M St. NW  
#1020

Washington, DC 20036

202.223.6667 (phone)

202.223.6668 (fax)

<http://www.iacc.org>

Not sufficiently.

These core principles remain critical for an orderly transition to the private sector without further government oversight. Although ICANN has taken significant strides in integrating, there remains much work to be done.

For example, ICANN is still working through significant reforms with respect to its structure; specifically the Generic Names Supporting Organization (GNSO) constituency group. There appears to be a strong likelihood that the proposed new GNSO restructure will now significantly dilute the voice of brand holders (often represented through industry groups like the IACC). ICANN needs to ensure a balanced structure that provides voting participation for all key stakeholders.

More needs to be done to coordinate with ccTLD registries (only a few of which have contracts with ICANN). Although ICANN does not have the contractual right to mandate that these ccTLD registries provide better security measures, it should leverage its position as a global authority to encourage swift development of policies to protect and remediate future breaches, including but not limited to, establishing best practice security policies for all registries and registrars in order to protect registrants. ICANN should also consider adding additional technical staff to its organization in order to interact with the community and handle potential security and stability issues that may arise.

**2. Is privatization the appropriate model, bearing in mind the need to maintain the security and stability of the DNS?**

The current model of an independent, non-profit organization with international multi-stakeholder representation is the best available model for administration and management of the Internet name and numbering system. ICANN can minimize the risk of capture by increasing transparency and accountability and thereby effectively eliminate the potential of a single party or group of interested parties shaping domain name system policies.

**3. Have ICANN's actions met the requisite milestones set forth in the JPA and amendments to it?**

While ICANN is making progress in certain areas such as increasing multi-stakeholder participation and government participation, there continues to be other areas that need additional improvement. One area relates to contract compliance.

Although ICANN has increased its budget and added additional staff to its compliance team, there is still additional work that needs to be done in enforcing the terms of existing contracts. With over 800 registrars worldwide, the IACC recognizes that it can be a daunting task to monitor and enforce the terms of the Registrar

The International AntiCounterfeiting Coalition  
1730 M St. NW  
#1020

Washington, DC 20036  
202.223.6668 (fax)

202.223.6667 (phone)

<http://www.iacc.org>

Accreditation Agreements (RAA). Enforcement, however, is critical to ICANN's role as a fully independent, self-governing organization. But, ICANN continues to fall short in its enforcement responsibility. Although registrars are required to ensure the availability of reliable and accurate WHOIS data, this information is routinely found to be false and inaccurate. Without better contractual compliance procedures, ICANN should not be allowed to terminate the JPA and transition to an independent organization.

**4. Should ICANN be independent? If so, what are the steps to making it such?**

Although the IACC looks forward to a time when ICANN can be a fully independent, self-governing body, that time is not now. In addition to the considerations noted above which evidence a lack of preparedness to withstand internal and external pressures should government oversight be eliminated, numerous pending developments suggest that ICANN's attention is better focused on those developments and not the added issues which would accompany a change in the JPA relationship.

ICANN is in midst of (i) a name space expansion process, (ii) implementation of IDN's across ccTLD's, (iii) GNSO structural reforms, and (iv) implementation of IPv6. Any one of these pending processes generates sufficient uncertainty about ICANN's transition to the private sector. These issues appear to be consuming most of management's time and resources and there is little time to dedicate to the transition of the organization to the private sector.

In summary, although ICANN continues to make progress in achieving many of the benchmarks identified in the JPA, it is still not prepared to transition to an independent, self-governing body. Hence, additional U.S. government oversight is still appropriate.

Should you require any additional information related to these comments, please do not hesitate to contact the undersigned.

Respectfully submitted,



Robert Barchiesi  
President  
The International AntiCounterfeiting Coalition

The International AntiCounterfeiting Coalition  
1730 M St. NW  
#1020

Washington, DC 20036  
202.223.6668 (fax)

202.223.6667 (phone)

<http://www.iacc.org>