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Submitted to: [comments-ccwg-acct-draft-recs-21feb17-en@icann.org](mailto:comments-ccwg-acct-draft-recs-21feb17-en@icann.org)

April 19, 2017

Karen Mulberry  
Director, Strategic Initiatives  
ICANN  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094-2536

Re: Cross Community Working Group on Accountability Work Stream 2  
Draft Recommendations to Improve ICANN's Transparency

Dear Ms. Mulberry,

The International Trademark Association (INTA) is pleased to submit the attached comments regarding the Cross Community Working Group on Accountability's (CCWG-Accountability WS2) Draft Recommendations to Improve ICANN's Transparency.

INTA commends ICANN for the report and supports ICANN's ongoing efforts to improve transparency and accountability across its governing and operational structures.

Should you have any questions about our comments, I invite you to contact Lori Schulman, INTA's Senior Director of Internet Policy at 202-261-6588 or at [schulman@inta.org](mailto:schulman@inta.org).

Sincerely,

A handwritten signature in blue ink, appearing to read "Etienne Sanz de Acedo". The signature is fluid and cursive, with a long horizontal stroke at the end.

Etienne Sanz de Acedo  
Chief Executive Officer

**INTA Comment on CCWG-Accountability Work Stream 2 -  
Draft Recommendations to Improve ICANN's Transparency  
April 10, 2017**

The International Trademark Association (INTA) submits the following comments regarding the Cross Community Working Group on Accountability's (CCWG-Accountability WS2) Draft Recommendations to Improve ICANN's Transparency ("Draft Recommendations" or "Draft Transparency Report") dated February 2017 and posted for public comment on February 21, 2017. INTA appreciates the work done by the CCWG-Accountability WS2's participants and acknowledges the complexity of the issues implicated.

INTA has reviewed the Draft Transparency Report with a view to ensuring that the CCWG Accountability WS2's recommendations are consistent with the purpose of improving ICANN's transparency in a manner suitable for ICANN as a multi-stakeholder organization. INTA's comments correspond to each of the four numbered sections of the Draft Transparency Report. Given that many of the CCWG-Accountability WS2's recommendations were provided at a general level, INTA's comments take an accordingly broad view.

### **1. Improving ICANN's Documentary Information Disclosure Policy (DIDP)**

INTA agrees with the CCWG-Accountability WS2's observation that a strong and well-defined information access program is "probably the most important aspect of a robust transparency policy." See Draft Transparency Report at 5. INTA also agrees with all the changes recommended by the CCWG-Accountability WS2 to ICANN's Documentary Information Disclosure Policy (DIDP).

Specifically, INTA supports the recommended amendments to, and deletions from, the DIDP. For example, INTA agrees that the DIDP should be revised to cover information relating to all of ICANN's activities, not just its "operational activities." See Draft Transparency Report at 5; 20 ¶1. Likewise, the DIDP should provide that ICANN will respond to an information request "as soon as reasonably possible," with a response timeline that is no more than 60 days (30 days plus one 30-day timeline extension). See Draft Transparency Report at 6; 20 ¶ 6. INTA also supports all the other specific wording changes proposed by the CCWG-Accountability WS2, including those intended to focus the scope of exceptions from disclosure, as addressed in more detail below. See Draft Transparency Report at 20-21 ¶¶ 7, 9, 10, 11, 13, 14.

More broadly, INTA agrees that ICANN should implement "clear and simple procedures for making and responding to requests for information, . . . including requirements that requesters should only have to provide the details necessary to identify and deliver the information." See Draft Transparency Report at 5; 20 ¶ 3. INTA also adds that the DIDP's "clear and simple" procedures should provide a list of the exact information that a requester must provide to properly initiate a request for information from ICANN. Further, the DIDP should set forth the steps by which ICANN staff will respond to a request for information. This will allow a requester to tailor its request to facilitate a prompt response by ICANN, which should ease ICANN's workflow as well. Although INTA does not believe it is necessary for ICANN to appoint dedicated employees or teams to handle requests under the DIDP, INTA agrees that "a right to information system is most effective when the response process is centralized." See Draft Transparency Report at 5-6.

INTA generally agrees with the CCWG-Accountability WS2's recommendations regarding responses to requests. INTA believes that ICANN should take reasonable steps to comply, whenever possible, with "requesters' reasonable preferences regarding the form in which they wish to access" requested information. Draft Transparency Report at 6; 20 ¶ 5. In addition to supplying requesters with requested information in either DOC or PDF format, INTA urges ICANN to provide requesters with any Excel spreadsheets, PowerPoint presentations and any other non-word-based documents in their native formats. Moreover, as the report recommends, ICANN should not limit its responses to requests for information that are not publicly available, but rather, where a requester seeks information that is already publicly available, ICANN should "direct the requester to where this information may be located." See Draft Transparency Report at 6; 20 ¶ 8.

As mentioned above, INTA supports the recommendation that exceptions to disclosure be "crafted carefully" to exclude only information whose disclosure would cause "real harm." INTA agrees that the DIDP's exceptions should be tailored to exclude from disclosure *only* that information that is "likely to cause harm to a legitimate public or private interest" if disclosed. See Draft Transparency Report at 7. Further, INTA fully supports all the specific proposed changes to the exceptions as currently written. See Draft Transparency Report at 20-21 ¶¶ 9-15.

The report proposes a reasonable three-part test as an overarching guideline for determining whether to disclose information. See Draft Transparency Report at 6. This test, which balances the public interest in obtaining disclosure of information with the risk of harm to the public interest if disclosure is granted, is an appropriate method by which to gauge disclosure as it provides a background against which to interpret the DIDP's various exceptions to disclosure. INTA concurs with the recommendation that the DIDP be amended to include a severability clause so that, when information under request contains some material that is excluded from disclosure, that information can still be provided, albeit with redactions. See Draft Transparency Report at 10; 21 ¶ 17. This will allow the public to access the maximal amount of information while protecting information which could give rise to "real harm" if disclosed.

Whenever a request is refused or responded to with redactions, INTA agrees that ICANN should be required to provide the rationale underlying its decision, including the specific exception(s) upon which ICANN's determination is based as well as available appeal processes. See Draft Transparency Report at 10; 21 ¶ 18. This will require ICANN to adhere to the enumerated exceptions, fostering openness and predictability in the decision-making process.

INTA strongly supports the suggestion that the DIDP include an effective, user-friendly process for appealing "refusals, redactions, breaches of timelines, and other administrative failures." Draft Transparency Report at 10. Whether appeal is taken "under the IRP process," as urged by the CCWG-Accountability WS2, or by some other adequate means, INTA believes that a forum in which ICANN's administrative decisions can be challenged will be to the benefit of all. A robust and user-friendly appeals process will encourage proper determinations in the first instance, while also generating a body of decisions to guide future determinations. Moreover, an appeals process will ensure that redactions are as narrowly-tailored as possible to achieve their purpose of preventing "real harm."

INTA also believes that the public will benefit from granting the Ombudsman's office a stronger promotional role to increase awareness of the DIDP as well as how to request information thereunder. Draft Transparency Report at 10; 21 ¶ 19. This will facilitate and increase use of

the DIDP's request protocol, which will in turn yield insights as to how it can be further improved and optimized.

Although INTA does not take a position as to ICANN's internal document management system, INTA does agree with the CCWG-Accountability WS2 that effective records management is an "important element of strong transparency." Draft Transparency Report at 10. INTA also agrees that ICANN should institute periodic reviews of its DIDP not only because "transparency standards evolve over time," Draft Transparency Report at 11, but also to ensure that the policy is functioning properly and effectively.

## **2. Documenting and Reporting on ICANN's Interactions with Governments**

INTA agrees with the recommendations that ICANN publicly disclose, at least on an annual basis, expenditures on "political activities" both in the U.S. and abroad, the identities of individual engaging in such "political activities" on behalf of ICANN, the types of engagements involved, to whom such engagements are targeted, and the topics discussed throughout the course of such engagements.

## **3. Transparency of Board Deliberations**

INTA views ICANN's Board meetings as a subset of information to which ICANN's DIDP should apply. Although Board minutes may contain sensitive information, such information should only be exempt from disclosure to the public where, as the CCWG-Accountability WS2 suggests, "it would be subject to a DIDP exception" and ICANN's Bylaws should be amended accordingly.

## **4. Improving ICANN's Anonymous Hotline (Whistleblower Protection)**

INTA believes that it is appropriate and desirable for ICANN to have an anonymous hotline for its employees, INTA does not take a position regarding the specifics of this program.

### **About INTA**

INTA is a 139-year-old global not for profit association with more than 7,000 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. 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 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.