

February 14, 2008

**Via First Class Mail**  
**and E-Mail**

*jpamidtermreview@ntia.doc.gov*

Ms. Suzanne R. Sene  
Office of International Affairs  
National Telecommunications and Information Administration  
1401 Constitution Avenue, N.W., Room 4701  
Washington, D.C. 20230

**Re: Midterm Review of the Joint Project Agreement**  
**Docket No. 071023616-7617-01**

Dear Ms. Sene:

We submit these comments on behalf of the International Anti-Counterfeiting Coalition (“IACC”) in response to the Request for Comments (“RFC”) on the Midterm Review of the Joint Project Agreement (“JPA”) signed by the National Telecommunications and Information Administration (“NTIA”) and the Internet Corporation for Assigned Names and Numbers (“ICANN”).

The IACC is the largest multinational organization representing exclusively the interests of companies concerned with product piracy and counterfeiting. Our members consist of approximately 200 corporations, trade associations, and professional firms and represent 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 brands across a range of industries, including manufacturers and distributors in the entertainment, automotive, pharmaceutical, motion picture, consumer goods, personal care, apparel and other product sectors. These members regularly conduct intellectual property enforcement efforts and enforce their rights in scores of countries around the world.

The IACC is committed to combating counterfeiting and piracy and working with domestic and international lawmakers, enforcement officials and intellectual property owners to improve IP protection and enforcement.

The IACC thanks the NTIA for this opportunity to comment upon the JPA and upon ICANN's governance of the Domain Name System ("DNS") under NTIA supervision. These issues are of importance to the IACC and its membership on account of the increasing importance of the Internet in global commerce. Regrettably, as others have already observed, this also creates opportunities for criminal conduct, specifically including counterfeiting. Internet sales of counterfeit goods has experienced explosive growth over the recent past. As such, Internet transparency is crucial for rights owners in enforcing their rights – and for consumers who have been victimized by unscrupulous sellers of counterfeit product who capitalize on the relative anonymity and global marketplace offered by the Internet. The WHOIS database is, therefore, an important tool for tracking illegal sellers of counterfeit product.

As a result, the IACC is committed to the development of a robust and independent administration of the DNS and supports the current path towards eventual privatization of control over the DNS in the hands of an independent, non-governmental third party. By the same token, however, the IACC also believes that premature termination of United States Government oversight will undermine progress and potentially defeat this objective.

ICANN does not demonstrate the achievements or use processes which can withstand internal or external pressures which might undermine the stability and transparency of the DNS. Indeed, ICANN consistently falls behind the curve in dealing with matters at the core of its responsibilities, including contract compliance on the part of registrars and maintaining accurate and complete WHOIS information.

To take but two recent examples:

(1) After years of analysis and discussion, ICANN was unable to make any progress on demonstrable deficiencies in the WHOIS database. Notwithstanding a policy development process which extended long past any timeframe contemplated by applicable ICANN protocols or policies, ICANN was unable to arrive at consensus on a key aspect of the DNS – the extent to which WHOIS information should continue to be made publicly available as mandated by ICANN's underlying agreements with the Department of Commerce. Not only did ICANN fail to arrive at consensus and, therefore, to make any changes to the WHOIS database despite years of effort, the WHOIS database still fails to satisfy certain elements specified almost ten years ago.

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(2) ICANN is in the midst of an analysis of its structure. To suggest that a private entity, otherwise unaccountable to any third party, should be given complete control over the DNS in the midst of this incomplete process where the end result remains to be determined appears imprudent. Moreover, there is every indication that the recommended reorganization will further reduce the influence of commercial constituencies within ICANN – notwithstanding the apparent absence of any voice within ICANN for one of the largest potential commercial constituencies – consumers.

These examples underscore the difficulties with the ICANN submission in response to the RFC. While there is much activity at ICANN, there is not comparable evidence of improvement or achievement. In fairness, ICANN has demonstrated some improvement. The IACC is greatly encouraged by the increased commitment demonstrated by ICANN to issues of registrar compliance as evidenced by the allocation of increased resources to this issue and the current review of potential amendments to the Registrar Accreditation Agreement. That it has taken ICANN almost a decade to arrive at this stage is disappointing but it is evidence of improvement.

The IACC thanks the NTIA for this opportunity to comment on these important issues and for its continued supervision of this increasingly important area.

Very Truly Yours,  
J. Andrew Coombs,  
A Professional Corporation

By: J. Andrew Coombs  
General Counsel for the International  
Anti-Counterfeiting Coalition

JAC:bm