



copyright alliance

Connecting creators · Protecting creative work

The Honorable Darrel Issa  
Chairman  
Subcommittee on Courts, Intellectual Property, and the Internet  
2138 Rayburn House Office Building  
Washington, DC 20515

The Honorable Doug Collins  
Vice-Chairman  
Subcommittee on Courts, Intellectual Property, and the Internet  
2138 Rayburn House Office Building  
Washington, DC 20515

The Honorable Jerrold Nadler  
Ranking Member  
Subcommittee on Courts, Intellectual Property, and the Internet  
2138 Rayburn House Office Building  
Washington, DC 20515

May 20, 2015

Dear Chairman Issa, Vice-Chairman Collins, and Ranking Member Nadler,

The Copyright Alliance submits this letter for the record concerning your May 13, 2015 hearing, “Stakeholder Perspectives on ICANN: The .Sucks Domain and Essential Steps to Guarantee Trust and Accountability in the Internet’s Operation” to bring attention to the current issues surrounding transparency and accountability within ICANN. The Copyright Alliance is a nonprofit, nonpartisan membership organization dedicated to promoting and protecting the ability of creative professionals to earn a living from their work. The Alliance represents a diverse array of members in the creative fields who embrace the opportunities provided by a free and open Internet.

Maintaining a free and open Internet is crucial for American creators, who depend on a free Internet, coupled with meaningful legal protections to promote that freedom. For instance, appropriate and effective copyright protection is essential for ensuring online markets can develop on free market principles that allow creators to generate revenue from the use of their works. Additionally, meaningful copyright protection is vital for our

national economic interests: core copyright industries contributed over \$1 trillion dollars last year to the U.S. economy, and provide almost 5.5 million good American jobs.<sup>1</sup>

As the U.S. government prepares to potentially relinquish control over key aspects of Internet governance to the private sector, understanding ICANN's role and making it more transparent and accountable is of the utmost importance. The Copyright Alliance endorses the testimony given by the Coalition for Online Accountability, and believes that ensuring ICANN's compliance with the provisions of contracts it has entered into is key to maintaining transparency and accountability.

As Steven Metalitz noted in his testimony,<sup>2</sup> ICANN and Internet registrars have agreed to a variety of contractual obligations in the 2013 Registrar Accreditation Agreement (RAA). Execution of this agreement is a prerequisite to accreditation to sell domain names in the new gTLDs. Under the terms of the RAA, Registrars must, among other things, make available and publicly accessible an up-to-date database of identity and contact information on domain name registrants (also known as the Whois service),<sup>3</sup> require registered name holders to represent that the registered name will not be "directly or indirectly used" to infringe the legal rights of any third party,<sup>4</sup> comply with the obligations specified in the Whois Accuracy Program Specification,<sup>5</sup> and "take reasonable and prompt steps to investigate and respond appropriately to any reports of abuse."<sup>6</sup> These mechanisms were put in place after an extensive public comment process and years of community input. And while they provide meaningful tools for rights holders to protect against those who abuse gTLD domain name registrations by registering sites dedicated to copyright infringement, they are hollow without proper enforcement by ICANN.

We do not advocate for any new or expanded requirements, we simply suggest that the requirements ICANN has already set for itself be enforced. The multistakeholder community has already spoken by providing a private contractual framework. It is only by ensuring those contracts are "vigorously and transparently enforced,"<sup>7</sup> that a multistakeholder process can be successful.

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<sup>1</sup> STEPHEN E. SIWEK, COPYRIGHT INDUSTRIES IN THE U.S. ECONOMY: THE 2014 REPORT 6, 11 (Int'l Intell. Prop. Alliance 2014)

<sup>2</sup> *Stakeholder Perspectives on ICANN: The .Sucks Domain and Essential Steps to Guarantee Trust and Accountability in the Internet's Operation: Hearing Before the Subcomm. on Courts, Intell. Prop. and the Internet of the H. Comm. on the Judiciary*, 114<sup>th</sup> Cong. (2015) (statement of Steven Metalitz, Counsel, Coalition for Online Accountability) [hereinafter Metalitz Statement].

<sup>3</sup> See section 3.3.1 of the RAA.

<sup>4</sup> See sections 3.7.7 and 3.7.7.9 of the RAA.

<sup>5</sup> See section 3.7.8 of the RAA.

<sup>6</sup> See Section 3.18.1 of the RAA.

<sup>7</sup> Metalitz Statement, *supra* note 2, at 4 ("[T]he essence of the 'multi-stakeholder model' of DNS governance is the replacement of governmental regulation of a critical public resource with private contractual constraints and community oversight. This model only works when those contracts are strong and when they are vigorously and transparently enforced.").

Additionally, while these requirements provide safeguards important to all stakeholders, they are especially vital to individuals and small businesses that often lack the resources to effectively protect their creative works online. Without safeguards like those set out in the RAA, anonymous and untraceable actors can operate infringing sites which creators will not be able to identify or address. If ICANN properly enforces the mechanisms that it has already established, it will ensure proper accountability and promote greater freedom to launch new businesses and engage in legitimate activities over the Internet.

While the transition of ICANN's key technical functions to the multistakeholder community presents numerous challenges, as a non-profit organization and the primary organization governing the Internet, ICANN should stay committed to serving the public interest and the rule of law. The Copyright Alliance is grateful to the committee for its continued engagement and oversight of these issues and asks that you remain involved to ensure that the public interest in a truly open and free Internet is properly served.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Hart", is positioned above the typed name and title.

Terry Hart  
Director of Legal Policy  
The Copyright Alliance