



Internet Association



Computer & Communications  
Industry Association  
Tech Advocacy Since 1972

November 11, 2015

*Via Electronic Mail*

The Honorable Daniel H. Marti  
U.S. Intellectual Property Enforcement Coordinator  
Office of Management and Budget  
The White House  
Washington, D.C. 20500

**Re: Comments Clarifying the Role of Domain Name Registrars in Response to U.S. Chamber of Commerce Global Intellectual Property Center's Filing**

Dear Mr. Marti:

On behalf of the Internet Association (IA) and the Computer & Communications Industry Association (CCIA),<sup>1</sup> we are writing to express concerns in response to the U.S. Chamber of Commerce Global Intellectual Property Center (GIPC)'s submission for the 2016 Joint Strategic Plan on Intellectual Property Enforcement.

GIPC's October 16th comments raised the role of domain name registrars in addressing online infringement, and urged the Office of the IPEC to "find a way forward" in this effort.<sup>2</sup> In doing so, GIPC misread the Internet Corporation for Assigned Names and Numbers (ICANN)'s Registrar Accreditation Agreement (RAA) by suggesting registrars neglect the agreement by choosing not to suspend domain names as a means to address allegedly unlawful activity.<sup>3</sup> Additionally, GIPC's comments are improperly directed and instead raise issues best addressed through the global ICANN community.

The RAA requires registrars to "use commercially reasonable efforts to enforce compliance with the provisions of the registration agreement between Registrar and any Registered Name Holder," and the Registered Name Holder is required to "represent that, to the best of the Registered Name Holder's knowledge and belief, neither the registration of the Registered Name nor the manner in which it is directly or indirectly used infringes the legal rights of any third party."<sup>4</sup> Further, under the RAA, registrars are "responsible to ICANN for compliance with all

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<sup>1</sup> The Internet Association (IA) is the unified voice of the Internet economy, representing the interests of leading

<sup>2</sup> See Comments of the Chamber of Commerce, Docket No. OMB-2015-0003, Oct. 16, 2015, at 7, available at <http://www.regulations.gov/#!documentDetail;D=OMB-2015-0003-0031>.

<sup>3</sup> *Id.* at 6.

<sup>4</sup> ICANN, *2013 Registrar Accreditation Agreement*, <https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en> (last accessed Nov. 9, 2015).

obligations of the Registered Name Holder as set forth in [the RAA] and Specifications and Policies.”<sup>5</sup>

Discussions are underway in the ICANN community regarding proper implementation and enforcement of these elements of the RAA. The RAA does not require registrars to suspend sites based simply on third party accusations, nor does it mandate specific action that registrars must take when notified of alleged abuse or illegal activity.<sup>6</sup> GIPC inaccurately assigns an obligation to registrars that does not exist and that would lead to a chilling of free expression and inevitable over-enforcement by registrars.

The IA and CCIA do agree with GIPC that voluntary partnerships and transparent, inclusive consultations can lead to productive solutions. Such consultations and any resulting processes must be fully transparent in order to ensure their voluntary nature. We have concerns, however, with GIPC’s suggestion that the Office of the IPEC should assume responsibility for an Internet governance matter. A key tenet guiding Internet governance is the need for policies to be built by a bottom-up multistakeholder process, rather than be developed in a top-down manner by national governments.

The ICANN community is responsible for making inclusive progress on issues regarding the responsibilities of registrars, and no U.S. government official should seek to substitute its own judgment for ICANN’s on these issues.

Please feel free to contact us if you would like to discuss these issues further. We would be glad to meet with you in person to discuss them on a date of your choosing.

Sincerely,

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*