

IP JUSTICE

United States Department of Commerce
National Telecommunications and Information Administration (NTIA)

RE: Docket No. 110207099-1099-01
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Request for comments on the Internet Assigned Numbers Authority (IANA) Functions

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Fiona M. Alexander
Associate Administrator
Office of International Affairs
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, N.W. Room 4701
Washington, DC 20230

Via email to: IANAFunctions@ntia.doc.gov

ICANN's Responsibility to Respect International Human Rights Principles

IP Justice¹ appreciates this opportunity to provide comment to US Department of Commerce National Telecommunications and Information Administration (NTIA) regarding improvements to the functions of the Internet Assigned Numbers Authority (IANA) and its relationship with the Internet Corporation for Assigned Names and Numbers (ICANN).

IP Justice would like to focus NTIA's attention on one issue fundamental to all of ICANN's responsibility -- one that impacts all of ICANN's functions: ICANN's obligation to respect internationally recognized human rights principles in carrying out its duties.

With power, comes responsibility. As the organization responsible for the global governance of certain functions of the Domain Name Space (DNS), ICANN must also be willing to live up to the same high standards as other legitimate governance organizations in respecting the fundamental rights of Internet users. Until a suitable legal framework is in the place that can hold ICANN accountable for circumventing internationally recognized human rights guarantees, ICANN is in no position to receive additional autonomy.

¹ IP Justice is an international civil liberties organization that promotes balanced intellectual property rights and freedom of expression on the Internet <http://www.ipjustice.org>. IP Justice is a member of ICANN's Non-Commercial Users Constituency (NCUC) <http://ncdnhc.org>.

As a private corporation, there is very little to hold ICANN in compliance with international legal standards and human rights protections that nation states must respect. As a private corporation ICANN does not believe it owes any legal duty or ethical obligation to respect internationally recognized legal principles. Some contend that the legal structure of ICANN as a private corporation serves as a legal “loop hole” through which the organization can escape any responsibility to uphold human rights in the space where it governs.

ICANN’s connection to the United States Government through its contractual arrangement with NTIA is one of the few ways that ICANN can be held accountable to upholding fundamental rights and freedoms. The US Government is legally obligated to respect human rights, while private corporations are not. ICANN has provided mixed messages about the extent to which it owes an obligation to uphold international legal principles including human rights.

Legitimate governance organizations are rooted in legal traditions that respect human rights and have means of enforcing them. For example, the US Government is prohibited from restricting the speech of its citizens except in narrowly defined circumstances under the First Amendment to the US Constitution. Furthermore the US (and most governments that participate at ICANN) have signed the Universal Declaration of Human Rights, including Article 19, which “guarantees everyone the right to freedom of expression in any medium and regardless of frontiers”. Unfortunately ICANN remains unwilling to commit to human rights principles, preferring to remain without any legal duty or ethical obligation to ensure the public’s most fundamental rights are protected in the critical realm over which it claims authority.

ICANN must affirmatively answer that it will uphold internationally recognized human rights, but to date ICANN has flouted any obligation to protect the public in this manner. At the Rome ICANN Meeting in 2004, a European Union Privacy Commissioner said that ICANN’s “whois” policies violate international privacy protections. ICANN has done nothing to rectify this deficiency of privacy protections in its policies.

ICANN sees no duty to protect freedom of expression in the DNS either. Proposed policies for new top-level domains that would prohibit “sensitive” words as domain names are in stark contrast to internationally recognized freedom of expression guarantees. Internationally recognized legal principles of “due process” which ensure fairness can also be easily skirted in a private corporation that believes it owes no duty to the public.

Unfortunately ICANN’s lack of commitment to internationally recognized fundamental rights and freedoms threatens the healthy growth of the DNS and the global public interest. ICANN’s structure must be rooted in a firm foundation and a legally enforceable obligation to uphold basic rights. Today more than ever, we see the promise and the power of a free and open Internet to empower citizens and strengthen democracies. And we recognize the critical need to ensure the Internet remains an engine of human progress and freedom. Respect for human rights in the policies governing the DNS is critical to furthering the global public interest.

Since ICANN claims its objective is to promote the global public interest, it ought to be willing to adhere to internationally recognized legal principles that guarantee the public basic rights and fundamental freedoms. Removing any duty or legal obligation to respect human rights, which ICANN may have by virtue of its relationship with the US Government, would leave the public defenseless in cyberspace.

Without a legal mechanism to ensure ICANN will respect internationally recognized human rights, the same way a legitimate governance organization must respect human rights, it would be dangerous to grant ICANN further autonomy.

Respectfully submitted,

Robin Gross
IP Justice
<http://www.ipjustice.org>