

# COALITION FOR ONLINE ACCOUNTABILITY

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C/O MITCHELL SILBERBERG & KNUPP LLP • 1818 N STREET N.W., 8TH FLOOR • WASHINGTON, D.C. 20036-2406  
TEL: (202) 355-7900 • FAX: (202) 355-7899 • E-MAIL: INFO@ONLINEACCOUNTABILITY.NET

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June 17, 2016

Mr. Göran Marby  
President and CEO  
Internet Corporation for Assigned  
Names and Numbers (ICANN )  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094-2563

Dear Goran:

I write to thank you for taking the time, during your first week on the job as ICANN CEO, to reach out to Greg Shatan and me as leaders of the Intellectual Property Constituency of ICANN's Generic Names Supporting Organization. I also write to follow up on one issue we discussed briefly on that call: ICANN's obligations to enforce its contracts, and specifically the Public Interest Commitments (PICs) contained in the agreements with registry operators for the new gTLDs.

As you know, under the PICs, every new gTLD registry operator must require their registrars to prohibit registered name holders in the new gTLDs from using their registered domain names to engage in specified forms of abuse, and to provide "consequences for such activities including suspension of the domain name." Among the specified abuses are listed "piracy, trademark or copyright infringement, fraudulent or deceptive practices, [or ] counterfeiting". <http://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-09jan14-en.htm>, Spec. 11 (Public Interest Commitments), section 3(a).

IPC considers these PIC obligations to be essential safeguards that must be vigorously enforced in order to promote the healthy development of the new gTLD namespace. They are especially critical to the creative sector groups participating in the Coalition for Online Accountability (COA), which I represent in the IPC, and on whose behalf I write today. These groups must confront on a daily basis the serious challenge of online abuse of their intellectual property rights, and have a vital stake in the success of what ICANN can do, within its mission, to encourage a healthy and safe online environment.

Accordingly, we were surprised and concerned by a recent public statement of the chair of ICANN's Board that cast serious doubt on ICANN's commitment to enforce the PICs. In a communication to the Governmental Advisory Committee on behalf of the Board, the Chair

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3541-0000121st Century Fox

Broadcast Music Inc. (BMI)

Entertainment Software Association (ESA)

Motion Picture Association of America (MPAA)

NBCUniversal

Recording Industry Association of America (RIAA)

Software & Information Industry Association (SIIA)

Time Warner Inc.

The Walt Disney Company

Counsel: Steven J. Metalitz ([met@msk.com](mailto:met@msk.com))

stated that four issues address by PIC 3(a) (piracy, copyright infringement, fraudulent or deceptive practices, and counterfeiting) “appear to be outside our mandate,” and was silent regarding trademark infringement, which the GAC Advice to which the Chair was responding also listed. Over the past few years, the Board has authorized the signing of hundreds of new gTLD registry agreements that specifically address these five issues. The Chair’s public statements on behalf of the Board threaten to undermine the credibility of these agreements, and of ICANN’s commitment to enforce them vigorously.

Furthermore, the revisions to the ICANN by-laws that the Board approved just last month explicitly enshrine ICANN’s authority “to negotiate, enter into and enforce agreements, *including public interest commitments*,” and specifically bar any party from challenging the PICs or other provisions of the new gTLD registry agreements “on the basis that such terms and conditions conflict with, or are in violation of, ICANN’s Mission or otherwise exceed the scope of ICANN’s authority or powers.” Revised By-Laws, § 1.1.d.ii and iv (emphasis added). This new articulation of ICANN’s core values and mission statement makes it even more pressing to clarify whether the Board in fact holds a contrary view.

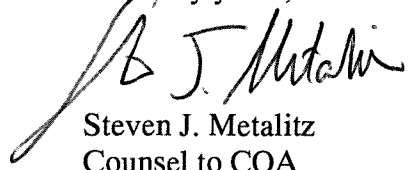
As mentioned on our call, IPC wrote to the Board Chair on April 11, asking for an explanation of his statements to the GAC, and posing several follow-up questions. <https://www.icann.org/en/system/files/correspondence/shatan-to-crocker-11apr16-en.pdf> To date we have received no reply from the Chair.

This was the context in which we discussed on our call the “open letter” you received from the Internet Association, and your reply dated May 27. See <https://www.icann.org/en/system/files/correspondence/marby-to-beckerman-27may16-en.pdf> We do not read your statements in that reply about ICANN’s Mission and Core Values as inconsistent with the new by-laws provisions cited above, nor with the need for strong ICANN enforcement of the PICs as well as other contractual obligations it has entered into. We know, though, that others may be reading your statements differently, and thus encourage you to look for early opportunities to spell out your commitment to vigorous contract compliance, and thereby set the right tone for your initial weeks as ICANN CEO.

Finally, may I note again how central the contract compliance function is to your role as CEO, and indeed to the entire multi-stakeholder model on which ICANN is based. That model depends fundamentally on the credibility of ICANN’s commitment to enforce the obligations contained in the contracts it has entered into with providers of services critical to the Domain Name System. If that credibility is undermined by signals that ICANN will give those obligations a cramped interpretation, or reduce them to the mere duty to recite “magic words” in service agreements, without regard to whether those provisions are ever enforced, then the compelling argument against regulation of the DNS by one or more governments is seriously, and perhaps fatally, weakened. At the same time, while you are surely correct that the role of ICANN CEO is in many ways unlike that of almost any other corporate or non-profit CEO, it seems indisputable that achieving effective contract compliance is a core implementation function that lies at the heart of your job. COA participants look forward to further dialogue with you on this issue, and to working with you toward the shared goal of an ICANN that excels in the performance of the critical role assigned to it in Internet governance.

*Mr. Goran Marby*  
*June 17, 2016*  
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Sincerely yours,



Steven J. Metalitz  
Counsel to COA

cc: Greg Shatan, President, Intellectual Property Constituency (IPC)  
Thomas Schneider, Chair, Government Advisory Committee (GAC)  
Steve Crocker, ICANN Board Chair  
Honorable Larry Strickling, National Telecommunications and Information  
Administration (NTIA)