

RECERTIFICATION REPORT
INTELLECTUAL PROPERTY INTERESTS CONSTITUENCY
January 29, 2009

A. Introduction

According to Article X, Section 5 of the ICANN Bylaws, the Intellectual Property Interests Constituency (hereinafter to be referred to as the IPC) is part of the Generic Names Supporting Organization (GNSO) of the Internet Corporation of Assigned Names and Numbers (ICANN)¹.

In furtherance of "GNSO Improvements" implementation and the August and October 2008 Board Resolutions calling for the existing GNSO constituencies to reconfirm their status to the Board every three years, the IPC welcomes the opportunity to confirm its status as a GNSO Constituency through the following Recertification Report (the "Report")².

The IPC's "Committee on the Future" developed the Report in consultation with a range of IPC members, and it was adopted by the IPC in accordance with the IPC's normal practices and procedures, outlined further below.

B. Summary of Findings

Following a review of its Charter, structure, and operations, the Report provides an overview of the IPC and examines its compliance with the IPC Bylaws and the requirements of Article X, Section 5, Subsection 3 of the ICANN Bylaws.

The Report sets forth the following findings:

1. The IPC operates in full compliance with the ICANN Bylaws and its thoughtfully crafted Charter document.
2. The IPC's Charter sets forth clearly delineated and transparent processes that ensure fairness.
3. The IPC represents globally the interests of the community its purports to represent: owners of intellectual property from around the world.
4. Policies relating to the Internet's naming and addressing system have a large impact on this community, especially regarding the interaction of their rights with the Internet DNS.
5. IPC Members have made valuable contributions to ICANN policy-making and to the evolution and success of the Organization.

¹ See ICANN Bylaws, <http://www.icann.org/en/general/Bylaws.htm#X>

² See ICANN Board Resolution, August 28, 2008, <http://www.icann.org/en/minutes/minutes-28aug08.htm> & 2008.10.01.10, <http://www.icann.org/en/minutes/minutes-01oct08.htm>

6. The representational voice of intellectual property owners in ICANN has been reduced through organizational reform initiatives, including "GNSO Improvements".

7. Private-sector led management of the Internet's naming and routing system can only be realized if this essential community finds adequate representation and voice within ICANN's processes and decision-making.

C. IPC Charter

The IPC Charter, attached as Annex A, reflects the purpose, structure and governing rules of the IPC, and describes the community the IPC purports to represent globally.³

The IPC is pleased that its Charter encourages broad input and participation in the constituency, and permits the constituency to represent the interests of intellectual property owners globally through its dedicated membership of professionals and regional IP Organizations.

The IPC Charter rules permit the following members into the IPC: individuals, companies, law firms, and IP Organizations who represent the interests of intellectual property owners globally.⁴

The IPC Charter reflects that the mission of the IPC is:

...to represent the views and interests of owners of intellectual property worldwide with particular emphasis on trademark, copyright, and related intellectual property rights and their effect and interaction with Domain Name Systems (DNS), and to ensure that these views, including minority views, are reflected in the recommendations made by the GNSO Council to the ICANN Board.

...to review and raise all intellectual property matters including any proposals, issues, policies, or otherwise, which may affect intellectual property, particularly as it interfaces with the DNS, and to provide to the GNSO and the ICANN Board timely and expert advice before it must make any decision or take any position thereon.⁵

The IPC is pleased that its Charter has served as effective and efficient model for organizational governance, and that its Bylaws fully satisfy the requirements laid forth in Article X, Section 5, SubSection 3, of the ICANN's Bylaws.

Article X of the Bylaws sets forth that each GNSO constituency should maintain its recognition, and thus its ability to select GNSO Council representatives, only so long as it in fact represents the interests globally of the stakeholder community it purports to represent, and shall operate to the maximum extent feasible in an open and transparent manner, consistent with procedures designed to ensure fairness.⁶

³ The IPC notes its Charter was amended 10/17/2008 due to "GNSO Improvements" implementation considerations.

⁴ See IPC Bylaws, Section II. Membership. <http://www.ipconstituency.org/bylaws.htm>

⁵ See IPC Bylaws, Section I. Mission Statement and Purpose. <http://www.ipconstituency.org/bylaws.htm>

⁶ See ICANN Bylaw, Article X, Section 5, Subsection 3. <http://www.icann.org/en/general/bylaws.htm#X>

Trademark and copyright owners from around the world, ranging from individuals to small enterprises to the largest companies, are represented in the IPC through their respective IP Organization.

These member-based IP Organizations consist of thousands of trademark and copyright owners (both corporations and individuals) from all corners of the world, and includes a large percentage of the world's IP practitioners.

Because the IPC consists of IP Organizations dedicated to representing the interests of intellectual property owners globally, the IPC does in fact represent the interests of the community it purports to represent - in full compliance with the ICANN Bylaws.

The IPC Council (IPCC)

The IPC Charter ensures that the constituency continues to serve the interests of the community it purports to represent globally, by providing voting rights in the constituency to IP Organizations that represent the interests of intellectual property owners from around the world.

The IPC intends to be clear: individual members of the IPC have made tremendous contributions to the work of the constituency. They have served as Officers and have represented the constituency on the GNSO Council. However, a "one-member one-vote system" in the IPC is for obvious reasons, not appropriate, nor reflective of the reality of the membership of the constituency, which consists of IP Organizations that represent the interests of tens of thousands of intellectual property owners.

The IPC strikes a representational balance in its structure through a standing committee called the IPC Council (IPCC). Membership on the IPCC is restricted to IPC representatives from local, state, national, and international intellectual property Organizations.

Members of the IPCC serve at the pleasure of their respective member Organizations, which retain full responsibility for designating their representatives and alternative representatives. The terms of each representative and his or her alternate are left to the discretion of each member Organization.⁷

The IPCC helps ensure that the IPC is not subjugated to the risk of capture or undue influence from a particular sector or small group of individuals.

The IPCC's tiered system of voting reflects that the priority in governance of the constituency should be given to the international Organizations with the broadest coverage in terms of membership.

Through this representational structure, the IPC ensures that the interests of intellectual property owners are represented globally, and to the maximum extent feasible, on an equal basis.

⁷ See IPC Bylaws, Section III. IPC Council. <http://www.ipconstituency.org/bylaws.htm>

While it has a broad mandate, in practice, the IPCC votes primarily to conduct elections, implement bylaw changes, and on special constituency matters and reports. As a consensus-driven constituency, the IPC rarely conducts votes as a means for decision-making on substantive policy issues.

IPC Membership

As stated above, it is through its IP Organization members that the IPC maintains its ability to represent the interests of intellectual property owners from around the world. In fact these IP Organizations, both national and international, were formed by IP owners to represent and serve their interests on a global scale.

Individual companies and law firms are encouraged to join the IPC as Category 1 members, together with individuals who are committed to the advocacy and development of intellectual property.⁸

This structure helps ensure that the IPC represents the views and interests of owners of intellectual property rights worldwide, that it has a broad representation (of both intellectual property professionals and rights owners) and avoids capture by any small group of individuals.

General Criteria for Membership

The IPC's rules for membership provide that any organisation, company or individual who desires to be a member, demonstrates that:

1. they are committed to the advocacy and development of intellectual property as fundamental components of meaningful commercial activity in the national, regional and global realms;
2. they are primarily and substantially involved in the field of intellectual property; and
3. they make a substantial contribution through their members or otherwise to the field of intellectual property.

Categories of Membership

The IPC has four categories of membership:

- Category 3: International intellectual property organisations
- Category 2: Local, state or purely national intellectual property organisations
- Category 1A: Companies, firms or organisations which do not fulfil the requirement for Category 2 or 3 membership but have demonstrated interest in the protection of intellectual property
- Category 1B: Individuals who have demonstrated interest in the protection of intellectual property

⁸ See IPC Bylaws, Section II. Membership. <http://www.ipconstituency.org/bylaws.htm>

Category 1 Members

The Category 1A members include law firms, corporations, and associations with an interest in the protection of intellectual property.⁹

Specifically, this membership includes 12 law firms, with firms located in the United States (including firms with international offices in numerous countries), Jordan, Chile, the UK, Canada, Hong Kong, Singapore, Cuba, and Finland; 11 corporations, with operations based in the United States, Finland, the Netherlands, and the UK; and three associations, representing the European Union, Ireland, and South Africa.

The Category 1B members include 68 individuals who have an interest in the protection of intellectual property. Countries represented include the United States, Chile, Singapore, Australia, Germany, the UK, Pakistan, the Czech Republic, Argentina, Canada, Korea, Israel, France, and Jordan.

Category 2 and 3 Members

The IPC considers eligibility for membership applying the following additional criteria:

1. the number of members in the organisation;
2. the international/geographic diversity of membership;
3. the extent to which the organisation is representative of a particular industry or industry segment;
4. the organisation's standing before international bodies such as the World Intellectual Property Organisation;
5. the nature and structure of the organisation.

The method by which the Category 2 and Category 3 members participate in the work of the IPC depends upon their own structure and organisation. Typically, they will have an Internet committee which consists of members, normally rotated on a regular basis, who will contribute to the work of the IPC, and will appoint representatives who will vote on behalf of the Organization.

Category 2 and 3 Members

Most of the established international intellectual property Organizations and many national ones are members of the IPC, enabling the IPC to draw on the knowledge and experience of those organisations' members. This gives the IPC a diverse global membership.

⁹ See IPC Bylaws, Section II. Membership. <http://www.ipconstituency.org/bylaws.htm>

The members of the IPC include the following national and international Organizations:

AIPPI (International Association for the Protection of Intellectual Property)

- One of the world's leading international organisations dedicated to the development and improvement of intellectual property created in 1897.
- Politically neutral, non-profit organisation domiciled in Switzerland with over 8000 members representing more than 100 countries and organised into 64 national and one regional group, including Australia, Brazil, Canada, China, Colombia, Egypt, Finland, France, Germany, Indonesia, Italy, Japan, Paraguay, Peru, Republic of Korea, Russia, Singapore, United Kingdom and USA.
- Works for development, expansion and improvement of international and regional treaties and agreements and national laws relating to intellectual property.

American Bar Association - Intellectual Property Law Section ("ABA-IPL")

- Largest IP Organization in the world with 24,000 members
- Oldest ABA section, in existence since 1894
- Provides publications, legislative updates, and CLE in the IP area
- Primarily for US practitioners, but associate membership open to others

American Intellectual Property Law Association (AIPLA)

- 16,000 members comprised primarily of attorneys in private practice, in-house counsel, government attorneys, and academics
- Founded in 1897; focus on advocacy and CLE
- National bar association for members of the bar of a US state; foreign members able to practice in a court in their countries eligible for affiliate membership

American Society of Composers, Authors, and Publishers (ASCAP)

- ASCAP licenses the public performance right in the copyrighted musical compositions, the copyrighted musical works on behalf of its members for a myriad of uses including but not limited to television, radio, cable, the Internet, at bars, concerts and other venues where music is used.
- Membership consists of 340,000 U.S. composers, songwriters, lyricists, and music publishers. Represents interests of those who write music and lyrics and those who publish music. Also affiliated with nearly every foreign country that has a performing rights organisation for reciprocal licensing and royalty collection. Maintains an office in London in addition to offices in the US and Puerto Rico.

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- Can join as writer or publisher
- Founded in 1914

Arab Society for Intellectual Property (“ASIP”)

- Established in 1987 representing Arab Nations, including Jordan, Egypt, Saudi Arabia, Lebanon, Syria, Palestine and Algeria.
- Has consultative status with the United Nations Economic and Social Council and observer status with WIPO.
- Aims at promoting and developing intellectual property protection in the Arab world.

Asociación Interamericana de la Propiedad Industrial (“ASIPI”)

- Created in 1964 and has over 800 members.
- Permanent observer in WIPO.
- Objectives involve developing intellectual property law and harmonising within America.
- Members represent the following countries, among others: Argentina, Bolivia, Chile, Cuba, Ecuador, Mexico, Nicaragua, Paraguay, Salvador, Venezuela, Uruguay and USA.

Asociacion Mexicana para La Proteccion de la Propiedad Industrial (AMPPI)

- Mexican national division of AIPPI
- Devoted to IP interests specifically in Mexico

Broadcast Music, Inc. (BMI)

- Performing right Organization representing more than 375,000 affiliated songwriters, composers and music publishers with a repertoire of more than 6.5 million works.
- Collects license fees for public performances of music and distributes them as royalties to its affiliated songwriters, composers, and music publishers whose works have been performed.
- Maintains reciprocal representation agreements with 77 foreign copyright Organizations that facilitate licensing of public performances of BMI repertoire overseas and of foreign repertoire in the U.S.

Coalition for Online Accountability (COA)

- Organization is a coalition of copyright-related Organizations: ASCAP, Business Software Alliance, BMI, Entertainment Software Association, MPAA. Recording Industry Association of America, SIIA, Time Warner Inc., Walt Disney Company
- Purpose is to enhance and strengthen online transparency and accountability, and promote enforcement against online infringement of copyright and similar wrongs, by working to ensure that data needed for such enforcement remain publicly accessible, accurate, and reliable.

Federation Internationale des Conseils En Propriete Industrielle (“FICPI”)

- Established in 1906 from the Association of Intellectual Properties in private practice.
- Has around 3800 members in 86 countries/regions.
- Aim is to enhance international cooperation within the profession of intellectual property attorneys in private practice and promote exchange of information and harmonising business relations.

International AntiCounterfeiting Coalition (IACC)

- Washington, DC-based non-profit founded in 1979
- Devoted to combating product counterfeiting and piracy; represents interests of a variety of industries (apparel, luxury goods, food, pharmaceuticals, software, and more)
- Conducts training, submits comments on IP laws and regulations, aims to improve enforcement standards
- Domestic and international membership; programs have covered six continents. Membership consists of brand owners, product security firms, government agencies, law firms, investigative agencies, and associations; annual revenues of members exceed \$650 billion

International Federation of the Phonographic Industry (“IFPI”)

- IFPI, the International Federation of the Phonographic Industry, represents the recording industry worldwide with over 1450 members in 72 countries. IFPI’s memberships include the major multinational recording companies and hundreds of independent record companies of all sizes.
- IFPI represents its members at three levels – international, regional and national. The international secretariat is based in London and is linked to regional offices in Brussels, Hong Kong, Miami and Moscow. IFPI has national groups and affiliated industry associations in 44 countries.
- IFPI’s mission is to promote the value of recorded music, to safeguard the rights of record producers and to expand commercial uses of recorded music.

Intellectual Property Owners Association (IPO)

- Founded in 1972.
- Membership includes more than 11,000 individual members active in the association through more than 250 companies or other member categories.
- Serves owners of patents, copyrights, trademarks, and trade secrets in all industries across all fields of technology.
- Focus includes advocating for changes in U.S. law that provide effective protection for IP owners (such as recent efforts supporting U.S. patent law reform) providing education on effective IP management in the U.S. and abroad, and raising public awareness of IP issues generally.

International Trademark Association (INTA)

- Founded in 1878
- Over 5,800 member Organizations from more than 190 countries; members include both trademark owners and professionals
- Goals are to support and advance trademarks and related intellectual property as elements of fair and effective national and international commerce; educate the public on the importance of trademarks; shape public policy; and advance professional knowledge and development in the trademark field.

Intellectual Property Institute of Canada (IPIC)

- Founded in 1926
- 1,700 members include nearly all patent and trademark agents and IP attorneys in Canada. Membership also includes members in other countries who have an interest in Canadian IP law
- Many members are in the “knowledge economy” – in such industries as biotechnology, e-commerce, and information technology
- Purposes include professional development, networking, and IP advocacy
- IPIC represents its members, both nationally and internationally, through advocacy and participation in IP policy development initiatives.

LES International

- Founded in 1972, LESI has more than 12000 members in 32 national and regional societies representing 93 countries.
- Members are involved in licensing transfer and management of intellectual property rights.

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- Aims at setting and promoting consistent standards for licensing executives on a global basis.

Marques

- MARQUES is the European Association of Trade Mark Owners, representing the interests of intellectual property owners and the communities that identify with and trust their marks across a region that has over 600 million inhabitants.
- MARQUES members feature over 750 trade mark professionals. The goal of the Association is to assist brand owners in the management of their trade marks and to provide an effective platform for the representation of their interests.
- MARQUES members spend many hours dealing with domain name matters. MARQUES estimated that its members together own upwards of 2 million domain names, many of them gTLDs. MARQUES membership accordingly constitutes a very substantial component of the Internet Stakeholder constituency.

Motion Picture Association of America (“MPAA”)

- Trade association which represents the film industry.
- Operates around the world working with local government and law enforcement to promote film industry and protect copyright.
- Offices in Canada, Asia-Pacific, Europe, Middle East, Africa and Latin America.

Software and Information Industry Association (“SIIA”)

- Principal trade association for the software and digital content industry for more than 500 international corporate members.
- Provides global services in government relations, business development, corporate education and intellectual property protection to leading companies in this field.
- Aim is to promote and protect the industry and advocate a legal and regulatory environment that benefits the entire industry.

D. IPC Operations

Following a review of IPC operations, the IPC is pleased to report that it functions in an open and transparent manner, in compliance with its Charter obligations and the ICANN Bylaws.

Article X of the ICANN Bylaws requires that each constituency operate to the maximum extent feasible in an open and transparent manner, consistent with procedures designed to ensure fairness.¹⁰

Day-to-Day

By clearly delineating roles, functions, and responsibilities, the IPC's Charter helps the constituency ensure it functions in compliance with its own Bylaws, and those of ICANN's.¹¹

The Charter also helps the constituency ensure it operates in an open and transparent manner, consistent with principles of fairness.

In compliance with the IPC Bylaws, Officers of the IPC - with the help of constituency volunteers and special committees – perform the following day-to-day management functions of the constituency:¹²

- arranging in person meetings or telephone conferences;
- establishing meeting agendas and minutes of the meetings;
- maintaining appropriate mechanisms suitable for facilitating contact and disseminating information to all members of the IPC;
- maintaining membership and mailing list;
- updating the IPC website;
- reaching to any other interested IP groups around the world and encouraging them to join the constituency;
- making technical changes to the IPC Bylaws, as needed, in order to bring them into compliance with ICANN Bylaws, such changes to be subject to ratification by the IPCC at its next subsequent meeting or by correspondence;
- organizing the substantive work of the IPC by establishing a timetable for the progress of the work, by designating the committees to carry out the preparatory work and by submitting draft reports to the IPCC for approval when appropriate;
- adopting the proposed IPC budget as put forth by the treasurer.

¹⁰ See ICANN Bylaw, Article X, Section 5, Subsection 3. <http://www.icann.org/en/general/bylaws.htm#X>

¹¹ See IPC Bylaws. Various Sections. <http://www.ipconstituency.org/bylaws.htm>

¹² See IPC Bylaws. Section IV. Officers. <http://www.ipconstituency.org/bylaws.htm>

Communications

The IPC maintains a robust membership list containing various forms of contact information including, most importantly, email addresses. The IPC Secretary maintains and updates this list through communications from the members, and a current list is held by the Secretary and President at all times.¹³ This member contact information is used primarily for communication to the IPC constituents.

Primary contact and communication is done through email. This gives all IPC Officers and members the ability to communicate with the entire constituency, or smaller working groups, as necessary. Furthermore, Email communication allows flexibility for those traveling and those in different time zones. Phone conferences are routinely scheduled to discuss matters of concern and for general updates and planning, both for full IPC matters as well as for smaller working group matters, as needed.

Under IPC Bylaws, the IPC is required to hold at least one in-person meeting per year.¹⁴ In practice, such meetings are held at each of the three annual ICANN meetings, and occasionally at other times. Call-in participation at such meetings is afforded when technologically feasible, and such distant participants are included within necessary quorum numbers as provided by the Bylaws. Additional in-person meetings are held, when possible, usually in synchronization with IP international meetings.

The IPC schedules numerous teleconference meetings every year to discuss topics of importance to its members. The IPC teleconference meetings often run in parallel with new and ongoing ICANN processes. IPC teleconference meetings are coordinated and timed to permit the constituency to provide input on matters that affect IP owners worldwide, including on developments within ICANN that may impact the constituency's operations and/or functions. When and where possible, the IPC invites outside experts to its meetings to educate its membership, and to increase awareness on issues that may be generally outside a member's area of expertise.

At all meetings, the IPC President determines the agenda after consultation with the IPC officers and members; such agenda is posted to the IPC list prior to the meeting to allow further input and modifications from constituency members.¹⁵

All notes, minutes, documents, papers and additional relevant materials are distributed as attachments via Email, and are placed on the IPC website, and made available to the public, at <http://www.ipconstituency.org/index.htm>.

Elections

Pursuant to the IPC Bylaws, and in conformity with ICANN Bylaws, the IPC holds elections, run and overseen by the IPC Secretary, for GNSO Council Representatives and constituency

¹³ See IPC Bylaws. Section IV. Officers. <http://www.ipconstituency.org/bylaws.htm>

¹⁴ See IPC Bylaws. Section III. IPC Council. <http://www.ipconstituency.org/bylaws.htm>

¹⁵ See IPC Bylaws. Section IV. Officers. <http://www.ipconstituency.org/bylaws.htm>

Officers.¹⁶ The IPC elections are governed under a number of general principles and rules as follows:

- Elections of the IPC shall be fair, open and transparent and election for GNSO Council representatives shall comply with all applicable provisions of the ICANN Bylaws.
- The IPC shall strive for geographical diversity in its elections for IPC officers.
- No individual may serve as a GNSO Council representative and an IPC officer at the same time.
- No individual may serve as an ICANN Board member and an IPC officer at any one time.
- Only category 3 and category 2 IPC members shall have nomination and voting privileges. Category 3 members shall have three votes; category 2 members shall have two votes. They may cast all their votes for one candidate or spread them out accordingly.
- Only category 3 and category 2 members listed as members of the IPC at the start of the election may participate in the elections.
- Category 3 and category 2 members may nominate individuals from any of the three categories of membership.

Elections are a three-week process leading up to the annual ICANN meeting, consisting of three one-week periods: a Nomination Period, Acceptance Period and an Election Period. The election process commences with the Nomination Period, marked by the Secretary's sending notice to the entire membership calling for nominations. Nominations must include essential information including geographical region of citizenship and a summary of why the nominee is a suitable candidate for the position.¹⁷

At the conclusion of the Nomination Period, the Secretary circulates this information to the IPC and commences the Acceptance Period, wherein each candidate nominee who chooses to accept the nomination submits to the Secretary for circulation to the IPC acceptance statements.

The Acceptance Period is promptly followed by the Election Period, wherein the Secretary calls for, receives and tabulates votes from eligible voting members. Immediately following the Election Period, and as soon as practicable, the Secretary publishes a full overview of the votes and notifies the membership of the results.

IPC officers and GNSO Council representatives are elected by a majority of the votes cast by eligible voters. A quorum of at least 25% of the sum of category 3 and category 2 members is

¹⁶ See IPC Bylaws. Section VI. Elections. <http://www.ipconstituency.org/bylaws.htm>

¹⁷ See IPC ByLaws. Section VI. Elections. <http://www.ipconstituency.org/bylaws.htm>

required to effectuate the election. Elected officials commence their office at the conclusion of the annual ICANN meeting.

Accepting New Members

The IPC is open to all Organizations and individuals that are committed to the advocacy and development of intellectual property as fundamental components of meaningful commercial activity in the national, regional, and global realms; who are primarily and substantially involved in the field of intellectual property; and who make a substantial contribution through its members or otherwise to the field of intellectual property.¹⁸

Individuals and Organizations meeting the criteria can apply for the appropriate category of membership, and the IPC Secretary administers the in-take process on behalf of the IPC. Membership applications are available to complete, print and submit via the IPC website. All applications are submitted to the head of the IPC Membership Committee, who in turn, shares such applications with the entire committee. The applications are discussed and voted on by such committee members and the Secretary communicates the approval (or denial) of the application to the applicant after the approval of membership has been ratified by a meeting of the full IPC.

Pursuant to the IPC Bylaws, in determining eligibility for membership factors that may be considered as applicable include: (1) the number of members in the Organization; (2) the international/geographic diversity of membership; (3) the extent to which the Organization or individual is representative of a particular industry or industry segment; (4) the Organization's standing before international bodies, including, but not limited to, the World Intellectual Property Organization; and (5) the nature and structure of the Organization.¹⁹

Policy Development

ICANN processes and Internet developments determine the production of IPC policy development. IPC position statements cover a broad range of matters affecting the interests and rights of intellectual property owners as they relate to the DNS.

When formal ICANN processes have been initiated, such as a PDP or public consultations, IPC members are notified through their Council representatives and/or constituency Officers, and volunteers are sought to form committees to represent the IPC interests.

Committee participation is open to all interested constituency members, and often the IPC holds special meetings on topics so members can discuss issues at length.

Committee volunteers become the 'point of contact' for the constituency on their respective issue, and the committee participants often serve on the correlating GNSO task force or working group, at the discretion of the IPC.

¹⁸ See IPC ByLaws. Section II. Membership. <http://www.ipconstituency.org/bylaws.htm>

¹⁹ See IPC ByLaws. Section II. Membership. <http://www.ipconstituency.org/bylaws.htm>

Committee participants develop the constituency's position statement, and then circulate it to the full constituency list for discussion and input.

All IPC members are free to suggest edits and propose amendments to the position statements which are taken into account by the project teams for their consideration.

The IPC rarely conducts voting on policy issues.

Rather, the constituency almost always achieves consensus through a process of dialogue, discussion, and compromise of competing viewpoints. Through this process the IPC develops its policy positions without formalized votes.

E. Additional Initiatives

While the IPC considers the GNSO its home Supporting Organization, it looks beyond that SO for opportunities to represent the interests of owners of intellectual property worldwide.

The following initiatives are listed as illustrative examples of IPC efforts in this regard:

- At the 30th International ICANN Meeting, the IPC sponsored an informational media briefing with law enforcement and other community leaders, on ICANN policy developments related to Whois.²⁰
- IPC representatives have testified before governments on ICANN-related Internet issues impacting intellectual property owners worldwide.
- The IPC developed an informational booklet for potential new gTLD applicants exploring the issue of right protection mechanism in new registry operations. The guidebook is listed by ICANN as a resource on the new gTLD program page.²¹
- To better inform GNSO policy development, the IPC developed an online "Supplemental Request for Information on Domain Tasting" with assistance from ICANN staff.²²

Conclusion

The IPC appreciates the opportunity to seek recertification as a GNSO Constituency, and is pleased to report that it remains dedicated to representing the interests of intellectual property owners globally.

The IPC thanks the Board of Directors for its consideration on this important issue, and looks forward to continued work on "GNSO Improvements" implementation.

²⁰ <http://losangeles2007.icann.org/schedule?filter0=29>

²¹ <http://www.icann.org/en/topics/new-gtld-program.htm>

²² <http://www.icann.org/en/announcements/announcement-2-10aug07.htm>

Appendix A – IPC Charter

Bylaws of the Intellectual Property Interests Constituency As approved by the IPCC on November 14, 2005 As amended by the IPCC on October 17, 2008

I. Mission Statement and Purpose

The Intellectual Property Interests Constituency (hereinafter to be referred to as the IPC) is a part of the Generic Names Supporting Organization (GNSO) according to Article X (5) of the ICANN bylaws, which became effective on December 15, 2002.

The purposes of the IPC are to:

Represent the views and interests of owners of intellectual property worldwide with particular emphasis on trademark, copyright, and related intellectual property rights and their effect and interaction with Domain Name Systems (DNS), and to ensure that these views, including minority views, are reflected in the recommendations made by the GNSO Council to the ICANN Board.

More particularly, to review and raise all intellectual property matters including any proposals, issues, policies, or otherwise, which may affect intellectual property, particularly as it interfaces with the DNS, and to provide to the GNSO and the ICANN Board timely and expert advice before it must make any decision or take any position thereon.

These bylaws are to be interpreted and applied to avoid, to the extent possible, any inconsistency with the ICANN bylaws.

II. Membership

(A) In General

The IPC shall consist of organizations and individuals:

(1) committed to the advocacy and development of intellectual property as fundamental components of meaningful commercial activity in the national, regional, and global realms;

(2) who are primarily and substantially involved in the field of intellectual property; and

(3) who make a substantial contribution through its members or otherwise to the field of intellectual property.

(B) Categories of Membership

The categories of membership shall be:

Category 3: Category 3 shall consist of international intellectual property organizations.

Category 2: Category 2 shall consist of local, state, or purely national intellectual property organizations.

Category 1A: a company, firm, or organization, which does not fulfill the requirement for category 2 or category 3 membership, but has a demonstrated interest in the protection of intellectual property.

Category 1B: an individual who has a demonstrated interest in the protection of intellectual property.

(C) Additional Factors

In determining eligibility for membership in the above-referenced categories of membership, the following additional factors may be considered as applicable:

- (1) the number of members in the organization;
- (2) the international/geographic diversity of membership;
- (3) the extent to which the organization or individual is representative of a particular industry or industry segment;
- (4) the organization's standing before international bodies, including, but not limited to, the World Intellectual Property Organization; and
- (5) the nature and structure of the organization.

(D) Subscription

Each member shall pay an annual non-refundable subscription fee as prescribed by the IPCC.

III. IPC Council (IPCC)

(A) Composition

The IPC Council (IPCC) shall be composed of one designated representative and up to two alternative representatives of each member organization of category 3 and category 2 members. Members of the IPCC shall serve at the pleasure of their respective member organizations, which shall retain full responsibility for

designating their representatives and alternative representatives. The term of each representative and his or her alternate shall be left to the discretion of each member organization.

An individual can only represent one organization at the same time. Category 1A and 1B members are invited to participate as observers.

The IPCC shall be presided over by the president of the IPC, or in that person's absence by the vice-president of the IPC.

(B) Powers

The IPCC shall be the governing and principal decision making body of the IPC and shall direct the IPC and pursue its objectives, and shall in particular:

- (1) adopt and amend the bylaws and decide on the dissolution of the IPC;
- (2) admit, refuse, or expel any member where on reasonable grounds it feels it is in the best interest of the IPC to do;
- (3) elect in accordance with the provisions herein or remove officers of the IPC;
- (4) elect in accordance with the provisions provided herein or remove three representatives to the GNSO Council;
- (5) determine and study questions coming within the purposes of the IPC;
- (6) formulate membership consensus and minority views on policy issues for the purpose of advising the IPC representatives on the GNSO Council;
- (7) give directions to the officers of the IPC and review and approve their work;
- (8) issue, change and revoke directives containing instructions and advice on the administration and operation of the IPC and its bodies; and
- (9) consider the recommendations of the treasurer and subsequently establish subscription fees for IPC membership.

(C) Quorum

No decision of the IPCC shall be taken without the representation of at least 25% of the sum of category 3 and category 2 members. For the purpose of amending the IPC bylaws or dissolving the IPC, a quorum of at least 50% of the sum of category 3 and category 2 members shall be required.

(D) Decisions

Only category 3 and category 2 members are entitled to vote. Each IPCC member in category 3 shall have 3 votes; each IPCC member in category 2 shall have 2 votes. Normally the designated representative shall be entitled to cast the vote on behalf of his or her organization. An alternate representative may only cast the vote on behalf of his or her organization if mandated in writing (which includes email) by the designated representative. Proxies are permitted, provided the secretary receives written notification of said proxy assignment within a reasonable period of time that shall be set by the secretary.

Any GNSO Council representative or IPC officer may be removed with cause, by a two-thirds majority vote of category 3 and category 2 members.

All other matters require a simple majority vote of both category 3 and category 2 members.

(E) Meetings

The IPCC shall hold at least one in-person meeting per year. Extraordinary meetings in person shall be held when requested by at least one third of category 3 members or by the majority of the IPC officers. The meetings shall be called at least one month before they are to be convened. The president shall determine the agenda of the IPCC meeting after consultation of the IPC officers and the IPCC.

At the request of one third of category 3 members the IPC officers must insert an item in the agenda.

Remote participation at in-person IPCC meetings is permitted. Category 2 and category 3 members participating remotely shall be considered part of a quorum pursuant to Article III (C) of these bylaws.

(F) Vote by Correspondence

The IPCC can exercise its powers and make decisions by correspondence (which includes e-mail) whereby a one-week notice must be given before asking for the casting of the vote.

IV. IPC Officers

(A) Composition

The IPC officers shall be composed of a president, a vice president, a treasurer and a secretary and not more than three additional officers that the IPCC may deem appropriate, but whose offices shall be renewed on an annual basis.

Meetings of the IPC officers shall be presided over by the president, or in that person's place by the vice president.

(B) Term of Office

(1) The terms of the IPC officers shall commence at the conclusion of an ICANN annual meeting and shall end at the conclusion of the next ICANN annual meeting thereafter. Notwithstanding the foregoing, during the GNSO Restructuring Period, the terms of the IPC officers shall be extended to not more than 30 days following the approval by the ICANN Board of the Commercial Interests Stakeholder Group formal plan, with new elections to be held within that 30-day period.

(2) An IPC officer may not hold a seat on the IPC office for more than three successive terms in the same position. For purposes of this provision, the extension of term under Article IV (B) (1) shall not be considered a new term. If no successor is elected, the elected officer shall remain in office until a successor has been elected.

(3) If the office of the IPC president becomes vacant, then the vice president shall become acting president until an election for the president can be held.

(4) If a vacancy occurs in an officer's seat, other than the president, with six or more months left in the term, the IPC president shall direct the secretary to hold an election in accordance with the procedures described below. If the vacancy occurs in an officer's seat, other than the president, with less than six months left in the term, the IPC president, in consultation with the remaining IPC officers, shall appoint an individual to fill the seat.

(C) Powers

(1) The IPC officers shall be the managing board of the IPC and shall be responsible for the day-to-day management of the IPC.

(2) In the exercise of its powers the IPC officers shall be guided by the decisions, including those on administrative and financial matters, adopted by the IPCC. The IPC officers shall - with the help of volunteers and special committees - in particular:

(a) arrange in person meetings or telephone conferences;

(b) establish meeting agendas and minutes of the meetings;

(c) maintain appropriate mechanisms suitable for facilitating contact and dissemination of information among all members of the IPC;

- (d) maintain a membership and mailing list;
- (e) maintain a website;
- (f) reach out to any other interested IP groups around the world and encourage them to participate in the IPC;
- (g) make technical changes to the IPC bylaws, as needed, in order to bring them into compliance with ICANN bylaws, such changes to be subject to ratification by the IPCC at its next subsequent meeting or by correspondence;
- (h) organize the substantive work of the IPC by establishing a timetable for the progress of the work, by designating the committees to carry out the preparatory work and by submitting draft reports to the IPCC for approval; and
- (i) adopt the proposed IPC budget as put forth by the treasurer.

(3) The president, with the advice and consent of the other IPC officers, shall appoint IPC representatives to all ICANN designated committees and task forces.

(D) Decisions

Decisions of the IPC officers shall be taken by a simple majority of officers at meetings or by correspondence. The IPC officers have the right to invite other persons to attend their meetings without a right to vote.

V. GNSO Council Representatives

(A) Number of Representatives

(1) Three individuals shall represent the constituency on the GNSO Council in accordance with the ICANN Board resolution to amend the ICANN bylaws effective on April 18, 2005.

(a) Two of those individuals holding offices at the time of adoption of these revised IPC bylaws shall remain in office until the conclusion of the 2006 ICANN annual meeting, after which time they may run for reelection, provided their candidacies do not conflict with any other provision of the IPC or ICANN bylaws.

(b) One of those individuals holding office at the time of adoption of these revised IPC bylaws shall remain in office until the conclusion of the 2005 ICANN annual meeting, after which time that individual may run for

reelection, provided that his or her candidacy does not conflict with any other provision of the IPC or ICANN bylaws.

(B) Term of Office

(1) Pursuant to Article X (3)(2)(a) of the ICANN bylaws, the term of an IPC GNSO Council representative shall commence at the conclusion of an ICANN annual meeting and shall end at the conclusion of the second ICANN annual meeting thereafter. Notwithstanding the foregoing, during the GNSO Restructuring Period, the terms of the GNSO Council representatives currently serving shall be extended to not more than 30 days following the approval by the ICANN Board of the Commercial Interests Stakeholder Group formal plan, with new elections to be held within that 30-day period.

(2) An IPC GNSO Council representative may not hold an IPC seat on the GNSO Council for more than two successive terms. For purposes of this provision, the extension of term under Article V (B) (1) shall not be considered a new term. If no successor is elected, the elected representative shall remain in office until a successor has been elected.

(3) If a vacancy in a GNSO Council seat occurs with six or more months left in the term, the IPC president shall direct the secretary to hold an election in accordance with the procedures described below. If the vacancy occurs with less than six months left in the term, the IPC president, in consultation with the IPC officers, shall appoint an individual to fill the seat.

(C) Geographic Diversity

The GNSO Council representatives must be citizens of countries that are in different geographic regions as defined by Article VI (5) of the ICANN bylaws.

VI. Elections

(A) General Principles

(1) Elections of the IPC shall be fair, open and transparent. IPC election for GNSO Council representatives shall comply with all applicable provisions of the ICANN bylaws.

(2) The IPC shall strive for geographical diversity in its elections for IPC officers.

(3) No individual may serve as a GNSO Council representative and an IPC officer at the same time.

(4) No individual may serve as an ICANN Board member and an IPC officer at any one time.

(5) Only category 3 and category 2 members shall have nomination and voting privileges.

(6) Category 3 members shall have 3 votes; category 2 members shall have 2 votes. They may cast all their votes for one candidate or spread them out accordingly.

(7) Only category 3 and category 2 members listed as members of the IPC at the start of the election may participate in the elections.

(8) Category 3 and category 2 members may nominate individuals from any of the three categories of membership, as described in Article II (B) of these bylaws.

(B) Election Procedure

(1) Nomination period

The election process will be initiated by a nomination period of one week. The secretary of the IPC shall begin the nomination period by sending a notice to the IPCC members calling for nominations. Nominations shall include:

- name of the nominating organization and membership category;
- name of the authorized representative making the nomination;
- nominee's name, contact information, membership category, and geographical region of citizenship; and
- a summary of why the nominee is a suitable candidate for the position.

(2) Circulation of List of Nominees

At the conclusion of the nomination period, the secretary shall circulate this information to the IPCC and work to post this information on the IPC website.

(3) Acceptance Period

The nomination period will be followed by a one-week acceptance period. During this period, each candidate nominee who chooses to accept the nomination, shall submit to the secretary for circulation to the IPCC and posting on the IPC website, a statement which shall include the following:

- formal acceptance of the nomination; and
- a brief curriculum vitae of no more than 250 words.

(4) Election Period

The acceptance period will be promptly followed by the election period, which shall last one full week. During this period, the secretary will receive votes from the IPCC members. Immediately following the election period, and as soon as practicable, the secretary will publish a full overview of the votes.

(C) Determining the Winner of IPC Elections

IPC officers and GNSO Council representatives shall be elected by a majority of the votes cast by eligible voters as defined by Article VI (A)(7) of these bylaws.

(1) In the Case of the Initial GNSO Council Elections Under These Bylaws

If, in the case of the initial election of the GNSO Council representatives under these revised bylaws, the two candidates with the largest number of votes are from the same geographic region, the following shall take place:

- The candidate with the next largest number of votes who is not a citizen of a country in the same geographic region as the candidates with the largest number of votes shall be declared elected as a GNSO Council representative.
- If necessary, the secretary shall conduct a runoff election between the two candidates from the previous election who are citizens in countries of the same geographic region. The candidate with the largest number of votes in this runoff election shall be declared elected as a GNSO Council representative.

VII. Finances

(A) Period of Accounting

The accounting period shall be the calendar year.

(B) The Treasurer

(1) The treasurer shall be responsible for the finances and the accounts of the IPC, including the budget preparation, the subscription recommendation and control and monitoring of the bookkeeping, auditing and financial administration. The treasurer is authorized to open and operate a bank account. The treasurer holds the funds of the IPC as trustee for its members. The treasurer is responsible for delivering all books and accounts of the IPC in good order to his or her successor in that position.

(2) The treasurer shall present a report to the officers for each accounting period.

(C) Subscription Fees

The subscription fees are due 60 days after the treasurer issues a notice of payment. The subscription fee may be prorated depending on when a new member joins, in a manner to be determined by the IPCC upon a recommendation from the treasurer. New members will acquire voting rights only after the subscription fee has been paid.

(1) Cases of Non-Payment

If a member of the IPC does not pay its subscription fees within 60 days after a second notice of payment is issued, the treasurer shall ask the IPCC to exclude the member from the IPC.

(D) Independent Review of IPC Ledgers and Accounts

Upon a request made in writing (including via e-mail) to the president by a representative of any category 2 or category 3 member, there shall be an independent review conducted of all IPC ledgers and accounts. The IPC officers shall select the conductor of said review, a neutral third party with recognized accounting experience. The results of said review shall be made known to the IPCC.

(E) In Case of IPC Dissolution

When the IPC is dissolved, no part of the funds of the IPC will be distributed to the members. The funds shall be transferred to one or more legal entities that pursue objects similar to those of the IPC. If there are no legal entities that pursue objects similar to those of the IPC, then there shall be a refund.

VIII. Coming into Force

These bylaws were adopted by the IPCC on November 14, 2005 and replace the bylaws that were effective on July 22, 2005. These bylaws will come into force the day after they were adopted by the IPCC.

The President
J. Scott Evans

The Acting Secretary
Michael Heltzer

Minority Report: IPC Re-Certification Report

It is the premise of this Minority Report that the IPC is not representative of its stakeholder community. Those who seek GNSO improvement are under the misapprehension that the IPC stakeholders are “*Intellectual Property Interests (representing the full range of trademark and other intellectual property interests relating to the DNS).*”¹ This is not so. The IPC Charter defines the stakeholders as “*Intellectual Property owners.*” Stakeholders have been so narrowly defined so even Intellectual Property *users* are excluded.² Others can join as observers only.

The IPC has a hierarchical and exclusive structure whereby only “*international organisations*”³ can have full active memberships and voting rights in IPC elections.⁴ Only their representatives can join the executive.⁵ This is not inclusive or representative. At best, the *international organisations*⁶ model is a WIPO precedent yet only 16 international organisations are members of the IPC compared to WIPO’s 216.

Many modern IP owners (and users) don’t belong to *international organisations*---so are unrepresented by the IPC. This leaves the IPC dominated by a particular type of organisation and representative of a particular type Intellectual Property owner only.⁷

¹ Whoever wrote the GNSO Improvements Report thought these were the IPC’s stakeholders, see P. 40 <http://www.icann.org/en/topics/gnso-improvements/gnso-improvements-report-03feb08.pdf>,

² Users include licencees -business and individual in character-despite the fact they often share concurrent and identical rights vis a vis third parties, to enforce IP and can if exclusive licensees sue in their own names etc.

³ In fact this is national and international organisations -but there are only 3 national organisations based on the membership list of 28/10/08 --- AMPPI, the IP Institute of Canada and the New York based IPO.

⁴ This excludes companies, firms and individuals--- who can participate only as Observers.

⁵ The IPC does consider comments from its ‘observers’ -but as a discretionary courtesy.

⁶ The Majority Report states “.a “one-member one vote system in the IPC is for obvious reasons, not appropriate, nor reflective of the reality of the membership of the constituency which consists of IP Organizations.” No explanation is given for the choice of this model.

⁷ The Majority Report defends the current structure as avoiding the dangers of “capture by any small group of individuals” yet arguably this is exactly what has happened.

The IPC needs to radically evolve to improve representativeness, inclusiveness and transparency.⁸

Stakeholders

The requirement of an international organisational structure in order to enjoy active and voting membership is a barrier to participation in the IPC.⁹

Only 3 IPC members are national organisations so for all intents and purposes---we are dealing with *international organisations* only. Others¹⁰ may join but as observers only. The IPC has only 16 *international organisations* as members¹¹ and a very different collection to WIPO.¹²

The IPC is as a result dominated by a handful of *international organisations*, primarily based in North America. These are traditional rightsholder representatives and they tend to have a particular approach to IP policy.

ICANN's own goal is "*to develop policy in a bottom-up process reflective of the diversity of the community and conducted in an inclusive, representative manner.*"¹³ It should prefer direct and democratic representative structures and open access to the policy making process.¹⁴

⁸ As the GNSO Improvements Report notes, "*It is important that the Board has flexibility to create new constituencies and let older ones merge or lapse as market dynamics evolve.*"

⁹ See the GNSO Improvement Reports at p.41 "Another important aspect to improving inclusiveness and representativeness in the constituency structure is reducing barriers to participation in individual constituencies."

¹⁰ Those "*primarily and substantially involved*" in the field of intellectual property or who make a "*substantial contribution*" to the field and who are "*committed to the advocacy and development of intellectual property.*"

¹¹ Based on its 28 October 2008 membership list.

¹² See the WIPO members at http://www.wipo.int/members/en/organizations.jsp?type=NGO_INT and http://www.wipo.int/members/en/organizations.jsp?type=NGO_NAT

¹³ See The Improvements Report at p.40.

The IPC structure is hierarchical and exclusive. No case has been made as to why participation should be filtered and collectivised and this directly contradicts the goals of the GNSO Improvement Report.

Adversarial

Perhaps it was thought the NCUC would counterbalance this in some adversarial model and that the two constituencies would together reach some kind of balance. This is flawed as the NCUC's own brief is also limited –to the non-commercial.

Who advocates in this model for the start ups and new entrants to markets? Often they bring new technological approaches and transform business models –to the ire of the incumbents who will be our traditional IP owner. There are not yet *international organisations* serving these new participants and they may well wish to avoid the existing ones due to conflicting perspectives. The IPC membership structure is a barrier to the representation of these interests.

Further, everyone is an Intellectual Property owner today, whether through open source and copyleft licensing, citizen journalism, social networking, direct distribution, the ubiquity of website ownership etc. The fact is that there are not yet *international organisations* serving these IP owners and users and their interests.

Observers

Legal professionals and trade mark attorneys can join the IPC as observer members in Category 1 only. They¹⁵ are well suited to provide a balancing perspective in the often complex policy making process for protecting and defending IP online, but their ability to do so is limited by their observer status.

Given the polarisation of views on the translation of traditional intellectual property rights to the internet and the accompanying paradigm in business models, it is difficult to understand why ICANN would charter a constituency to represent only one half of the argument—yet containing

¹⁴ See p.39 <http://www.icann.org/en/topics/gnsso-improvements/gnsso-improvements-report-03feb08.pdf>. "*The GNSO, as noted in the Bylaws, includes various constituencies representing particular groups of stakeholders. Our goal is to make the way in which stakeholders interact in the GNSO, whether organized as constituencies, interest groups or another vehicle, as inclusive and representative as possible, without sacrificing effectiveness or efficiency.*"

¹⁵ While American ABA and the AIPLA are members, there is not a wide take up of membership by the representative bodies of national legal professions based on the membership list of 28/10/08.

all the IP legal professionals. It is increasingly important that balance be brought to the policy issues as the promotion of rights without the balancing exceptions and defences does not serve ICANN.

Operational Issues

The IPC could benefit from operating in a more representative, open, transparent and democratic manner. All committees should be thrown open to the full membership and there should be transparency in their manner of constitution. Committee chairs should be voted in by the relevant committee.

Victoria McEvedy

Solicitor and Attorney

Category 1 member of the IPC and a member of the Committee on Re-Certification.

London 30 January 2009