

The Intellectual Property Constituency (IPC) of ICANN's Generic Names Supporting Organization (GNSO) welcomes the opportunity to comment on ICANN's Strategic Plan. *See* Strategic Plan, available at <http://www.icann.org/strategic-plan/strategic-plan-v6.pdf> (hereafter "Strategic Plan"). While there are a number of issues of concern to the IPC in the Strategic Plan, we confine ourselves, in this submission, to the issue of contract compliance. Furthermore, the IPC understands that, as a result of the recent Amsterdam Consultation, a new version of the Strategic Plan will be made available in the near future. We will reserve more substantive comments for the comment period associated with that document.

In the Strategic Plan, ICANN identifies competition and choice as one of its strategic priorities. *See* Strategic Plan, at 28. As part of fulfilling this priority, ICANN recognizes the importance of "review[ing] and augment[ing] the corporate compliance program, including the system for auditing registry and registrar compliance by all parties to such agreements." *See id.* at 31.

Contract compliance is a critical component of ICANN's continued management of the Domain Name System. As is clearly stated in the Strategic Plan, a meaningful contract compliance program is necessary "in order to provide users and other community members with a predictable experience." Strategic Plan, at 31. ICANN also identifies a number of elements the compliance program would contain that would help fulfill this goal, specifically, "Working constructively with registries/registrars to implement and complete corrective action plans[; and] Implementing a planned escalation of actions, including legal and specific performance remedies, to correct ongoing harm and to provide greater flexibility and legitimacy for the compliance function." *Id.* at 32.

The IPC supports ICANN's stated goal in the Strategic Plan of enhancing overall contract compliance, noting with particular approval the proposal for escalating remedial measures. Such measures would go far to ameliorate the current situation, where ICANN's only remedy for a registrar's failure to comply with the Registrar Accreditation Agreement (RAA) is de-accreditation. ICANN is understandably reluctant to use this measure, though, perversely, as a result, some registrars freely ignore their obligations knowing that ICANN will never enforce any contractual terms, so long as the "nuclear option" is the only enforcement remedy available.

Despite these positive developments, the IPC remains concerned that the compliance program has not yet been implemented, though ICANN's MOU with the U.S. Department of Commerce clearly requires implementation of the program by June 30, 2004, *see* MOU, II.C.14.d, a date that has long since come and gone. The IPC strongly urges ICANN to swiftly implement an effective compliance program for the important purpose of strengthening contract enforcement, including but not limited to compliance of registrars and registries with their Whois data obligations. The IPC also urges ICANN to allocate sufficient resources to its contract compliance program to enable the program to achieve credibility.

Following the release of the Strategic Plan, members of GNSO constituencies and the wider ICANN community met with ICANN staff on February 7th and 8th in a consultation (referred to as the "Amsterdam Consultation") to further refine the Strategic Plan and ICANN's

goals for the next three years, in order to ensure adequate community participation in the consultation process. Contract compliance was one of the many issues addressed during the consultation, one in which a number of stakeholders were in agreement, with no stakeholder voicing any disagreement.

One product of the Amsterdam Consultation was a set of consensus principles agreed to by the participants. The IPC generally supports these principles, particularly principle 5 which recognizes that “[c]ompliance is a crucial part of policy development for the Internet.” Additionally, the IPC supports the principle that there should continue to be an independent body, within ICANN, for developing addressing policy. The full range of stakeholders in the IP addressing space should have a meaningful opportunity for input to the development of IP addressing policy. The IPC thus supports the continued leading role of ICANN’s Address Supporting Organization (ASO) in the development of such policies.

The IPC looks forward to working with ICANN staff, supporting organizations, and constituency participants to ensure that the important goals set out in the Strategic Plan are met in a timely and predictable fashion.