

AMERICAN BAR ASSOCIATION
SECTION OF BUSINESS LAW
SECTION OF SCIENCE AND TECHNOLOGY LAW

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

- 1 RESOLVED, That the American Bar Association urges the Secretary of State and the Assistant
- 2 Secretary of Commerce/Administrator of the National Telecommunications and Information
- 3 Administration to support a renewal of the mandate of the Internet Governance Forum of the
- 4 United Nations to operate substantially in accordance with its current mandate.

REPORT

Over the past several years the American Bar Association's Section of Business Law has been working with the Internet Governance Forum (IGF) of the United Nations and its antecedent, the Working Group on Internet Governance. The Section has done so through its Cyberspace Law Committee and, more particularly, through the Committee's Task Force on Internet Governance.

The issue is whether the mandate of the IGF should be extended and, if so, on what terms. For the reasons elaborated below, the ABA believes that extension of IGF on generally the same terms under which it currently operates is very much in the best interest of the sound and effective administration of the law and policy relating to internet governance both in the US and globally.

The IGF was established by the United Nations for a five (5) year period that expires at the end of 2010. The ABA believes that, because of the attributes described below, the IGF serves a unique and useful function in ensuring the safe and secure operation of the Internet globally. Key among these attributes are:

- The IGF is a unique international forum. The IGF is the only international forum dedicated to providing a completely open and egalitarian discussion forum for these issues. The IGF provides all stakeholders - governments, intergovernmental organizations, non-governmental organizations, industry, the private sector, civil society, academia and the Internet technical community - scope to participate in all aspects of its planning and execution on a truly equal footing.
- The IGF has no executory power. Additionally, the fact that the IGF has no executory power (*i.e.*, no power, mandate or authority to set policy, or rules governing the Internet, enter into agreements (including negotiate any treaty or convention), or issue resolutions (binding or otherwise) or an output document regarding the Internet) allows for a free, open and frank exchange of opinions and ideas among Internet stakeholders that is not replicated in any other international venue. Its very strength derives from the absence of executory power. This free, open and frank exchange of view is important to the international Internet community to ensure that all aspects of issues affecting the safe and secure operation of the Internet are made known to the technical, legal, academic and policy-setting communities so that those issues can be taken up and dealt with in and by their appropriate constituencies and organizations.
- The IGF is inclusive and multistakeholder. The IGF meets a need for an open and inclusive dialogue among all stakeholders of the international Internet community in discussing critical issues concerning the future of the Internet.

The use of the term "renewal" is intended to convey that any extended mandate of the IGF should ensure that the IGF continue to operate on terms and conditions similar to that under which it has operated to date, including that it be an open and multistakeholder forum, that it have no executory power, that its mandate be limited in time and, and that it operates generally

on the same terms and conditions on which it currently operates. The Recommendation deliberately does not specify a particular term for an extension, such as an additional five years. Such a decision is in the discretion of the Secretary General of the United Nations and it does not seem appropriate to suggest the specifics of how he might exercise that discretion.

The extension of the IGF mandated has already been supported by a number of major actors in the Internet space. A few examples of that support follow:

Internationally, the European Union has expressed its support of the of the IGF encouraging the active participation of the EU in the IGF as a place dealing with both globalized and localized aspects of the Internet, as well as to actively take part in upcoming meetings of the IGF. See, European Parliament recommendation of 26 March 2009 to the Council on strengthening security and fundamental freedoms on the Internet, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0194+0+DOC+XML+V0//EN>)

Also, the International Chamber of Commerce (ICC) recently announced that it strongly supports keeping the IGF in its current format, because it is the only mechanism allowing open dialogue in Internet governance issues among all stakeholders. The ICC stated:

“There are many organizations involved in a wide range of Internet governance issues and each of them has a useful role to play. The IGF’s unique capability to bring together the range of organizations and stakeholders involved in Internet governance issues [for open discussions] is a particular value-add to the global level discussions on these matters. The IGF’s format brings all stakeholders together, treats all of them equally, and provides a space to address any Internet governance issue in a timely manner because it is not a negotiation process that requires compliance with set preparatory processes. This unique benefit cannot be fulfilled by alternative approaches.

We have observed that in the range of Internet governance issues, it is the landscape of organizations and forums that are involved that bring out the many dimensions of these policy issues. No single organization leads on or owns any particular issue, but rather contributes in a specific way. The IGF, with its flexible approach, allows for the constant refreshing and renewing of thought on issues as new developments occur and as organizations make progress on specific aspects of them. This is a real benefit to us all.”

See full statement at:

<http://www.iccwbo.org/uploadedFiles/BASIS/Final%20ICC%20BASIS%20IGF%20India%20reflections%2030%2001%2009.pdf>

Respectfully submitted,
Karl Ege, Chair
Section of Business Law
August 2009

GENERAL INFORMATION FORM

Submitting Entity: Section of Business Law

Submitted By: Karl Ege, Chair

1. Summary of Recommendation.

The recommendation proposes that the ABA recommend to the Secretary of State and the Assistant Secretary of Commerce/ Administrator of the National Telecommunications and Information Administration to support the extension of the mandate of the United Nation's Internet Governance Forum (IGF), on generally the same terms under which it currently operates, as the IGF is the only international forum that provides all stakeholders scope to participate on equal footing.

2. Approval by Submitting Entity.

The Section of Business Law Council approved the proposed recommendation on April 18, 2009.

3. Has this or a similar recommendation been submitted to the House or Board previously?

No

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

None

5. What urgency exists which requires action at this meeting of the House?

The current mandate of the IGF will expire in late 2010. The question of whether to extend the mandate of the IGF will be taken up at its next meeting in late 2009. Accordingly, for the resolution of the ABA to have an impact, it should be considered by the House of Delegates at this year's Annual Meeting.

6. Status of Legislation. (If applicable.)

n/a

7. Cost to the Association. (Both direct and indirect costs)

None

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8 Disclosure of Interest. (If applicable)

No member of the originating Committee or of the Council of the Section of Business Law is known to have a material interest in the Resolution by virtue of a specific employment or engagement to obtain the result of the Resolution.

9. Referrals.

Section of Science and Technology Law

Section of International Law

Section of Intellectual Property Law

Section of Public Utility, Communications and Transportation Law

Forum on Communications

10. Contact Persons. (Prior to the meeting)

With respect to the matter described below, the contact persons who can supply additional information are:

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11. Contact Persons (Who will present the report to the House)

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EXECUTIVE SUMMARY

1. Summary of the Recommendation.

It is recommended that the American Bar Association urges the Secretary of State and the Assistant Secretary of Commerce/ Administrator of the National Telecommunications and Information Administration to support an extension of the Internet Governance Forum (IGF) of the United Nations to operate generally in accordance with its current mandate, as the IGF is the only international forum that provides all stakeholders scope to participate on equal footing.

2. Summary of the issue which the Recommendation addresses.

The IGF was established by the United Nations for a five (5) year period that expires at the end of 2010. In the absence of an extension, the IGF will lapse.

3. An explanation of how the proposed policy position will address the issue.

The policy position, if adopted, would continue the mandate of the IGF for an additional period of time on generally the same terms as its current mandate.

4. A summary of any minority views or opposition which have been identified.

No minority or opposing views are known at this time