

# 2008 Internet Commerce Association ANNUAL REPORT

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## Meeting Challenges for the Domain Name Industry in 2008 and Beyond

Internet Commerce Association celebrated its second anniversary of operations on September 1, 2008. Many thanks go to our growing ranks of committed members who have supported the ICA during this important formative period. The ICA has been active on many fronts in 2008, supporting domainer interests in litigation, in Washington, DC, and within ICANN's policymaking realm. This Report will provide ICA's membership and the public at large with a review of our most important activities and achievements in the course of the past year.

While the ICA has chalked up many successes in 2008 we cannot rest on our laurels, as serious challenges loom ahead and our opponents are well funded. Threats include:

- 🌐 The expectation that trademark interests will seek a radical rewriting of the Anticybersquatting Consumer Protection Act (ACPA) in the 111th Congress to slant presumptions against domain name investors and establish much more severe civil money and even criminal penalties. While the ICA firmly opposes intentional trademark infringement it also believes that law and public policy must strike a reasonable balance between the legitimate interests of trademark holders and domain name investors. The ACPA is an issue for all domain name investors regardless of locale because its in rem jurisdiction provision allow for the transfer or extinguishment of any domain name associated with a U.S.-based registry such as .com.

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- ⊗ The recent seizure of domain names by the Governor of Kentucky raised critical issues of fair play for domain name owners. ICA is in active consultation with registries, registrars, and cyberliberties group looking toward introduction of proactive federal legislation that would establish minimum jurisdiction and due process standards that would have to be met for any court or administrative order relating to a domain name to be valid.
- ⊗ The impending rollout of potentially hundreds of new generic top level domains (gTLDs) will fundamentally alter the landscape of the DNS. ICA will be weighing in as this process goes forward. Issues already identified as threats to our members are a lack of pricing limitations that would permit the imposition of differential pricing at existing TLDs, an objectionable tax on domain success rather than a fee for registry services rendered; demands by ICANN's Governmental Advisory Committee (GAC) that all geographic names at both the first and second level be subject to official endorsement, a formula for political favoritism and less than optimum development; and demands by trademark interests that would grant their marks a range far beyond that conferred by trademark law.
- ⊗ Whether ICANN will be cut free from U.S. oversight in the fall of 2009 without taking steps to ensure continued accountability and responsiveness to domainer interests. In particular, ICANN must take responsibility for the growing lack of uniformity in the UDRP process and a spate of recent decisions that have turned its presumptions on their head to the detriment of legitimate domain name investors.

Clearly, serious challenges will confront our members in the year ahead. But, with your continued support, the ICA will rise to the fight and remain a strong, articulate, and effective voice for domain owners world-wide.

## ICA Legal Defense Fund

Help support your fellow ICA members by contributing to the ICA's Legal Defense Fund. Upon approved request by a member to the ICA Policy Committee, the ICA Legal Defense Fund may be used to help support the legal battles that affect all members.

Donations of every size are greatly appreciated and contributors will be acknowledged in the ICA Monthly Newsletter. Please be the first to help support your fellow members make the decision to fight back rather than merely fold to threats of litigation.

Visit [InternetCommerce.org/Donate](http://InternetCommerce.org/Donate) to make your donation today!

# 2008 Membership Update

## Growing Base of Support

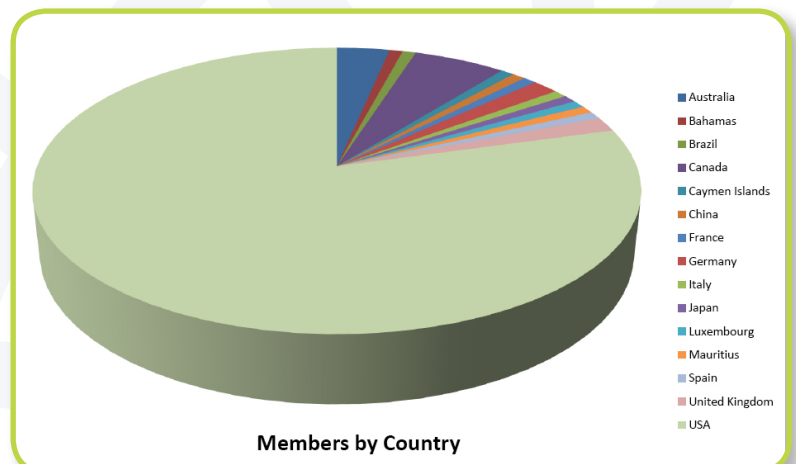
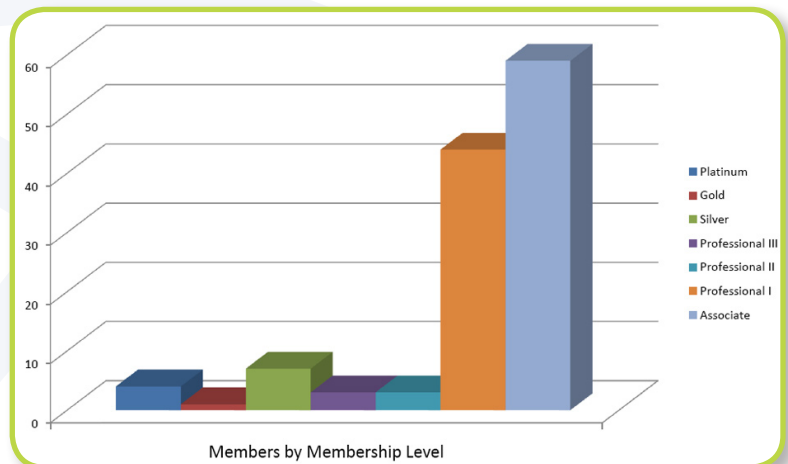
### A Growing Base of Support

The ICA began in the fall of 2006 with five founding members and a mission to develop the association into a grassroots organization that could serve as a voice for the variety of individuals and businesses working in the world of domain names. The founding members represented domain marketplaces, monetization providers, portfolio owners and conference providers: an appropriate mix for the diversity represented in the ICA two years later. With 121 members in seven different membership classes, the ICA has striven to provide opportunities for domain owners

and service providers to offer their support at any level. The mission and goals for the ICA do not come easy, however, let alone cheaply. With no shortage of threats to the domain industry on the horizon, it's more important than ever for domain owners to unite under the ICA banner to ensure their rights are not eroded in the changing legal and business landscape. As opposing groups and entrenched stakeholders attempt to marginalize the legitimate business enterprises of our members, the ICA requires your continued ongoing support to meet these challenges. Renew today!

**Global Perspectives.** The causes concerning ICA members are not limited by geography or nationality and we have been working with representatives in Europe, the UK, and Australia to expand the ICA mission through regional organizations that will operate under the ICA's centralized leadership. As you can see from the graph below, the ICA already enjoys a broad base of international support and encouraging regional membership will help the ICA meet our global challenges. We anticipate that ICA-EU will launch as an affiliated sister organization in late 2008 or early 2009 to more effectively advocate the interests of domainers active in the European Union.

**Supporting Professionals.** A new membership class has been approved by the Board of Directors for those who play a supporting role in the industry to get involved and help keep the ICA financially secure. This non-voting class features a lower annual membership fee and will ensure accountants, attorneys and others can stay up-to-date with ICA and committee activities. As with other ICA supporters, we encourage our members to "Support those who support the fight for your rights!"



# 2008 Summary of Achievements

## ICANN Update

### Summary of Achievements

The Internet Corporation for Assigned Names and Numbers (ICANN) looms larger over everything our members do in the domain space. Whether you are an investor in domain portfolios, an active seller of premium domains, or geared more towards advertising monetization and commercial development of domains, the policies and positions advocated by ICANN have a significant impact on our member's interests. As such, monitoring ICANN activities and establishing the ICA as a productive, respected, and effective member of the ICANN community has been a core goal for the ICA during our first two years of existence. We have accomplished this goal through a variety of efforts, including sending representatives to ICANN's series of international meetings, submitting countless comment letters, participating in ICANN working groups, and vocalizing ICA member concerns at a public hearing of the U.S. Department of Commerce regarding ICANN's desire to move out from U.S. oversight in 2009.

### ICANN Continues its Expansion

The ICA was started in September 2006 out of the domain name industry's determination to prevent a recurrence of the .com settlement entered into by ICANN with VeriSign. ICANN's rapidly expanding annual budget (\$60 million+ annually) is but one indicator that oversight is needed now more than ever to prevent domain owners from subsidizing a quasi-governmental body exercising regulatory authority far beyond what is appropriate for a technical manager of the domain name system (DNS). Industry participants have long realized that they needed to establish an ongoing organizational presence within ICANN and other decision centers, and the ICA's active and continuing involvement with ICANN benefits our members regardless of where they are headquartered. As ICANN plans to aggressively roll out additional gTLDs in the near future it projects receiving an additional \$92 million in application fees, resulting in a 150 percent increase in its annual revenues. Professional domain name registrants must ask whether this massive expansion in revenues will result in a larger and more intrusive bureaucracy that will burden their activities.

The ICA submitted extensive comments and participated in a February 2008 workshop in Washington, DC regarding whether US oversight of ICANN should terminate in fall 2009. ICA counsel Phil Corwin noted that ICANN was making progress in meeting the goals for eventual independence but articulated the ICA position that much more needed to be done before we could support termination of the U.S. oversight role. The ICA will continue keeping a watchful eye and speaking out in Washington to assure that any independence for ICANN is accompanied by the private sector oversight and public accountability promised in ICANN's agreement with the US government.

### Related Activities

While not an exhaustive list of the ICA's ICANN-related activities, the following is a snapshot of where the ICA is devoting its resources concerning ICANN oversight. While many of these issues are technical they are nonetheless of considerable importance to our members. With a variety of constituencies, working groups and the international base

# 2008 Summary of Achievements

## ICANN Update

of members, the ICA is always looking for feedback from members on what issues concern them most. If you have any specific questions regarding the ICA's activities regarding ICANN, please send an email to [contact@internetcommerce.org](mailto:contact@internetcommerce.org) for more information or to share your thoughts.

⊗ The ICA is represented by Executive Director, Michael Collins and Member, Mike O'Connor on a Generic Names Supporting Organization (GNSO) drafting group and workgroup tasked with resolving problems with Inter-Registrar Transfers. One issue that the drafting group addressed was that of registrars considering a whois edit or registrant change as a transfer under the inter-registrar transfer policy. The group worked to clarify the ambiguous language that allows registrars to block transfers for reasons outside of those contemplated by existing policy. While there is a time lag between completion of the work of a drafting group and the adoption of official policy at ICANN the ICA expects to see these recommendations implemented soon.



*Internet Commerce Association Counsel Phil Corwin*

⊗ Activity continues at the workgroup level to address other registrar transfer issues that concern domainers, such as the ease of removing a registrar lock and acquiring an auth info code, whether email is secure enough for transfer authorization, how to improve email security in that context, and other important transfer issues. With four separate Inter-Registrar Transfer Policy workgroups on the GNSO schedule, the ICA will continue to be involved with this subject throughout 2009.

⊗ Registrar Accreditation Agreement (RAA) amendments provide substantial new protections for registrants, and ICANN was pressed to move forward on this important issue by the ICA following the collapse of RegisterFly in early 2007. The ICA participated in the policy debate by submitting detailed comments to ICANN, and the ICA's executive director contributed to RAA amendment language as a key participant in a Business Constituency (BC) workgroup.

⊗ In a good example of moving proactively, the ICA engaged ICANN and GNSO Council staff on the offensive tone of the Domain Monetization Policy Issue Brief draft document that was unveiled at ICANN's June 2008 meeting in Paris. ICA Counsel Philip Corwin raised strong questions about its language and purpose during a public session with the ICANN Board. The ICA received assurances from ICANN staff that the Brief would be "re-crafted" and we have since received a draft revision for review. The revised brief no longer associates domain monetization with abusive domain name "tasting" but is also more thorough, informative, and objective. It now associates domain parking and related advertising monetization with well regarded commercial domain name users such as Amazon.com and the New York Times. Indeed,

# 2008 Summary of Achievements

## ICANN Update

one section is now titled “Domain Parking Is Not the Same as Cybersquatting”.

⊗ The ICA has consistently spoken out in favor of ICANN’s adoption of policies to end abusive domain name tasting and related intentional trademark infringement through abuse of the Add/Grace Period (AGP). ICA Counsel Philip Corwin participated in a panel discussion of this issue at the Sao Paulo ICANN meeting in December 2006. ICANN has subsequently adopted, and is now implementing, pricing and AGP policy alterations that should bring this abusive practice to a rapid end.

⊗ ICA member Mike O’Conner chairs a GNSO working group on Fast Flux hosting. Fast Flux is a technique often used by phishers to overcome attempts by ISPs and others to block the fraudulent attacks. ICA supports reasonable measures to protect internet users from fraud balanced by a concern that legitimate uses of fast flux are not prohibited. Finding an effective response to phishing scams is of direct relevance to our members, many of whom have been targeted during 2008 with attempts to fraudulently obtain their registrar information to facilitate unauthorized domain name transfers.

### **Volunteer today to serve on an ICA Committee or Working Group!**

The ICA is looking for members to serve on a variety of committees and working groups to help advance the cause of our membership. As a non-profit and tax-exempt industry trade association, the ICA relies on our members to fill key positions to help keep the organization running strong.

Most committees meet once a month for a scheduled conference call that averages one hour and working groups meet when needed or appropriate. These groups support the ICA by helping the Executive Director manage the organization budget, perform strategic and annual planning, and spreading the word about the ICA’s mission and the value of domain names in our marketing materials, with the press and at trade fairs. Meetings are scheduled far in advance to allow participants enough notice to plan schedules accordingly and volunteers will receive a formal agenda with active issues, action items and a dial-in conference number in advance.

Email [Contact@InternetCommerce.org](mailto:Contact@InternetCommerce.org) today to volunteer for any of the following committees or working groups:

**Budget and Finance Committee**  
**Policy Committee**  
**Marketing & Fundraising Committee**  
**Strategic Planning Working Group**  
**Legal Advisory Working Group**

# 2008 Summary of Achievements Legislative and Policy Updates

## Two Years of Lessons Learned

The ICA has witnessed several major issues surface in the last two years. With the tireless work of organization Counsel Phil Corwin, the association has been successful in ensuring that member rights are respected at multiple levels of government and within ICANN. While opposing organizations may be using scare-tactics to draw supporters, attempts to confuse protection of domain owner rights with unethical or illegal activities have been met with and countered by the rational and informed voice of the ICA.

Cultivating the ICA as a partner in fighting phishing and online fraud in general has helped ensure that our members have a voice at the table when legislators, judges or administrators review causes effecting domain owners. The ICA extended a helpful hand to politicians when it circulated its “Politician’s Guide to Domain Names” in DC to assist elected officials protect their campaign and community domains and websites. By promoting the legitimate business models and best practices of our membership, the ICA hopes to prevent over-reaching regulation or unnecessary expansion of existing law. The summary of activities below is a sampling of where the ICA has been focusing our efforts in 2008.

## Snowe Bill Defeat

The ICA played a significant role in the opposition and ultimate death of US Senate Bill 2661, although the drafting politicians and supporting organizations seem intent on reviving the issue in 2009. The bill was introduced by Senator Olympia J. Snowe in the guise of an anti-phishing bill and drew bipartisan support at introduction. The ICA questioned the bill’s anti-phishing effectiveness and noted its profound threat to domainers by drastically expanding trademark law. Our position found support in other industry and public interest organizations as well as in the halls of Congress.

This legislative threat was taken to the press and to the domainer community to draw attention to the wide-reaching consequences of the ill-conceived bill. The Snowe Bill, if successful, would have affected domain owners nationwide and the ICA encouraged members and non-members alike to write their own effective opposition letters to congressional leaders. Many responded and found that domainer voices did register and have an impact in Washington.

While the ICA is proud of its role in helping expose the fallacies of the Snowe Bill as introduced, the introduction of the bill itself served as a success for the Coalition Against Domain Name Abuse (CADNA) which played a role in the drafting and advocating for the failed legislation. Despite their defeat in 2008, CADNA has been actively adding Fortune 500 businesses as members as they continue to make wildly exaggerated allegations of domain name abuse. The growth of CADNA as an active organization in Washington should serve as a reminder for all domain name interests of the continuing need for a strong ICA to ensure that the legitimate rights of members are not confused with the fight against phishing and intentional trademark infringement.

# 2008 Summary of Achievements Legislative and Policy Updates

## Kentucky's Domain Name Seizure

Kentucky Governor Steve Beshear ordered a seizure of 141 domain names related to online gambling; stating they are “tantamount to a virtual home invasion”. Some were seized only because the associated websites include online gambling ads, ads for gambling sites that operate legally and are regulated in their home jurisdiction. ICA filed an *amicus brief* with the court opposing the seizure. ICA also participated in a major media outreach hosted by the Blue Grass Institute on location in Kentucky.

Gambling industry associations have taken the lead in the courts because they, not ICA, represent the owners of the seized domains. Regardless of the outcome of this litigation, the Kentucky seizures have demonstrated the need for strong due process and jurisdictional protections to prevent a recurrence in other states. ICA helped enlist the participation of three major public interest groups - the Center for Democracy and Technology, Electronic Frontier Foundation, and American Civil Liberties Union - in filing their own brief citing the threat to free speech posed by Kentucky's action. We are in active discussion with them, registries, registrars, and other interested parties working toward a common goal of introducing bipartisan preemptive federal due process and jurisdiction standards legislation early in 2009.

## Support CFIT in its Suit with VeriSign

In late 2007, ICA filed an *amicus brief* in CFIT's (Coalition for Internet Transparency) suit opposing VeriSign's .com registry contract including four price increases. These price increases will cost our industry tens of millions of dollars over the six-year contract term. Furthermore, if the contract had gone up for competitive bidding, the price of .com registrations would have certainly plunged, saving members of our industry hundreds of millions of dollars. Oral arguments in this case were held in early December 2008; ICA's brief was accepted by the court and specifically referenced by the presiding jurists. This case holds historical relevance for ICA, as we were born out of the outrage engendered in the domainer community when the .com contract renewal was granted to VeriSign in 2005. The industry realized that it is too difficult and takes too much time to organize effective representation for industry interests on an issue by issue basis, and that such a reactive strategy is generally ineffective. ICA was created to put domainers ahead of the curve in Washington and ICANN.

For those who are not familiar with the history of this case. VeriSign launched a controversial search service named Site Finder in 2003, which redirected all non-existent domain names including typos of popular trademarks to a paid search site. ICANN ordered VeriSign to stop the service. VeriSign sued ICANN over this registry policy issue. ICANN negotiated out of the suit by offering a six year contract for .com registry with 7 percent price increases permitted in four of the six years. Thus, ICANN agreed to settle its suit with VeriSign by letting registrants of .com domain names pay for the settlement with registration fees that are at least double what would have been set in a competitive market. It gets worse; ICANN shares in the price increase through VeriSign's increased payments for the .com registry. ICANN

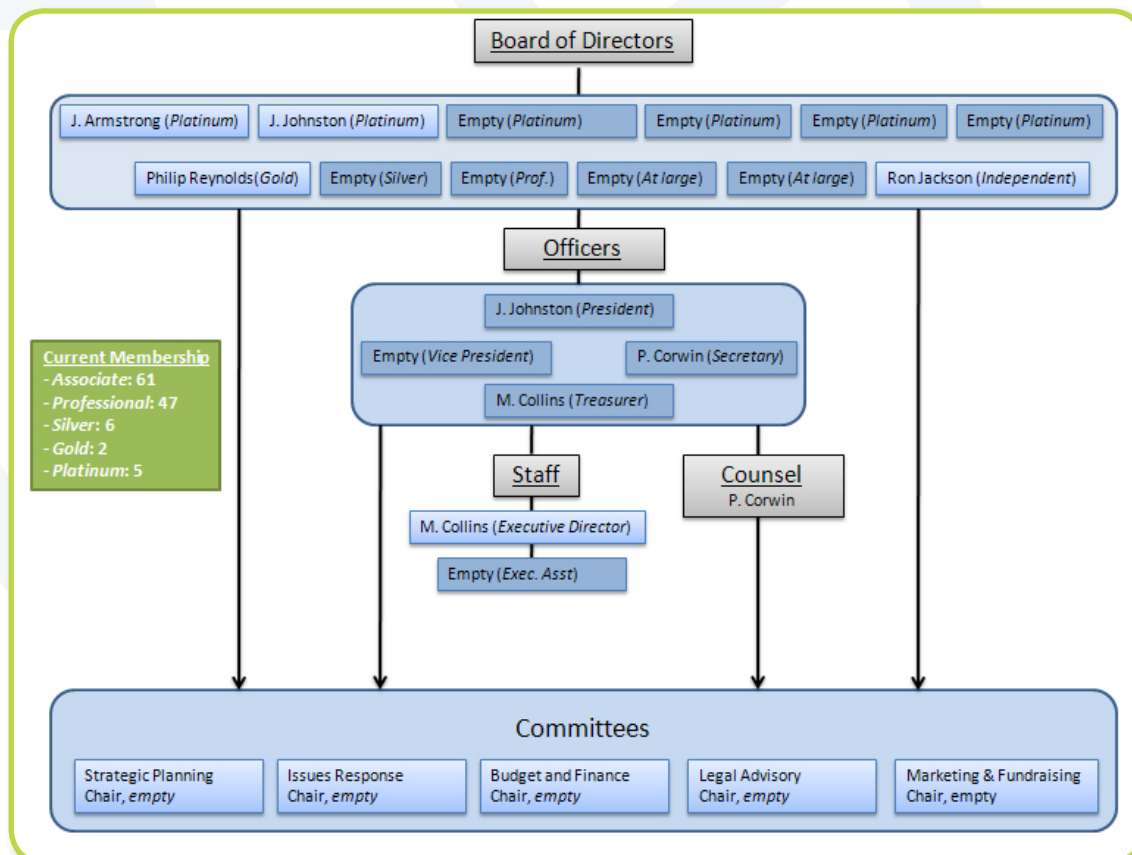
# 2008 Summary of Achievements

## 2009 Initiatives and Elections

### ICA Initiatives and Elections

Internet Commerce Association plans many improvements for 2009, starting now with a leadership recruitment drive and elections for the open seats on the Board of Directors. There are many leadership roles to be filled, so there are opportunities for just about anyone who would like to volunteer. We also encourage employees of member companies to lend their specialty skills to an ICA committee. If you specialize in accounting, design, marketing, or event planning, contact the ICA today!

Keeping members properly informed of ICA activities and opportunities for involvement in another core initiative for 2009. Watch for improved monthly newsletters, updated website content, including easy-to-access copies of ICA comment letters submitted to ICANN, briefs filed as a friend of the court, and links to the ICA in the press. But the ICA is here to serve you, our members, so if there is any activities you would like the ICA to explore, please contact us today!



# 2008 Summary of Achievements

## Press Coverage and Media Relations

### Press Coverage and Media Relations

A large part of the ICA's operational mission is drawing attention to the causes affecting our membership. Through our work with PR firms on both coasts of the United States graciously provided by [Oversee.net](http://Oversee.net) and [Sedo.com](http://Sedo.com), the ICA has ensured that the voice of domain owners is heard by regional and national press alike. The ICA's early and vocal opposition to the domain seizure orchestrated by the Governor of Kentucky helped draw much needed attention to the illegal violation of domain owner's due process rights. This national spotlight helped secure the organized cooperation of a variety of groups, establishing the ICA as a respected watchdog of domain owner rights. The list below is just a sampling of publications where the ICA was either mentioned or quoted for its work on behalf of our members and your financial support will help ensure our voice is heard when the news breaks in 2009. Visit the ICA's home on the web, [www.InternetCommerce.org](http://www.InternetCommerce.org), for the latest information.

### Internet Commerce Association in the News

**DomainNews** (11/7/08)

ICA Response to CADNA's Allegation that CyberSquatting is a Criminal Activity

**Arkansas Democrat Gazette** (10/27/08)

Web sites not always immune to local laws

**CNET News** (10/26/08)

Kentucky attempts to seize gambling site domains

**Wall Street Journal** (10/21/2008)

Online Businesses Subject to Local Laws...Everywhere

**Forbes** (10/17/2008)

Ky. judge allows gambling Web site case to proceed

**Lexington Herald Leader** (10/17/08)

Judge upholds move to stop Internet gambling sites

**Washington Post** (10/8/2008)

Kentucky Tests State's Reach Against Online Gambling

**Domain Name Wire** (9/24/08)

GoDaddy's 60 Day Transfer Lock Closer to Termination

**OnlineKosten.de** (6/20/08)

ICA Luxemburg: Lobbyarbeit für Domaininhaber (German)

**Reuters** (4/24/08)

Reynolds Named to Internet Commerce Association Board

# 2008 ICA Membership Renewal

## 2009 Membership Renewal / Contact

The Internet Commerce Association exists because only together will our voices will be heard. As a result of our membership strength, our common interests, and our collection of experience in the business of domain names, the ICA is the best organization to fight for member rights wherever they are threatened. The challenges facing the domain industry in 2009 require the ICA but the ICA can only exist because of you! So protect your investment and renew your membership for 2009 today by visiting [InternetCommerce.org/Membership\\_Application](http://InternetCommerce.org/Membership_Application).

Please visit [InternetCommerce.org](http://InternetCommerce.org) for up-to-date news on ICA activities, subscribe to our monthly newsletter, or participate in our discussion boards. If you have questions about any topic covered in this guide, or any other aspect of the world of domain names, please feel free to contact:

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- ☉ Philip Corwin, Counsel, (202) 347-6875 / [pcorwin@butera-andrews.com](mailto:pcorwin@butera-andrews.com)

