

An Open Letter from the IRT Introducing our Work (To be read before reading our report)

Why did 18 people experienced in trademark protection on the internet come together to form the Implementation Recommendation Team (IRT)? What was it that motivated us to volunteer and spend more than eight (8) working weeks wading through over 900 pages of comment, meeting with a dozen expert witnesses, preparing draft after draft? After all, in attempting to craft a tapestry of interlinked recommendations that we believe are fair to everyone, it might be that we end up pleasing no one?

Was it because we support the concept of the expansion of the gTLD space unreservedly? Hardly. The views of the IRT reflect the views of business and trademark interests in general. A sizeable number of our team would have preferred status quo with no new gTLDs until better Rights Protection Mechanisms are in place for the existing gTLDs. Others favored the measured introduction of Sponsored or Community-based gTLDs. Some support the current expansion, seeing the advantages for commerce and the consumer alike in open competition and innovation.

Our starting point when we first met in Washington DC in early April 2009 was a discussion on the state of the domain name system today. We believe it is worth sharing this context with readers of our report to remind you of the bigger picture before you focus on the detail of our recommendations.

At the mid-point of 2009, there are something like 190 million domain names registered. Business registrants range from multi-national corporations with e-commerce operations generating millions in revenues through SMEs to sole traders and home workers. Non-commercial registrants include centers of learning, not-for-profit organizations and communities of interest. Private registrants feature people of every age, race, creed and gender from Silver Surfers to pre-teens in every corner of the globe.

These diverse interests all depend on domain names to keep them connected. Domain names underpin the email systems and social networks that bring us closer together and are the foundation of internet commerce and 21st century innovation. Domains should be trusted signs that assist all of us to navigate the internet, whether we type them straight into a browser or sift a search engine listing for that domain name we recognize.

However, the day to day experience of most internet users is not as it should be. Lurking in the darkest corners of cyberspace are the unscrupulous, the dishonest and the dangerous who prey on the unwary. Malicious behaviors like spamming or phishing abound; lucky is the internet user whose in-box is not full with offers that are too good to be true.

For most of us, it is a reasonable assumption that the owner of a trademark in the real world that you rely on to provide authentic goods or services is also the owner of a website that you find under the corresponding domain name. The complexities of gTLD

and ccTLD hierarchies are of no more interest to “average” internet users than the difference between a registrar and a registry. Naturally, we believe we should be able to trust a registry to protect our interests. It is only when something goes wrong that many people begin to consider the importance of cherishing their domain names and the concept of registrar or registry integrity.

Unfortunately, something often “goes wrong” with domain names. Last year the World Intellectual Property Organization reported on a 7% rise in the number of UDRP cases it processes. Since this scheme started in December 1999, WIPO has processed more than 15,000 UDRP or UDRP-based cases, covering around 27,000 separate domain names – and they are just one of four UDRP panel providers. A year earlier, ICANN terminated its contracts with accredited registrar RegisterFly, which had abandoned its customers and at just 12 days notice, managed to find a new home for the domains belonging to 6,000 of them. Before that in July and September 2006, the .eu registry, waged a battle in the courts with three Cypriot companies after it blocked 74,000 domain names it alleged were being hoarded for resale in contradiction of the .eu regulations. There is an inglorious history of domain name abuse that criss-crosses the world.

Domain name abuse, as it has frequently been observed, is a business with low overheads, no barriers to entry and few risks. Serial cybersquatters continue to prosper: when challenged through a UDRP or other DRP action, they often ignore the correspondence but continue to maintain websites with PPC adverts for as long as they can, hiding behind inaccurate Whois details or Proxy Registration services. As Francis Gurry, Director General of WIPO warned in a press release of 16 March, 2009, “The sale and broad expansion of new top level domains in the open market, if not properly managed, will provide abundant opportunities for cybersquatters to seize old ground in new domains.”

During our work on this report, the team was frequently reminded of the scale of abusive behavior in the domain name system by the brand owners in our midst. It emerged that each one of the five brand owners on the IRT expects to face at least one new domain name infringement somewhere in the world every day of the year.

Informed and motivated by this background, we strived in our work to provide what we have termed “a tapestry of globally-effective solutions” which we believe, if taken together and not significantly unpinned, will help reduce the incidence and severity of trademark abuse in the new gTLDs. Each solution we developed was considered from the point of view of consumers and registrants, registrars and new gTLD registries from the narrowest Community-based operator to the broadest Open applicant. We are keenly aware that you cannot please all of the people all of the time, but we hope that readers of our report will consider the benefits of our efforts, which we believe, will accrue to all branches of the ICANN family:

Benefits for trademark owners:

- The IP Clearinghouse will reduce the cost and administrative burden of protecting trademarks in the new gTLDs for all trademark owners – with a very

few “trademark supernovas” which suffer extraordinarily high levels of infringement finding relief through the Globally Protected Marks List. We believe that the free provision of accurate registrant data coupled with the rapid suspension of infringing names through the URS and a robust Post Delegation Dispute Resolution mechanism is what the ICANN family has wanted all along.

Benefits for new gTLD Registry Operators:

- Our recommendations will enable ASCII and IDN registry operators to design and operate effective Pre-Launch RPMs that are appropriate for and tailored to their target markets without significant additional investment. We believe the IP Clearinghouse will reduce registry liability while the Post Delegation Dispute Resolution mechanism, which will impact only on “bad actors”, will improve consumer confidence in registries, as will the requirement to publish complete and accurate Whois information. Enhancing the use of the algorithm through an interpretation of “meaning” will also help applicants to navigate through the application process.

Benefits for registrars:

- A level of standardization for RPM and the availability of accurate Whois data will help registrars to inter-act successfully and economically with registry operators. The IP Clearinghouse and the GPML will also remove uncertainty and risk from the Pre-Launch RPM process: over 50% of applications during Sunrise schemes run since .eu in 2005 have been inaccurate or ineligible, often because of registrar error.

Benefits for registrants and consumers:

- Consumers value transparency and accountability. Our recommendations promote this as well as rapid and inexpensive methods of tackling cybersquatters and registries that become safe-havens for them. They should help make any new gTLD space a safer place to communicate, work, shop, play and learn.

Benefits for ICANN:

- ICANN has consulted widely on the two versions of the Draft Applicant Guidebook it has published. It is sensitive to the calls from governments, business and consumer groups for solutions to be found to “over-arching” issues including trademark protection which, as CEO Paul Twomey stated on 6 March. 2009, “could be overwhelmed by the introduction of new gTLDs.” Our recommendations are designed to help ICANN on one of these “over-arching issues” by proposing fair, technically feasible and affordable solutions that are applicable globally and will allow new business models to flourish.

At the 2009 Mexico City Open Meeting, ICANN Chair Peter Dengate-Thrush said, “The Board has clearly heard and believes strongly that the concerns of trademark holders must be addressed before this process is opened for applications. The establishment of

this team is an attempt to get proposed solutions from the people with skill in trademark protection and other issues.”

We know that our work is neither perfect nor complete – there are some significant issues that we could not address in the eight weeks available to us and others on which the strongly divergent opinions of team meant that compromise was impossible. If our recommendations are adopted, and if new gTLDs are launched, it could make sense for ICANN to ask a team qualified in trademark protection to take a fresh look at the impact of our recommendations after 18-24 months to determine whether they can be improved. However, above all it is our joint wish that should the new gTLDs be introduced, our recommendations will provide a foundation of stability for all members of the ICANN family without stifling innovation.

Finally, we thank the members of the ICANN staff who provided support and guidance to us whenever we needed it and to those experts who submitted comments, attended our San Francisco consultations or acted as liaison to other parts of ICANN.

Signed,

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INTRODUCTION: IMPLEMENTATION RECOMMENDATION TEAM (IRT)

SUMMARY

The IRT was formed by ICANN's Intellectual Property Constituency in accordance with the 6 March, 2009 ICANN Board resolution at the request of the community seeking solutions for potential risks to trademark holders in the implementation of new gTLDs. The team reflects experiential and geographic diversity and is comprised of 18 members and two alternates.

The team has participated in numerous teleconferences, two two-day face-to-face meetings, and one full-day face-to-face consultations with remote participation via teleconference with various interest groups resulting in draft recommendations for several proposed solutions that are described herein:

- IP Clearinghouse, Globally Protected Marks List and associated Rights Protection Mechanisms (“RPMs”), and standardized pre-launch rights protection mechanisms;
- Uniform Rapid Suspension System (“URS”);
- Post-delegation dispute resolution mechanisms;
- Whois requirements for new TLDs; and
- Use of algorithm in string confusion review during initial evaluation.

A Preliminary Report was posted on 24 April, 2009 for a thirty (30) day comment period that closed on 24 May, 2009. See <http://www.icann.org/en/public-comment/public-comment-200905.html#irtpdf>. This Final Draft Report will be submitted to the ICANN Board and posted for public comment on 29 May, 2009 for a thirty (30) day comment period that closes on 29 June, 2009. Comments can be submitted at <http://www.icann.org/en/public-comment/public-comment-200906.html#irt-report>.

FORMATION

During public discussions of new gTLD implementation models, the Intellectual Property Constituency (IPC) and other rights holders and interested parties identified potential risks and costs to rights holders that should be avoided. The Board resolved in Mexico City that the IPC form an Implementation Recommendation Team (IRT) to develop proposed solutions to these issues.

The IRT was established by members of the Intellectual Property Constituency and the membership list was posted¹ (https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/trademark_protection:20090407232008-0-9336/original/IRT-Directory.pdf) and Caroline G. Chicoine was installed as Chair. The team broadly reflects diversity of IP interests and geography. In addition, in order to provide the IRT with broadened practical perspectives and experience, one person was selected from the gTLD Registries constituency and one person was selected from the Registrar constituency. Each of them was allowed to appoint an “alternate” to attend teleconference meetings in which they were unable to attend. Specific ICANN staff members have been assigned to support the team: preparing meeting notes, posting materials, arranging meetings and providing logistical and travel support. A listing of these individuals along with their statements of interest are attached as **Appendix A**. The team has held numerous teleconferences, two two-day face-to-face meetings in Washington, DC and San Francisco, CA, respectively, and one full-day face-to-face consultations in San Francisco, CA, as well as dedicating significant individual time in between. There has been essentially full attendance at all conferences. Meeting notes from the meetings are publicly posted as they are prepared, for example: (https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/trademark_protection:20090410223141-0-23728/original/MTGMINS-March25.pdf, and https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/trademark_protection:20090410223220-0-23543/original/MTGMINS-April1-2.pdf).

BACKGROUND

The IRT was given a broad mandate with a tight time frame. Without any intention to limit the broad mandate of the IRT, but in recognition of the extreme limitations of time, the IRT has devoted its time to addressing what it considers to be the most pressing and key issues for trademark owners. The IRT wishes to emphasize that there are still a number of issues that fall within its mandate that should be given additional adequate opportunity to address as well, and that nothing in this report is intended to limit or preclude those issues.

In preparation for and during the IRT’s first face-to-face meeting in DC on 1-2 April, 2009, the IRT considered and reviewed several proposals that were set forth in the comments to DAG1. For convenience and efficiency, the IRT grouped comments into the following categories:

- comments on the guidebook;
- pre-launch mechanisms;
- post-delegation at the top level;

¹ These links are to wiki pages that require passwords in order to contribute. Passwords are publicly available by sending an email to ngtld-overarching-issues@icann.org as indicated on https://st.icann.org/new-gtld-overarching-issues/index.cgi?new_gtld_overarching_issues.

- post-delegation; and
- dispute policies.

To complete the first draft report by 24 April, 2009, it was not possible for the IRT to extensively consider and work on each proposal. In order to ensure that the IRT spent the limited time available to build upon and develop at least the most salient, and what seemed the more promising solutions, the IRT was constrained to prioritize the list of proposals and consequently identified five proposals which are hoped may make available solutions to address some of the immediate concerns of the stakeholders, and were thus identified as having a high priority. These included and were named:

- IP Clearinghouse, Globally Protected Marks List and associated rights protection mechanisms (“RPMs”), and standardized pre-launch rights protection mechanisms;
- Uniform Rapid Suspension System (“URS”);
- Post-delegation dispute resolution mechanisms at the top level;
- Whois requirements for new TLDs; and
- Use of algorithm in string confusion review during initial evaluation.

In order to test the efficacy of each proposal and the solution to be developed by the IRT Sub-Groups based upon the proposals prioritized, the IRT also developed the following list of questions to be asked as a benchmarking checklist against which to measure all proposals:

- what are the harms that are being addressed by the solution;
- will it scale;
- does it accommodate territorial variations in trademark rights;
- does it conform to extent of actual legal rights;
- does it work in light of IDNs;
- can it be gamed and abused;
- is it the least-burdensome solution;
- is it technologically feasible;
- how will it affect consumers and competition; and
- what are the costs and who pays them.

It should be emphasized that the IRT was tasked to propose recommendations for new gTLDs and that the proposals contained herein are not currently intended to apply to other than new gTLDs.

It should also be emphasized that the IRT recognized that there is no single solution to satisfy all of the concerns raised in the comments to the DAG1 and DAG2, and that each proposal presented herein is part of a tapestry of solutions which are interrelated and interdependent. The proposals have been designed comprehensively to balance in relation to one another and the removal of any proposal will likely require further strengthening of the others.

Conversely, even together, all the above-mentioned solutions by no means present a panacea to all the overarching issues of trademark protection in connection with the introduction of new gTLDs. The IRT focused its efforts in addressing only the most salient of proposals and undertook the work of fleshing out and further building upon those prioritized proposals in order to swiftly flesh out an initial proposed framework for each proposal developed. The IRT recognizes that further work on each of the proposals will be required especially upon receiving comments from the community. The IRT also recognizes that still further work will be required to adequately address several of the concerns raised and proposals made by the community to comprehensively address all the overarching issues of trademark protection in connection with the introduction of new gTLDs.

In addition, it is important to note that the membership of the IRT is purely on an individual basis and based upon personal contribution of individual expertise by each member to the group. The work of the IRT is not endorsed by any particular IRT member, their clients, companies or affiliated companies or organizations, and participation in the IRT of any individual member does not signify endorsement, consent or approval of the work product of the IRT by any business, company, affiliate, client, association, group or any other party with which the individual IRT member may be affiliated or may otherwise represent. Indeed, any business, company, affiliate, client, association, group or any other party with which the individual IRT members may be affiliated or may otherwise represent, as well as individual IRT members, may disagree with or have differences with any one or several of the solutions proposed. This proposal is presented as a discussion draft and is subject to comments by any interested party, including the businesses, companies, associations and clients of the members of the IRT.

The IRT established a “code of conduct” which prohibited members of the IRT from discussing any of the proposed issues in depth with anyone outside the IRT in order to allow individual IRT members to speak freely and candidly. Each of these proposals was then extensively discussed not only in the face-to-face meetings, but in numerous teleconferences and wide-ranging abundant correspondence.

Notwithstanding, the IRT was not able to fully consider every other proposal given the time constraints. However, the IRT did identify one proposal, in particular, that it believes should be further considered to determine whether it has any merit; namely the

development of universal standards and practices for proxy domain name registration services.

Many of those who filed comments to the DAG have asked that ICANN consider the issue of proxy domain name registrations with regard to new gTLDs. The IRT recognizes that proxy domain name registration services raise complex concerns that require a great deal more analysis and consideration that were outside the limited time frame available. As a result, the IRT takes no position at this time on proxy domain name registrations. The IRT does recommend, however, that ICANN consider this issue and report to the community on whether it should or is able to make any recommendations with regard to the use, standards and practices of proxy registrations. The timetable of such recommendations may be independent of the timetable for the introduction of new gTLDs, but the IRT strongly recommends that ICANN's consideration of this issue commence as soon as possible.

The IRT was also able to briefly identify various additional proposals from the public comments to DAG1 and 2 that it believes warrant further consideration. These included:

- Applicants should be permitted to apply for more than one string in an application, (e.g., .BRAND in ASCII, Korean, Kanji, Arabic, etc.) if those other strings are IDN/ASCII equivalents of the base application (and ICANN shall only charge the additional cost recovery fees associated with the string evaluation and not a separate \$186,000 application fee for each string);
- Community based and corporate branded/single registrant TLDs need to have the same authority that sponsored TLDs have currently in selecting which registrars access their registry;
- Create special status in the application process for “.brand” type TLDs;
- Shifting of costs and fees of any unsuccessful application to the applicant with reasonable penalties;
- Phased implementation;
- Registrant verification;
- The holder of a second level domain name in existing gTLDs should have priority in respect of IDN equivalent;
- Fast-track UDRP resolution and reduction/shifting of cost in the UDRP;
- Auctions (portal/landing page for multiple TLDS with same string); and
- Charter enforcement/charter eligibility DRP.

For the sake of clarity, the inclusion of these other proposals should in no way be interpreted as a decision by the IRT as to the merits thereof. In addition, the IRT's

recommendations in this Final Draft Report should in no way be interpreted as a recommendation for or against the introduction of new gTLDs. The proposals set forth herein are being recommended if ICANN proceeds with the rollout of new gTLDs as planned.

NEXT STEPS

Information regarding the IRT will continue to be posted at: https://st.icann.org/new-gtld-overarching-issues/index.cgi?trademark_protection, a wiki page where others can post comments regarding new gTLD implementation and trademark protection.

The IRT is submitting this Final Draft Report to the ICANN Board for consideration by the ICANN community at the Sydney meeting, along with any other proposals or recommendations from the community on the topic of trademark protection in new gTLDs. Specifically, it is the intention of the IRT to present this Final Draft Report to the ICANN Board at the Sydney Open Meeting on 21 June, 2009, as well as to provide briefings to the GNSO, interested Constituencies, and others during the Sydney meeting. Members of the IRT will also be participating in a telephone briefing with ALAC on 4 June, 2009, as well as two other consultations ICANN is hosting on 13 July, 2009 in New York and on 15 July, 2009 in London.

IRT RECOMMENDATION FOR AN IP CLEARINGHOUSE, A GLOBALLY PROTECTED MARKS LIST, AND OTHER TOP AND SECOND-LEVEL RIGHTS PROTECTION MECHANISMS

1. INTRODUCTION & OVERVIEW

The IRT convened a work team to consider and recommend proposals that would, as far as possible, adequately and effectively protect the legal rights of trademark owners. In formulating each recommended proposal, the work team took into account the following framework and considerations:

- The recommendation should satisfy the checklist criteria agreed on by the IRT;
- The recommendation should protect the existing rights of trademark owners, but neither expand those rights nor create additional legal rights;
- The recommendation should provide clear benefits to trademark owners and new gTLD registries, such that as many as possible will be incentivized to use the recommended solution;
- The recommendation should accommodate user and consumer concerns, in particular the need to ensure consumer protection both in terms of preventing unnecessary confusion and of permitting (and not derogating from) the lawful use of marks;
- The recommendation should be sufficiently flexible and scalable so as to ensure its sustainability as an effective rights protection mechanism (RPM); and
- The recommendation should not result in unnecessary or undue costs, either to trademark owners, gTLD registries, registrars or to legitimate users and consumers.

The IRT believes that the recommendation for an IP Clearinghouse, as further described below, is the most appropriate platform for ensuring conformity to the above objectives as well as satisfying the IRT checklist. The IRT further believes that its recommendations for various operations at the top and second levels will also adequately allow for the appropriate legal protection for trademark owners without compromising the legitimate rights of consumers and other users. Finally, the IRT wishes to emphasize that its recommendations are not intended to replace or eliminate existing protections for legal rights, including recourse to national courts and under ICANN's Uniform Dispute Resolution Policy (UDRP) or the proposed Uniform Rapid Suspension system (URS).

In considering and working out the details of the IP Clearinghouse, the IRT has been conscious of the following potential limitations and/or differences:

- The need for protection of existing legal rights may differ at the top level and the second level;
- Certain categories of marks may warrant different levels of protection. For example, globally protected marks may be entitled to a higher level of protection than marks protected regionally or in only one country;
- A proposed solution should work with Internationalized Domain Names (IDNs);
- Technical limitations could determine to some extent the feasibility of particular solutions; and
- The IRT recommendation should not usurp or replace the existence of legal institutions and systems that are intended to establish the scope of legal rights (e.g., existing laws and national courts). In this regard, the IRT also took into account the fact that the UDRP already provides the basis and practice for resolving cyber-squatting disputes arising from the bad faith registration and use of domain names as well as the IRT's proposed URS, which should be mandatory and will provide additional protections for clear cut cases of cybersquatting.

In developing its recommendation, the IRT consulted with and examined the practices, experiences and recommendations of various registries, Internet service providers and dispute resolution services that it considered relevant to its task including, in particular, sunrise registrations, suspension practices and the costs associated with implementing a RPM.

In the course of its deliberations, the IRT considered and rejected the idea of a single, all-encompassing Trademark Reserved Names List as a universal protective mechanism. The primary reasons were that (1) such a list could not accommodate the various types (and corresponding scope of legal protection) of protected marks or the possibility of calibrating the recommended RPM to these differing types and scope of protection; (2) designing workable, specific, flexible and inclusive criteria for a single, all-encompassing Trademark Reserved Names List would be extremely difficult – if possible at all; and (3) such a one-size-fits-all solution would not be acceptable to the ICANN community.

The IRT believes that its recommendation provides a balanced, flexible, scalable, workable and sustainable solution that would adequately and effectively protect the legal rights of trademark owners upon the introduction of new generic top-level domains (gTLDs). It also believes that its recommendation satisfies most of the specific concerns identified in the IRT checklist.

2. THE IP CLEARINGHOUSE

OVERVIEW

The IRT recommends the creation of an IP Clearinghouse to support new gTLD registries, in general, and in operating cost-effective RPMs that do not place a heavy financial or administrative burden on trademark owners, in particular. The IP Clearinghouse will function (1) as the central entity with which all new gTLD registries, and possibly registrars, interact in relation to the Globally Protected Marks List and the Pre-Launch IP Claims Service also recommended by the IRT; and (2) as an information repository performing specific information collection and data validation services as described herein. It can also perform similar functions for other types of RPMs besides those recommended by the IRT at this point. The main features of the IP Clearinghouse should include the following:

- The IP Clearinghouse must be capable of holding data relating to the legal rights of trademark owners, including both registered rights and unregistered rights.² Such data will be used to support registration in both ASCII and IDN new gTLD registries.
- The data should be submitted by trademark owners directly, or through a registry or registrar, to the IP Clearinghouse together with a reasonable fee. The IP Clearinghouse will validate this data initially and every year thereafter to ensure accuracy.³ Validated data can then be pushed by the IP Clearinghouse to new gTLD registry operators, or pulled by these registries to support pre-launch RPMs such as Sunrise schemes as well as the Globally Protected Marks List and the Pre-Launch IP Claims Service.
- Trademark owners must grant a non-exclusive, royalty-free, sublicensable license to their data to ICANN, which will in turn sublicense it to the IP Clearinghouse. Access to and use of such data must be restricted to trademark owners (who will be permitted to access and use only their own data), ICANN, new gTLD registries and registrars, for the sole purpose of performing the data validation functions for new gTLD registries and the implementation of RPMs, e.g., in relation to the Globally Protected Marks List, the Pre-Launch IP Claims Service and the URS. Ownership of any and all data submitted to or generated by the IP Clearinghouse must remain exclusively with the entity providing such data.

² Most pre-launch RPMs have focused on registered trademark rights of national or multi-national effect. Whilst it is expected that the IP Clearinghouse will predominantly feature data on such rights, some registry operators may opt to include as eligible for their pre-launch RPM other types of rights, such as unregistered trademarks, company names, trading names, designations of origin, geographical names, family and personal names, etc. Therefore, the IRT recommends that the IP Clearinghouse should be structured so that it can accommodate a panoply of such rights even if they are applicable to only a small number of registries.

³ The initial submission of data and the annual validation must include an affidavit or declaration, signed by the trademark owner, attesting to the accuracy and completeness of all information submitted by it. The trademark owner is responsible for timely updating and correcting data in between annual validations as circumstances warrant (e.g., acquisition of new portfolio, expiration of registration, successful third-party challenge to registration). A trademark owner's failure to provide an accurate and complete annual validation affidavit or declaration or its failure to provide a timely, accurate, and complete interim update could result in a sanction or penalty. The IRT defers the identification of such a sanction or penalty to the IP Clearinghouse operator.

- The IP Clearinghouse must be operated by an outsourced entity under a renewable multi-year contract with ICANN of at least five (5) years. The contract must be awarded on the basis of an open, competitive tender.⁴
- The IP Clearinghouse must be operated by a neutral service provider that is not currently in a direct contractual relationship with ICANN to provide domain name registration services including that of a gTLD registry, registrar or other technical provider of domain name services to a gTLD registry or registrar. The IP Clearinghouse must commit to a strict code of conduct that, among other things, requires it to provide equitable access to its services by all entities seeking to use the IP Clearinghouse.
- The IP Clearinghouse must be available 24/7, 365 days of the year, including the availability of commercially reasonable customer support services.
- The cost to a trademark owner of placing and maintaining a record in the IP Clearinghouse should be reasonable. The annual cost of maintaining a portfolio of records in the IP Clearinghouse should not be prohibitive for a trademark owner with many names/brands, taking into account the complexity of the platform, the costs of validating trademark records from every country in the world and the potential liabilities of the IP Clearinghouse operator.⁵
- The IP Clearinghouse must be technically state-of-the-art and its daily operation must enhance the rapid provisioning of domain registrations. For example, it must support EPP as well as offer a web interface, and it must not slow the registration process unreasonably.
- The IP Clearinghouse must be highly scalable. For example, it should be able to accommodate identical trademarks registered under different classes of goods or services or in different trademark registration offices, recognizing the territorial nature of trademark law and international classification systems.
- The IP Clearinghouse must be able to accommodate all types of registered trademarks, including word marks and device (logo) marks that contain a word element from every trademark registration office in the world. This global spread is important so that the IP Clearinghouse can support IDN registries.

⁴ The IRT considered public comments questioning whether IP Clearinghouse services should be provided by a single entity. The IRT believes that, for reasons of efficiency, consistency of validation and cost, a single provider is the most appropriate recommendation, provided that the process used to solicit tenders for and awarding the contract is open and transparent.

⁵ It should be noted that the fees paid by the rights owners for the validation of applications in recent gTLD Pre-Launch RPMS consisted of three parts: (1) the fees of the registry operator; (2) the fees of the validation agents; and (3) the fees of the registrars submitting the application. The first two categories of fees were often bundled together by the registry operator to create the wholesale price for registrars. The IRT has been advised that registry operators have not sought any control over the final retail price charged by registrars as this could be seen as anti-competitive.

- The IP Clearinghouse must be able to deliver fast, accurate information in a standard format using a state-of-art technical platform that is secure and robust. Most communication will be electronic. Forerunners of the IP Clearinghouse have been used by validation agents in TLD launches since 2005, demonstrating both the feasibility of the concept and its flexibility at coping with a variety of RPM models, from .eu's First Past the Post Sunrise to .asia's auction model. It is an idea that was supported by many on the ICANN 2007 Protecting the Rights of Others Working Group.

SERVICES TO BE PROVIDED BY THE IP CLEARINGHOUSE

The IRT intends that each of the services described below shall be provided by the IP Clearinghouse at no charge to the gTLD registries or registrars that are required to interact with the IP Clearinghouse to implement the recommended RPMs. If a new gTLD registry decides to implement an RPM above and beyond those recommended herein, any incremental services necessitated thereby shall be provided on no greater than a cost plus basis to that new gTLD registry.

The services to be provided by the IP Clearinghouse are:

- The **validation of trademark rights on an annual basis** which can be pushed to new gTLD registry operators or pulled by them to support pre-launch RPMs such as Sunrise schemes;
- A **Globally Protected Marks List** of trademarks satisfying the strict requirements recommended herein that has the effect of limiting third-party applications for (a) top-level domains that match or are confusingly similar to trademarks on the list; and (b) second-level domains that match trademarks on the list; and
- A **Pre-Launch IP Claims Service** that will notify new gTLD applicants and trademark owners that a current validated right exists for the identical term being applied for at the second level.⁶
- The generation of data for and participation in **URS** pre-registration, and validation of URS complaint claims regarding trademark rights.⁷

The IRT believes that an **IP Watch Notice** service would be a highly useful tool for trademark owners. Because similar services already exist in the market, the IRT does not believe that the IP Clearinghouse should be required to or exclusively provide such

⁶ The IRT considered whether the IP Claims Service should also extend to the post-launch period. The IRT concluded that it was unnecessary to extend the IP Claims Service post-launch because of the protections afforded by the URS that the IRT also recommends herein.

⁷ The IRT notes that it is possible for the IP Clearinghouse to act also as the repository for and source for retrieval of URS decisions. While the IRT supports the requirement that URS decisions be stored in a centralized location, it does not believe it is necessary to require that the location be the IP Clearinghouse as long as there is a viable, open option to provide access to and searching of the decision.

a service. Nonetheless, the IP Clearinghouse should not be prohibited or prevented from offering such a service, provided that it should not use the data submitted to it by trademark owners in relation to either the Globally Protected Marks List or the Pre-Launch IP Claims Service for such purpose.

The IP Clearinghouse operator must, upon request by new gTLD registry operators, provide reasonable opportunity for those new gTLD registry operators to consult with it at no charge as those registry operators draft policies and create processes to implement RPMs. This is essential to ensure that new registry operators can interact effectively with the IP Clearinghouse.

3. THE GLOBALLY PROTECTED MARKS LIST (GPML)

The IRT recommends the creation of a Globally Protected Marks List (GPML) to provide protection to Globally Protected Marks (GPMs) at the top and second levels. We recommend the GPML in recognition of the numerous comments by and on behalf of trademark owners that called for the establishment of a Reserved Names List or White List for trademarks.

Because the IRT intends the GPML to include only marks that are globally protected, the standards for inclusion on the GPML should be high and strictly enforced.⁸ As a result, the level of protection afforded to GPML marks will be greater than for marks not qualified for inclusion on the GPML.

The IRT wishes to emphasize that the GPML is not intended to be a reserved list by which trademark owners will be able to simply block pending domain name applications or reserve domain names in advance. The GPML is also not a consolidated list of what may constitute “well known” or “famous” marks under national trademark laws, and should not be interpreted as such. Further, the IRT does not intend the GPML to possess any precedential value in any dispute or resolution proceeding in relation thereof, and the IRT believes that it should not to be used or relied on for this purpose.

GPML REQUIREMENTS

Trademark owners that wish to have a mark included on the GPML must provide to the IP Clearinghouse documented evidence that is capable of being verified of the criteria listed below. After the initial gTLD application round, these criteria should be evaluated and, if appropriate, revised. The recommended criteria are as follows:

⁸ The IRT received comments characterizing the GPML standards recommended in this report as favoring Western economies. The IRT has no intention of favoring any economy, country, or region; its intention was to develop objective criteria to identify globally protected trademarks.

- Ownership by the trademark owner of [number] trademark registrations of national effect⁹ for the applied-for GPM¹⁰ that have issued in at least [number] countries¹¹ across all 5 ICANN Regions with at least:
 - [number] registrations in the North American region
 - [number] registrations in the European region
 - [number] registrations in the African region
 - [number] registrations in the Asian/Australian/Pacific region
 - [number] registrations in the Latin American/Caribbean region

(NOTE: As a result of the public comments received in response to its initial draft report, the IRT has requested ICANN staff to collect relevant trademark registration data. The IRT has refrained from recommending particular numbers and thresholds at this time, pending the collection and review of the relevant data. The IRT emphasizes, however, that the final number and thresholds to be adopted for the GPML, including the required number of registrations and countries, must be sufficiently high such that the marks that qualify for the GPML are actually recognized as globally protected.)

- All trademark registrations must have issued on or before the date that GPML applications are first accepted and must be based on trademark registration applications filed on or before 1 November, 2008.¹²
- The second level domain name for the GPM's principal online presence must be identical to the GPM.

Consideration of Public Comments Relating to GPML Requirements. The IRT considered those public comments that called for a requirement that all registrations relied upon by the trademark owner be for only those marks in current use. The IRT decided against such a requirement for a number of reasons including the fact that use is not a requirement of registration in a great majority of countries and the practical difficulties of implementing such a requirement. The IRT also considered those comments calling for a Regionally Protected Marks List and, in light of the time constraints within which it has worked, is not making any recommendations at this time about such a list.

⁹ U.S. registrations must have issued on the Principal Register. In other countries with two-tier registers, eligible registrations must have issued on the superior register.

¹⁰ Although the trademark owner may rely on registrations that contain a design element or depict the applied-for GPM in stylized form, the only textual elements in the supporting registrations must be identical to the applied-for GPM.

¹¹ The IRT needed to decide how to account for registrations of supranational effect. The IRT decided to treat them as separate registrations for each covered country. For example, a Community Trade Mark registration would count as 27 registrations in 27 countries. The IRT based this decision on its belief that the GPML criteria will require both a certain minimum number of registrations as well as registrations in a certain minimum number of countries across several geographic regions. If these criteria are substantially reduced, the IRT believes that it may then be appropriate to count supranational registrations as one registration in each country.

¹² This date may require adjustment after the first round of gTLD applications.

OTHER OPERATIONAL CONSIDERATIONS

The GPML applicant should not be required to apply for a gTLD corresponding to its applied-for GPM as a condition of inclusion on the GPML. The IRT has considered this issue and decided against it. Because of the multiple factors associated with applying for a new gTLD (not the least of which is the \$185,000 application filing fee), the IRT does not believe that such a requirement would be fair.

The IP Clearinghouse must validate all data supporting the GPML application. After the IP Clearinghouse completes the validation and compiles the initial GPML, ICANN must publish the GPML before the request for proposal issues and early enough beforehand to allow for potential applicants to take the GPML into consideration should they choose to do so.¹³

The continued qualification of all marks on the GPML must be validated annually by the IP Clearinghouse operator and confirmed by the trademark owner. The initial submission of documented evidence and the annual validation must include an affidavit or declaration, signed by the applicant, attesting to the accuracy and completeness of all information submitted by the trademark owner. Where the submission relies on registrations that are owned in particular jurisdictions by a licensee or related company, the submission must include a declaration by the GPML applicant listing the owners of record for those registrations and their legal relationship to the GPML applicant.

After the initial application process has concluded, new applications for marks to be included in the GPML will be accepted before each new gTLD application round or on a rolling basis if ICANN begins to accept new gTLD applications on a rolling basis.

4. TOP LEVEL RIGHTS PROTECTION MECHANISMS

THE GPML AND IDENTICAL MATCHES

The IRT recommends the following top level protections for GPMs on the GPML.¹⁴ The IRT recommends that Section 2.1.1. of the current version of the DAG be amended so that applied-for gTLD strings are analyzed for confusing similarity against GPMs, in addition to existing TLDs, reserved names, other applied-for gTLD strings, and requested ccTLD strings.

¹³ A number of comments called for a challenge process. The IRT decided against a challenge process given the stringent eligibility criteria to get onto the GPML and the opportunity to request reconsideration. If it is later decided to make the GPML criteria less stringent, the IRT believes it would be necessary to revisit the idea of a challenge process.

¹⁴ The IRT notes that Section 2.1.1.1 of the current version of the Draft Applicant Guidebook (DAG) applies a confusing similarity standard for evaluating competing strings. That evaluation is, however, limited to visual similarity and relies in large part on algorithmic scoring. The current version of the DAG contains no provision for reconsideration or appeal where an application has failed the Initial Examination on the ground of string confusion. The IRT believes that its recommendations for Initial Evaluation and reconsideration of applied-for gTLD strings in relation to GPMs is a fairer and more balanced test; for example, including an evaluation of aural and commercial impression may permit the registration of a gTLD that would otherwise be denied under a simple or automated visual similarity test.

If an applied-for gTLD constitutes an “identical match” to a GPM on the GPML, the gTLD application will not be approved until the Initial Evaluation reconsideration process described herein is completed and a decision rendered in favor of the gTLD applicant. An identical match means the domain name consists of the complete and identical textual elements of the GPM. In this regard: (a) spaces contained within the GPM in question that are replaced by hyphens (and vice versa), (b) spaces, hyphens, punctuation or special characters¹⁵ contained within the GPM in question that are spelt out with appropriate words describing it, and (c) punctuation or special characters contained within the GPM in question that are omitted or replaced by spaces or hyphens will be considered identical matches.

Consistent with its general recommendation regarding use of the algorithm,¹⁶ the IRT recommends that the confusing similarity analysis of applied-for gTLD strings against GPMs include the aural and commercial impression (meaning) of the applied-for string in addition to the visual similarity. Accordingly, if, as between the applied-for gTLD and the GPM, sufficient similarity exists in terms of visual, aural and commercial impression (i.e., meaning) so as to be likely, as a matter of probability and not mere possibility, to deceive or cause confusion, the gTLD application will not be approved until the Initial Evaluation reconsideration process described herein is completed and a decision rendered in favor of the gTLD applicant.

An applicant whose application fails the Initial Evaluation can request reconsideration of the finding and will bear the costs of doing so. The IRT believes that all applicants that fail Initial Evaluation based on a finding of sufficient similarity should have the opportunity to request reconsideration, under the procedure outlined below.

RECONSIDERATION OF INITIAL EVALUATION

The IRT recommends that requests for reconsideration be heard by specialist dispute resolution providers.¹⁷ If an applicant wishes to request reconsideration, it must submit to the provider (a) within five (5) days of the date that ICANN notifies the applicant that the applied-for gTLD has failed the Initial Evaluation, a notice of intent to request reconsideration; and (b) within fifteen (15) days of the date that ICANN notifies the applicant that the applied-for gTLD has failed the Initial Evaluation, documentation containing arguments in support of the request for reconsideration (e.g., a brief). As with applicants that request Extended Evaluation under 2.1.2.1 of the Draft Applicant Guidebook (DAG), the request for reconsideration is an opportunity for the applicant to clarify information in its application; the applicant may not use the request for reconsideration as an opportunity to substitute portions of new information for the information submitted in their original application. All information submitted by the

¹⁵ Including but not limited to ~ @ # ! § % ^ © and &.

¹⁶ See pg. 46, *infra*.

¹⁷ The IRT makes no recommendation as to whether the dispute resolution providers implicated by the request for reconsideration and with respect to the initial block of identical matches to GPMs at the second level should or must be different from existing UDRP providers and other dispute resolution providers called for by other recommendations of the IRT.

applicant in connection with its request for reconsideration will become part of the application, to which the applicant will be bound, as consistent with the DAG.

In order to prevail on its request for reconsideration, the applicant must demonstrate either that the applied-for TLD is not sufficiently similar (visually, aurally, and in commercial impression) as to be likely, as a matter of probability and not mere possibility, to deceive or cause confusion or that it otherwise has legitimate rights to use the applied-for TLD.¹⁸

5. SECOND LEVEL RIGHTS PROTECTION MECHANISMS

GENERAL RECOMMENDATIONS

As a practical matter, trademark owners face a much larger threat at the second level than at the first level, and thus the recommendations regarding the second level recognize and articulate these concerns separately. The IRT recommends a two-pronged approach at the second level, which will provide one set of protections for the GPMs and a second set of protections for all other marks that are the subject of trademark registrations of national effect. The IRT recommends the following second level RPMs: for GPMs, initial blocking in the event of an identical match; and for non-GPMs, notification pursuant to the Pre-Launch IP Claims Service.

The IRT recognizes that each new gTLD registry will have unique characteristics such that no universal second-level pre-launch RPM can be imposed. That said, the IRT believes that there are certain minimum protections that should be employed by new gTLD registries to protect the IP rights of trademark owners. Each new gTLD registry should be free to select its own second-level RPM provided that it can demonstrate that its selected second-level RPM meets or exceeds the minimum protections described herein. For example, if a trademark owner applied for a .brand TLD, operated it as a closed TLD and restricted second-level registrations to its employees and subsidiaries, that .brand TLD would not need to provide an IP Claim or Sunrise process.

The IRT recommends that all new gTLD applicants be required, at point of application, to describe the pre-launch and post-launch RPMs they intend to implement. Specifically, new gTLD applicants should explain:

- The type of pre-launch RPM they will offer;

¹⁸ A gTLD applicant could demonstrate that it has a legitimate right to use the applied-for gTLD by proving that it has common law rights in the word of which the applied-for gTLD consists. Similarly, the IRT envisages a possible situation in which the GPM may be a generic word for goods and/or services other than those the GPM identifies. In such a case, an applicant for a gTLD that is an identical match to a GPM could prevail on its request for reconsideration if it has represented in its application that it will only use the gTLD in the generic sense of the word (e.g., solely in connection with the goods or services for which the word is generic). Such representations by an applicant must, in the view of the IRT, become incorporated into the applicable Registry Agreement for that applicant for that gTLD. If the manner of operation or use of the TLD by the Registry Operator is inconsistent with the representations made and relied upon to prevail in a request for reconsideration, the Registry Operator would be subject to the post-delegation dispute mechanism recommended by the IRT provided the other requirements of that mechanism are met.

- If the applicant will not offer one of the pre-launch RPMs identified herein, identify what pre-launch RPM it will offer and describe how its selected pre-launch RPM meets or exceeds the requirements herein;
- Policies (if any) covering character string requirements, charter enforcement, eligibility cut-off dates, and usage requirements; and
- The cost to trademark owners of participation in the pre- and post-Launch RPMs.

INITIAL BLOCKING FOR GPMs

With respect to GPMs, the IRT recommends that new gTLD registries implement a mechanism which initially blocks the registration of second-level domain names that are an identical match¹⁹ to the GPM. An identical match means the domain name consists of the complete and identical textual elements of the GPM. In this regard: (a) spaces contained within the GPM in question that are replaced by hyphens (and vice versa), (b) spaces, hyphens, punctuation or special characters²⁰ contained within the GPM in question that are spelt out with appropriate words describing it, and (c) punctuation or special characters contained within the GPM in question that are omitted or replaced by spaces or hyphens will be considered identical matches.

There should, however, be a process by which a “blocked” domain name registration applicant should be permitted to ultimately register the initially-blocked name if it can demonstrate to a dispute resolution provider that its registration would be consistent with generally accepted trademark laws; namely, that its use of the domain name would not infringe the legal rights of the GPM owner. To overcome the block, the applicant must show that it has a right or legitimate interest in the initially blocked name. The IRT believes that the criteria in Paragraph 4(c) of the UDRP should be used.

THE PRE-LAUNCH IP CLAIMS SERVICE FOR NON-GPMs

In addition, the IRT believes that each registry should describe in its application one or more mechanisms it will implement that will protect trademarks that do not qualify as a GPM. Unless a registry will offer a different RPM in the Pre-Launch phase (e.g., a Sunrise Registration Process), the IRT recommends that the registry provide the Pre-

¹⁹ The IRT discussed extensively those comments that stated that limiting the scope of second-level protection for GPMs to identical matches (e.g., those that consist solely of the GPM) did not afford as much protection from abusive registrations as would a broader match (e.g., those that consist of typographical errors of the GPM, addition or deletion of “s” or “es,” or contain the GPM plus a word commonly associated with the mark). The IRT did consider the possibility of second-level blocks for the GPMs in conjunction with words commonly associated with the GPM subject to proof that such combinations had been the subject of abusive registrations.

However, the IRT is not recommending at this time a broader “match” or an expanded definition of the GPM. Although the challenges associated with broadening the “match” or expanding the GPM are not insignificant, the IRT believes that the combination of the recommended second-level protection for the GPMs and the recommended URS should provide a commensurate scope of protection. The IRT recommends that an analysis be done after the first round of new gTLDs are launched to determine if this expectation has come to fruition and, if not, to revisit the issue.

²⁰ Including but not limited to ~ @ # ! § % ^ © and &.

Launch IP Claims Service (as described herein). The Pre-Launch IP Claims Service will be provided only to those trademarks that do not qualify as GPMs.²¹ Under the Pre-Launch IP Claims Service, each new gTLD registry shall provide notices to both: (a) potential registrants of domain names that identically match trademarks contained within the IP Clearinghouse; and (b) owners of trademarks contained within the IP Clearinghouse of the registration of domain names that identically match its trademark(s).

An identical match means the domain name consists of the complete and identical textual elements of the trademark. In this regard: (a) spaces contained within a trademark that are replaced by hyphens (and vice versa), (b) spaces, hyphens, punctuation or special characters²² contained within a trademark that are spelt out with appropriate words describing it, and (c) punctuation or special characters contained within a trademark that are omitted or replaced by spaces or hyphens will be considered identical matches.

Except for GPMs, registrants shall not be prevented from registering domain names matching marks contained within the IP Clearinghouse; provided, however, that each registrant receiving a notice pursuant to the IP Claims Service: (i) affirmatively opts into the registration of the domain name after receiving notice; (ii) represents and warrants that it has a right or legitimate interest in that domain name; (iii) represents and warrants that it will not use the domain name in bad faith as described in the UDRP; (iv) acknowledges that the registration or use of the domain name in bad faith may result in suspension under the URS, a UDRP proceeding, and/or judicial action by the appropriate trademark owner; and (v) represents and warrants that the registrant contact information provided in support of the domain name registration is valid and accurate, and acknowledges that provision of false information may result in cancellation of the registration.

6. STANDARD SUNRISE REGISTRATION PROCESS

If, in relation to non-GPM marks and during the pre-launch phase, a new gTLD registry elects to provide a Sunrise Registration Process in lieu of the Pre-Launch IP Claims Service, the IRT believes that such a registry should utilize a Sunrise Registration Process that applies standard Sunrise Eligibility Requirements (SERs) and incorporates a Sunrise Dispute Resolution Policy (SDRP). In addition, the IRT believes that the registry should utilize the IP Clearinghouse to verify the SERs. Adherence to these eligibility requirements does not preclude the registry from adopting more stringent criteria; the SERs are a floor, not a ceiling.

The SERs are:

- Ownership of a registration of national effect that issued on or before [the date of the Registry Agreement] and was applied for on or before [the date that ICANN

²¹ Because of the “initial block” provided for GPMs, no additional IP Claim Service is necessary for GPMs.

²² Including but not limited to ~ @ # ! § % ^ © and &.

publishes the list of applications received in the round] for a mark that identically matches the applied-for domain name. An identical match means the domain name consists of the complete and identical name protected by the trademark. In this regard: (a) spaces contained within a trademark that are replaced by hyphens (and vice versa), (b) spaces, hyphens, punctuation or special characters²³ contained within a trademark that are spelt out with appropriate words describing it, and (c) punctuation or special characters contained within a trademark that are omitted or replaced by spaces or hyphens will be considered identical matches.

- The registry may impose any further requirements relating to the International Class of goods and/or services covered by the relevant registration that it deems appropriate to its TLD; for instance, a registry could require that trademark registrations relied upon by Sunrise applicants must cover certain categories of goods or services (e.g., the .shoe registry could restrict participation in its Sunrise process to owners of trademark registrations that cover shoes or other goods in International Class 25).
- If the registry permits Sunrise registrations to be based on legal rights other than registered trademarks, those other legal rights must be capable of being authenticated and must be recognized under the laws of the country in which the registry is organized.
- Sunrise registration applicants must affirm that all information provided is true and correct, and must acknowledge that the provision of false information may result in the cancellation of any resulting domain name registration.
- Sunrise registration applicants must provide either documentation of the claimed trademark registration (or other legal right, as applicable) or information about it sufficient to facilitate its authentication to the IP Clearinghouse.

The SRDP must allow challenges based on at least the following four grounds:

- At the time the challenged domain name was registered, the domain name registrant did not own a trademark registration of national effect;
- The domain name is not identical to the trademark on which the domain name registrant based its Sunrise registration;
- The trademark registration on which the domain name registrant based its Sunrise registration is not of national effect; and
- The trademark registration on which the domain name registrant based its Sunrise registration did not issue on or before [the date of the Registry

²³ Including but not limited to ~ @ # ! § % ^ © and &.

Agreement] and was not applied for on or before [the date that ICANN publishes the list of applications received in the round].

SUNRISE REGISTRATIONS AND THE GPML

The GPML and the recommended Sunrise registration processes are independent protection mechanisms. Nonetheless, for purposes of clarity, the IRT emphasizes that a GPM owner will not gain priority or precedence over a non-GPM owner, in a Sunrise process relating to an application consisting of that GPM, by virtue only of the presence of the GPM on the GPML. In such a case, the non-GPM owner's Sunrise application will be granted if it otherwise fulfills the SERs; and during the pendency of the applicant's Sunrise application, the GPM owner shall not be permitted to register that domain name under a Sunrise process.

In addition, where a GPM owner and a non-GPM owner both apply under a Sunrise process for the identical domain name, the IRT believes that the registry operator could employ an auction or "first-come, first-served" allocation process (subject to fulfillment of the SERs.) Finally, where a GPM owner does not apply under a Sunrise process and a non-GPM owner subsequently applies for a domain name that matches the GPM identically, the outcome of the application shall be determined solely by the initial blocking and appeal process described above in relation to second level protection for GPMs on the GPML.

DRAFT UNIFORM RAPID SUSPENSION SYSTEM (URS)

1. INTRODUCTION

The Implementation Recommendation Team (“IRT”) recommends that all new gTLD registries be required, pursuant to their contracts with ICANN, to take part in a Uniform Rapid Suspension System (“URS”). The purpose of the URS is to provide a cost-effective and timely mechanism for brand owners to protect their trademarks and to promote consumer protection on the Internet. The URS is not meant to address questionable cases of alleged infringement (e.g., use of terms in their generic sense) or for anti-competitive purposes or denial of free speech, but rather for those cases in which there is no genuine contestable issue as to the infringement and abuse that is taking place.

The UDRP has unquestionably been an important and successful mediation tool for trademark owners and domain name registrants alike. However, times and circumstances have changed since the UDRP was implemented and brand owners and Internet users find themselves facing unprecedented levels of abuse and infringement, which undermines trust in, and thereby negatively impacts the stability and security of the Internet. The URS is intended to supplement and not replace the UDRP. They are separate proceedings with distinct remedies. The URS is designed to provide a faster means to stop the operation of an abusive site. The UDRP is designed to result in the transfer of the abusive domain name. Brand holders seeking to thwart infringement could utilize either or both proceedings.

Many brand owners face thousands of infringing websites per year. Often these web sites monetize off the value and goodwill of a brand, distribute counterfeit goods, malware and other malicious software, phishing attempts, and adult content. Cease and desist letters often go unanswered and brand owners are forced to spend large amounts of money drafting and filing UDRP complaints. In those obvious cases – as noted above – registrants often either fail to respond or simply agree to transfer the domain name after initiation of a UDRP. The end result is that brand owners spend large amounts of money to build up portfolios of domain names they do not want, simply to prevent fraud on their consumers and misuse of their brands.

Therefore, the IRT recommends that ICANN implement the URS, which would be mandatory for all new generic Top Level Domain (gTLDs), implemented through the new gTLD registry agreements, which would in turn bind registrars supplying new gTLDs to the marketplace. The URS would address cases of abusive use of trademarks where there is no genuine contestable issue as to the infringing or abusive use of a mark in a domain name and in connection with a site that represents abusive use (i.e., not a fair use or commentary situation nor a situation involving questions of whether the registrant is or is not authorized or selling, for example, legitimate, non-counterfeit goods).

The URS will provide a low-cost and rapid means for taking down infringing domain name registrations, yet preserving a registrant's right to a hearing and/or appeal. In addition, the URS does not result in the transfer or cancellation of a domain name registration. Rather domain name registrations found to be violating a brand owner's rights will be placed in a frozen state, for the life of the registration, and only will resolve to a specific error webpage.

Where there is any genuine contestable issue as to whether a domain name registration and use is an abusive use of a trademark, the complaint will be denied terminating the URS process without prejudice to further action, e.g., a UDRP or court proceeding. The URS is not intended for use in any questionable proceedings, but only clear cases of trademark abuse.

Finally, as a balance of fair interests and to prevent abusive use of the process, any trademark owner found to repeatedly misuse the URS, for example for anti-competitive purposes or to violate free speech, will be removed from the system and denied access to the URS for a set period of time.

As agreed upon by all the members of the IRT, the task force members considered this recommendation in light of the 10 guiding principals that the IRT used as a base line assessment for all possible solutions considered during the IRT process.

The following provides a more detailed analysis of the purpose, steps and processes behind the recommended URS.

2. PURPOSE OF URS

The purpose of the URS is to address a cybersquatting problem for brand owners that is already insidious and enormous in scale, and which will continue to spiral out of control with the introduction of an unlimited number of new gTLDs unless addressed.

The intent in proposing the URS is to solve the most clear-cut cases of trademark abuses, while balancing against the potential for an abuse of the process. The IRT notes that our proposal is limited to trademark abuse problems and have not extended this model to other forms of abuse. The URS is intended to address efficiently²⁴ and cost-effectively the most clear cut cases of abuse. It does not replace other current options available, such as the UDRP or other litigation options. Rather, it is intended to address the hole not filled by current available remedies.

In balancing the interest of brand owners and domain name registrants in the draft URS as compared with the current UDRP, the IRT notes that the same substantive standards

²⁴ The IRT considered comments it received on the timing of the URS process which raised competing concerns that the process was either too short or too long. The IRT, upon additional discussion and analysis, believes that the proposed timeline is a fair balance of competing interests, and is on target with its stated goals of being "fast and fair." Further, the timing is consistent with or in the range of current other expedited systems examined in the industry (e.g., the process provided by Nominet).

apply, but the evidentiary threshold level or the burden of proof on the complainant was increased.

3. INITIATION OF URS

The URS would be mandatory in all registry agreements for new gTLDs. In turn, registries would bind registrars in all new gTLD Registry-Registrar Agreements to add a requirement to participate in the URS in their service agreements with their customers.

To participate in the URS, a trademark owner complaining of infringement has two options for initiation of the complaint:

- 3.1 Pre-Registration – during the pre-registration process, trademark holders would pay a reasonable fee and provide important information about their trademarks.²⁵ This would streamline the complaint process by:
 - Adding the registered user’s information (signature and trademark information) to a verified list;
 - Pre-filling the complaint form with registered user information;
 - Allowing complaints to be submitted via e-mail instead of hard copy with accompanying signature for each complaint; and
 - Allowing companies to take advantage of deposit accounts for automatic deduction (and reimbursement) of filing fees.
- 3.2 No Pre-Registration – Complainants submit complaints without pre-registration and the streamlining benefits afforded to pre-registered users.

To initiate an URS action, both registered and non-registered users need to complete and submit a complaint form outlining trademark rights and assertions of infringement as required in the Form Complaint attached as **Appendix B**. Complaints must include PDF copies of (1) the Whois record for the domain name(s), and (2) the website showing the alleged violation(s).

Complaints can be filed on behalf of multiple related companies (i.e., multiple subsidiaries under a holding company name), but cannot be filed in the name of multiple unrelated companies. Moreover, complaints can be filed against multiple registrants if

²⁵ Information relevant to the URS pre-registration procedures is tied to the IP Clearinghouse. It is assumed that rights owners can pre-register in the IP Clearinghouse. Further, it is our recommendation that all URS decisions be recorded and searchable in an IP Clearinghouse database, as well as with any individual third-party providers as applicable. While the IRT supports the requirement that URS decisions be stored in a centralized location, it does not believe it is necessary to require that the location be the clearinghouse as long as there is a viable, open option to provide access to and search of the decisions. If ICANN should decide not to adopt the IP Clearinghouse, the URS will need to create a separate procedure for the collection and maintenance of such data.

the Complainant can establish that the multiple registrants are one in the same (i.e., multiple “shell” companies or aliases for a single person or entity). Each complaint carries either a pre-registered user fee or a higher non-registered user fee. Recommended filing fees for registered users are based on a tiered schedule and fees increase per the number of domains cited in the complaint as indicated in the attached **Appendix C**.²⁶ Complaint fees are non-refundable. Additionally, all complainants must include a statement that the complaint is being filed in good faith and that the complainant agrees to indemnify all parties that act based on the representations in the complaint.²⁷

Complaints are submitted to a third-party provider – to be selected by ICANN – for initial examination.²⁸ During initial examination, a case manager reviews the complaint for compliance (e.g., did the complainant fill out the Form Complaint properly and provide the required information in the form complaint, including an image of the complained of site as described in the complaint). Only if the complaint is validated as complete during the initial examination will the domain name registration(s) proceed to the freeze

²⁶ The IRT considered a number of comments regarding the adequacy of the fees associated with the URS. The IRT notes that the fees recommended in this paper are recommendations and must be revised accordingly based on feedback from potential URS providers.

It is important to note, however, that the IRT came upon the numbers suggested based on fees charged by other providers who offer similar services, discussions with several current UDRP examiners, and the need to keep the process cost-effective.

If the URS is not significantly cheaper than the UDRP it does not remain a viable alternative to resolve some of the problems facing brand owners now. The idea, however, is to make the process as cheap as possible while still providing a quality provider. Several comments made the claim that the fee structure would result in an average of \$1-2 per domain name decision and thus would necessarily mean examiners with less than optimal experience being involved. The IRT notes that there will be times where the number of domain names involved in an individual complaint will be towards the higher end of the fee. However it is also important to note that in the UDRP process, which allows multiple domain name complaints, the average number of domain names included in a single complaint has been between 1 and 2 (see http://www.wipo.int/amc/en/domains/statistics/domains_avrg.jsp) and not 100. As a result, the average fee will be more in the lines of \$100-200 per domain name and the IRT believes the fees recommended by the URS should remain the ballpark figure provided to potential providers in any RFP.

²⁷ The IRT considered the concept of requiring a complainant to post a bond as a surety for the indemnification obligation, but thought that such a requirement would overly complicate the process and is not common in other similar systems. The IRT also felt that the indemnification obligation from the brand holder was sufficient without additional supporting information.

²⁸ The IRT received a number of comments raising the concern that the initial draft of the URS contained too many layers or unnecessary complications. While the IRT believes that some of the comments received were as a possible misunderstanding of the process as drafted, and that clarification of the language on our part addressed some of the concerns raised, notwithstanding this draft contains further streamlining of the process.

In particular, the initial examination is no longer a review of whether or not a 'prima facie' case has been met, but is now limited to a compliance check to see that the complaint meets the initial requirements to process further. In addition, there will now be one substantive examination of the complaint after either an answer is filed, or after a default “non-answer” period. A written opinion will be issued in all cases after examination.

In addition, if a respondent files a 'default answer' after not answering, under the procedure available, at that time, there will be a substantive examination, with balances of protection added for such late answers.

The IRT believes that this has indeed streamlined the process yet further, in order to achieve a balance of interests in the goals of being “cost-effective, fast and fair,” and addresses the concerns raised by WIPO and others.

and notice stage. Incomplete complaints are deemed defective, ending the URS process.

Upon notice to the third-party provider, the Complainant will have the right to terminate the URS at any time prior to a full examination by the “Examiner” – who was retained by the third-party provider pursuant to Section 7 below. The effect of a termination will be to unfreeze a domain name and return any fees paid by the Registrant.

4. NOTICES

Notice of the complaint to the Registrant and to the domain name service providers is extraordinarily important to the success and legitimacy of the process. Notwithstanding the trademark abuse alleged in the complaint, registrants should have the ability to answer a complaint prior to the invocation of any adverse consequences to their domain names and websites. While abusive use should be addressed as quickly and inexpensively as practicable, the IRT is cognizant that registrants also should be protected against over-aggressive use of this system by complainants. Fair notice and an opportunity to answer is one of several remedies to counter such potential abuse.

All formal notices of the complaint should be provided by the third-party dispute resolution provider. Notice first should be provided to the New TLD registry operator within twenty-four (24) hours of the filing of the complaint via e-mail at the address the registry operator provides to ICANN. Upon receipt of the notice, the registry operator should within twenty-four (24) hours freeze the domain name to prevent transfers or other changes to the registration. In the registry protocols (EPP), such a freeze would be implemented with two registry commands – “ServerTransferProhibited” and “ServerUpdateProhibited.” During this time period, the website still will resolve and the domain name will remain active in the zone file.

The only changes that will be allowed to the Whois data from the moment of freeze through to determination and/or appeal will be to correct information that is considered fraudulent (i.e., use of another’s identity as a result of identity theft) or to change from a privacy/proxy service contact to the contact details of the actual domain name registrant. A request for such a change to a Whois record must be made through the URS provider who will then determine if the situation requires a correction of the Whois record and cannot be made independently by the domain name registrant or Complainant.

Within twenty-four (24) hours of the domain name freeze, the third-party provider should then provide notice of the complaint to Registrant. Such notice should inform the Registrant that the name is frozen and that the failure to answer would result in the Registrant’s inability to use the domain name for any purpose. This initial notice to the Registrant should be provided to the e-mail address contained in the Whois record for the domain name, regardless of whether the name is utilizing a privacy or proxy service. At the same time, the third-party provider should provide notice of the complaint to the registrar of record of the domain name at an address the registrar provides to ICANN.

Registrars, therefore, also would have the ability to contact their impacted customers to inform them of the complaint and the consequences of not answering.

In addition, the third-party provider shall send a certified letter to the Registrants' mailing address located in the Whois database.²⁹ Such letter should be sent within five (5) days of the filing of the complaint. Finally, after seven (7) days, a second e-mail should be provided to the Registrant.³⁰

5. ANSWER

A Registrant has fourteen (14) calendar days from the date of the initial email notification to submit an Answer.³¹ Each answer must include confirmation of Registrant details and a defense for domain name registration(s) and/or use that contradicts the Complainant's evidence that they do not have a legitimate right or interest in the domain name(s) (e.g., known by or authorized to use the name at issue or a claim that the use is noncommercial fair use) and that they registered and used the domain in bad faith as detailed and required in the Form Answer attached as **Appendix D**. In addition, the Registrant may allege the Complainant filed an Abusive Complaint on the form and request the Examiner investigate these allegations.³²

Answers submitted by a Registrant reflecting twenty-six (26) domain names or more³³ require submission by the Registrant of an Answer Fee as outlined in Appendix C.³⁴ The

²⁹ The IRT received some comments advising us to drop the requirement for a certified letter. The IRT found the Nominet Dispute Resolution Service for .uk particularly instructive in that Nominet also require notice in the form of a certified letter. The IRT believes that the certified letter is an important safeguard and that it would not add to the timing of the adjudication not add a significant amount to the cost of the system. The IRT considered requiring the complainant to send the certified letter – similar to the UDRP process – but decided that it actually would be more economical if the third party provider sent the letters and it would be another safeguard against potential reverse-abuse.

³⁰ The IRT also considered and rejected potential requirements that the third party provider provide notification of the complaint via fax and/or telephone in addition to e-mail and a certified letter. The IRT decided that such requirements would add significant complexity and cost to the system due to time zones and national and local laws regarding faxing and calling. The IRT have been cognizant that if this system becomes too expensive for complaining parties, it would cease to be a viable alternative to the UDRP.

³¹ The IRT considered numerous public comments on what would constitute sufficient time for registrants to answer, and determined that the IRT should keep the recommended period the same as the IRT had in its Initial Report. Due to concerns regarding implementation, complexity, and fairness, the IRT rejected the idea that the notice period should be longer for domain names with privacy or proxy services, as well as the idea that the IRT should base the notice period on how long the domain names have been registered. The IRT found the Nominet Dispute Resolution Service for the UK particularly instructive in that Nominet provides for a slightly longer period – fifteen (15) business days – than the IRT is recommending.

³² The IRT has considered how to deal with abusive complainants. The IRT feel that a system that requires a finding of abuse by the Examiner will be the best option. This is not merely a system where the complainant loses a complaint, but instead a system where the complainant abuses the system by filing complaints based on a false claim of rights or by asserting fraudulent claims against sites that clearly involve legitimate use. The concern about abusive registrants may be addressed through the use of increased fees for the filing of an answer.

³³ The IRT widely debated instituting a minimal fee on the registrant in the lines of, for example, \$30-40 per Answer for all Answers (to be matched by the Complainant). The fee would be refunded to the prevailing party. As a result of these discussions, the IRT had two competing concerns.

Answer Fee is refundable to the Registrant if the Registrant prevails in the URS. As with the Complainant, Registrants will similarly be eligible to maintain a deposit account for automatic deduction (and reimbursement) of Answer Fees.

When an Answer is submitted, the case manager will review the Answer to determine if it meets the requirements for a qualified Answer, that is, that all required information and representations are provided. If the Answer meets the requirements of the URS, the case manager will submit the Complaint, Answer and supporting documents to an Examiner for decision.

Incomplete Answers will be deemed defective and will be rejected, moving the URS process into default phase.

6. DEFAULT PROCEDURES

If a Registrant fails to submit an Answer, or submits a defective Answer, within fourteen (14) days of initial email notice, the Complainant and Registrant are notified by email

The first concern is that a fee should not be imposed because the IRT should not make a registrant pay a fee to defend themselves against an action (particularly in those cases where there is a questionable use that should go to UDRP); that any fee might be a burden on the registrant (particularly an individual or small business); and, finally, that collecting a fee from the respondent and a second fee from the complainant, as well as creating a system of refunding one of those two fees would impose additional complexity and costs on the system making it a more expensive process. Moreover, it could cause complaints of alleged phishing attempts to respondents and likely would dramatically increase the number of appeals.

The second is that a minimal fee to respond should be imposed to prevent gaming of the system and potentially wasting an Examiner's time (and as a result, potentially increasing the fees that will be charged to file complaints in the first place). The idea is that the fee would be low (for example, in the \$30 or \$40 range) and matched by the Complainant. In addition, the fee is refundable to the successful party upon the Examiner's decision, which means those registrants who are either not making an abusive use or the use is questionable and thus should go to UDRP or court are not out of pocket.

The result the IRT came to was a hybrid of the two – imposing a fee on registrants who have registered a number of domain names within the new gTLDs that reflect abusive use of a company's trademarks.

³⁴ A number of comments were submitted requesting a loser-pays system. The IRT considered a variety of situations and did not feel that this type of system can be implemented throughout the URS.

First, it is important to ensure that individual domain name registrants do not feel they cannot afford to file an answer. Second, there was concern that with the number of defaults that will likely occur, using the UDRP as a model, and the prevalence of false Whois information, recovery of such fees would be next to impossible. In addition, the IRT discussed the option of making the URS a "free" service, sponsored by ICANN, or splitting the costs of the URS on a yearly basis between the registries based on the percentage of disputes that involve that gTLD. The IRT, upon additional discussion and analysis, believes that the proposed timeline is a fair balance of competing interests, and is on target with its stated goals of being "fast and fair."

As a result, the IRT has settled for a partial "loser-pays" system whereby disputes that involve in excess of twenty-five (25) domain names will be subject to Answer Fees and where filing/Answer Fees are refundable to the prevailing party. Where a domain name complaint lists 100 domain names and 98 are found abusive, the complainant will be refunded 98% of fees and the respondent refunded 2% of fees.

and, in the case of Registrant, letter (sent by regular mail) that the matter has entered into Default.³⁵ All cases of default proceed to Examination.

During the period of default, the Registrant cannot (a) change the content found on the site in an attempt to argue the site is used in connection with legitimate means and thus regain access to it or (b) change the Whois information.

Should a Registrant find their domain name has been taken down after the fourteen (14)-day Answer period has passed and wishes to file a legitimate Answer to the Complainant, the Registrant may file a Default Answer to the third-party dispute provider at any time during the life of the domain name registration.

To file a Default Answer, the Registrant must fill in a form Request for Default Answer and submit it to the third-party dispute provider for examination. The Default Answer, if filed within thirty (30) days of the Default will cost nothing more than it would cost to answer in a timely fashion. If the Default Answer is filed after thirty (30) days of the Default, an additional fee of \$50, on top of any required Answer Fees, as indicated in attached Appendix C, will be imposed. The \$50 Default Answer filing fee is non-refundable.

Upon the successful filing of a Default Answer the domain name takedown will be immediately revoked and the domain name may resolve pending the outcome of the Examiner's examination. To avoid improper gaming of the system, the decision of the URS Examiner shall be based on the status and use of the disputed domain name at the time of the filing of the complaint.

7. EXAMINATION

Once an answer is filed or if there is a default for failure to answer within the fourteen (14) days period, a Final Evaluation of the complaint and answer if any will be initiated. The Final Evaluation of the case shall be made by a qualified legal expert with experience as a Panelist in UDRP proceedings who would be retained by a third-party provider.³⁶ This third-party provider³⁷ would operate the URS services on a cost-recovery basis.

³⁵ In the current environment, trademark owners are often forced to spend a significant amount of time, effort and monetary resources in going after those domain name registrants that the URS is intended to address. Often these registrants ignore cease and desist letters, forcing the trademark owner to file a UDRP or court action. The end result is often either: (a) a default in the UDRP response, or (b) contacting the trademark owner and agreeing to transfer the domain name after a UDRP proceeding has been initiated and significant attorneys' fees already paid. This is also, in many minds, a form of default.

³⁶ Several commentators suggested that there should be more than one provider for the IP Clearinghouse and URS resolution services. While the IRT appreciates the concerns raised, the IRT believes that there are benefits to having a single provider. These include having a single database of decisions that is searchable. A single provider would be more likely to provide consistency in decisions. If ICANN elects to have multiple URS providers to address competition concerns, the IRT recommends that ICANN ensure that URS decisions be searchable across the multiple providers through a single database, and that the various providers be consistent in the interpretation of the standards. It would also be important to ensure that multiple providers share information such as the identity

The Final Evaluation analysis involves consideration of three basic issues, similar to the standards for a UDRP decision, but requires a much higher burden of proof. The Examiner shall consider each of the following factors:

- Whether the domain name is identical or confusingly similar to a mark in which the Complainant holds a valid trademark registration issued by a jurisdiction that conducts substantive examination of trademark applications prior to registration. [A list of such jurisdictions shall be compiled and made available to parties and Examiners].³⁸
- Whether the domain name registrant lacks any right or legitimate interest in the domain name.
- Whether the domain name has been registered and used in bad faith.

A list of non-exclusive circumstances that demonstrate bad faith registration and use mirror the list stated in the UDRP, namely:

- circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

of abusers of the URS for the purposes of assessing penalties or additional fees. To avoid the perception of conflict of interest, the URS resolution provider should not be affiliated with a registry or registrar.

³⁷ The IRT acknowledges complete confidence in the current providers of the UDRP process. Some suggest, however, that there is the risk of an appearance of conflict of interest if the URS provider is also a UDRP provider. The IRT believes this risk is unfounded due to the use of independent examiners and the institutional integrity of the providers. Moreover, the revised version of the URS procedure limits review by URS staff to formal compliance. All substantive review is made by an independent examiner, reducing the appearance of a conflict. Nevertheless, this is an issue that merits further consideration. Given that there are multiple UDRP providers, an option to consider in the future if there are multiple URS providers is a requirement that any complaint filed with a specific URS provider must be filed with a different UDRP provider if the URS provider is also a UDRP provider.

³⁸ The IRT recognizes that entry standard for utilizing the URS is more limiting than the standard provided in the UDRP, which permits claims to proceed based on any registration of trademark rights or on common law rights. Parties that do not meet the higher entry standard proposed for utilization of the URS may, of course, still proceed with claims under the UDRP or in courts, as appropriate. Exclusion from the URS is not intended in any way to prejudice a party from proceeding under other available avenues. The purpose of this more restrictive standard is to avoid time consuming analysis over the question of rights, which would undermine the intended purpose and ability of the URS process to provide a fast inexpensive remedy for cases of clear abuse. The experience of UDRP Panelists is that the analysis of common law rights claims can be difficult and time consuming. In addition, reliance on registrations issued immediately upon application without substantive examination on absolute or relative grounds may result in gaming of the system, as seemed to occur during the introduction of .eu domain names, for example. Whether there are other rights that can be established and registered in the IP Clearinghouse that would be consistent with the goal of keeping the URS as streamlined and fast as possible also merits further consideration.

- you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

If the Examiner finds that all of these elements are satisfied by clear and convincing evidence and that there is no genuine contestable issue, then the Examiner shall issue a decision in favor of the Complainant. If the Examiner finds that this test is not met, then the Examiner shall deny the relief requested terminating the URS process without prejudice to the ability of the Complainant to proceed with an action in court or under the UDRP.

The IRT notes that the standard for decision is not the same as that under the UDRP. Under the UDRP determinations are made based on a preponderance of the evidence, i.e., is it more likely than not that the required element has been proven. Under the URS the test would be based on clear and convincing evidence that there is no genuine contestable issue. If there is a contestable issue, the matter is not appropriate for decision under the URS and the Complainant should pursue a decision in a different forum.

For example, if the trademark in question is BRANDXYZ for use in connection with computers and the domain name in question is brandxyzz.[gTld] and is used in connection with an abusive pay-per-click site, the site would be frozen. If the domain name is brandxyzcomputers.[gTld] and the record shows that it is a bona fide retailer who legitimately sells BRANDXYZ computers, the URS complaint would be denied.

A decision in the form attached as **Appendix E** will be used by the Examiner to report the results of the proceeding to the parties. The URS Form will contain the following elements:

- Name of the parties;
- The mark(s) and registration(s) on which the complaint is based;
- The disputed domain name(s);
- A finding on whether the domain name(s) is identical or confusingly similar to the mark(s), with short comments;

- A finding on whether there is a lack of right or legitimate interest in the domain name(s), with short comments;
- A finding on whether the domain name(s) was registered or used in bad faith, with short comments;
- A conclusion on whether it appears by clear and convincing evidence that there is no contestable issue and that the Complainant is entitled to relief in the form of an order for the suspension of the domain name(s);
- A finding on whether the complaint is abusive.

Once the decision is rendered, it will be returned electronically to the case manager who shall submit it to the parties and to the registry and registrar for immediate action.

Upon entry of a decision in favor of the Complainant, the domain name at issue remains frozen at the registry (meaning it cannot be sold, transferred, or assigned) for the duration of the registration period.³⁹ In addition, the domain name will no longer point to the registrar's website, and will be redirected at the registry to a site hosted by the third-party provider. The third-party provider will post a standard page on the domain name, such as:

“This domain name is no longer active as a result of a Rapid Suspension proceeding. For more information, please visit [www.\[URLofthirdpartyreviewer\].com](http://www.[URLofthirdpartyreviewer].com).”

Similarly, the registry will update the Whois record to reflect that the domain name is on hold and unable to be transferred or used for any purpose for the life of the registration (including renewal by the same or related registrant).

This will provide notice to any third-party provider who may be visiting either for due diligence, or because they are trying to find a brand or for that random person who goes to look at their site and wants to know why it is down.

³⁹ The IRT received comments relating to the transfer of domains as a possible remedy of the URS. After much consideration the IRT decided against including transfer as a remedy since transfer as a remedy is already available in the UDRP and under applicable national law, such as the Anti-Cybersquatting Consumer Protection Act (“ACPA”) in the United States. The URS is foreseen as just one of the tools available to brand owners for dealing with brand abuse in the domain name system. By keeping the remedy of the URS to 1) locking of the domain registration and 2) taking down the associated harmful use, the URS can remain quick while still balancing the right of the registrant by not transferring the property during an expedited process. In leaving transfer as a remedy to the UDRP and ACPA, the URS fulfills its purpose of becoming an addition to the existing available mechanisms without displacing the UDRP or ACPA. Finally, the IRT also considered extending the registration period of a domain name locked under the URS process (i.e., adding a year to the registration term), but also decided against this mechanism because of the likely increased technical expenses and burdens on the URS process provider and registries.

The IRT also recommends that all Examiner decisions be made publicly available and searchable through an open-access, centralized database, as well as through any of the third-party providers.”

8. APPEAL

The losing party may appeal an Examination Decision, relating to any or all of the domain names in the Complaint, in the following manner:

- If the complaint is denied, the Complainant may initiate a proceeding *de novo* under the UDRP or in a court of appropriate jurisdiction.
- If the complaint is granted, the Registrant may request reconsideration on the original record by a URS ombudsman on the grounds that the decision was arbitrary and capricious or an abuse of discretion by the Examiner,⁴⁰ or may initiate a proceeding *de novo* in a court of appropriate jurisdiction.
- If the Examiner finds that the complaint was abusive, the Complainant may similarly request reconsideration on the original record by a URS ombudsman on the grounds that the decision was arbitrary and capricious or an abuse of discretion by the Examiner.
- Costs of any appeal to the URS ombudsman, as indicated in Appendix C, will be borne by the appellant, but are refundable upon a finding in favor of the appellant.

A losing registrant may vacate the takedown of its site by submitting, within thirty (30) days of the Examiner’s decision, an appropriate fee, as indicated in Appendix C, to the URS provider with proof that it has initiated an appeal of the Examination Decision with a court of competent jurisdiction – a court located in the country of the registrant or the registrar,⁴¹ with authority to decide a case of cybersquatting or trademark infringement. This fee is refundable if the registrant prevails in court.

9. ABUSIVE COMPLAINTS

The URS should have a low tolerance for abusive complaints. One goal of the IRT is to penalize aggressive trademark holders that may abuse the URS. If a Complainant has been held to have filed abusive complaints on three occasions, the Complainant will be

⁴⁰ The appeal to an ombudsman is not to be a reconsideration of the Examiner’s decision but rather to determine whether the Examiner’s decision represents an abuse of discretion and/or process.

⁴¹ The IRT is extremely concerned with recent trends toward filing appeals in courts where cases are maintained for long periods of time for the sole purpose of gaming the UDRP appeals process. Discussions were held regarding how to prevent such actions – such as making the court of competent jurisdiction the court of the registry instead of the registrar – but decided to maintain the UDRP standard. The purpose for the fee to have a web site resolve to the original site once an appeal is filed is an attempt to prevent a large part of the gaming that occurs in purposefully filing appeals in such courts. The fee is refundable if the court resolves the dispute in favor of the domain name registrant.

barred from utilizing the URS for a one-year following the date of the last abusive complaint. [NOTE: Refer to **Appendix F** for an illustrative flowchart of the URS process].

IRT REPORT AND RECOMMENDATION ON POST-DELEGATION DISPUTE MECHANISM

As part of the IRT process, the IRT considered the numerous public comments calling for ICANN to create a mechanism for a post-delegation challenge to certain activities of new gTLD registries. In considering these comments, members reviewed the WIPO proposal entitled “Post-Delegation Procedure for New gTLD Registries Substantive Criteria and Remedies” communicated to ICANN on 5 February, 2009. In addition, members of the IRT task force assigned to consider this proposal had a telephone conference with Erik Wilbers and Eun-Joo Min from WIPO during its first face-to-face meeting held in Washington, DC 1-2 April, 2009 and further consultation with WIPO via Eun-Joo Min at its second face-to-face meeting in San Francisco, CA 11-13 May, 2009. As with all the proposals considered by the IRT, the task force members considered the proposal in light of the 10 guiding principles that the IRT used as a base line assessment for all possible solutions considered during the IRT process.

After further consultation with WIPO and review of the public comments, the IRT remains convinced that a Post-Delegation Dispute Mechanism is a necessary rights protection mechanism. However, the IRT continues to believe that revisions to the mechanism proposed by WIPO are required in order to make the mechanism reasonable and workable. The IRT’s proposed revised mechanism is set forth in Section 2 below. Finally, the task force members reviewed the latest version of the proposed Registry Agreement, which is appended to the second Draft Applicant Guidebook, and concluded that certain contractual provisions contained in the draft agreement will require modification in order to incorporate the IRT’s recommended form of the Post-Delegation Dispute Mechanism. Specifically, the Task Force recommends that ICANN amend the draft Registry Agreement to include provisions incorporating the language found in Section 2.1 below into the Registry Agreement. In order to provide guidance to Registry Operators, ICANN, intellectual property owners and dispute resolution providers, the IRT further recommends that ICANN create a non-exhaustive list of activities that may or may not constitute “bad faith.”⁴²

In its deliberations, the IRT was fully cognizant that the easier issue addressed in this recommendation is abuse of rights on the top level and that the concerns related to preventing wide scale abuses on the second level are more difficult and controversial. With this in mind, the IRT believes that the concerns expressed by WIPO in its proposal with regard to the possibility of widespread and systemic abuses by Registry Operators could be harmful to consumers and brand owners with the addition of new TLDs without some type of mechanism to thwart possible systemic abuses by Registry Operators. Concerns over such systemic abuses have largely arisen due to the gaming currently taking place in some sectors of the marketplace and ICANN’s perceived unwillingness

⁴² The IRT envisions a non-exclusive list similar in nature to the non-exclusive list of “bad faith” factors set out in the UDRP. Such factors should include, but not be limited to, circumstances designed to capture instances of willful blindness/reckless disregard.

or inability to take appropriate remedial actions.⁴³ For this reason, the IRT has taken great care to recommend a mechanism that is balanced to address the concerns of consumers and brand owners while protecting Registry Operators from potential abuse by overzealous trademark owners. This has led the IRT to seek the most workable compromise to achieve this balance.

Additionally, the IRT wants to explicitly state that we do not intend for this mechanism to create any third-party beneficiary rights in trademark owners under the Registry Agreements. It is our intent that this procedure will be incorporated into the Registry Agreement similar to the manner in which the UDRP is set forth in the RAA. To be clear, the IRT only intends for trademark owners to have the limited rights set forth in the procedure and the Registry Operators to have the obligation to follow the decisions issued by the dispute resolution provider.

Finally, the IRT wishes to stress that the Post-Delegation Dispute Mechanism is designed to combat (i) Registry Operators that operate a TLD in a manner that is inconsistent with the representations and warranties contained within its Registry Agreement, or (ii) Registry Operators that have a bad faith intent to profit from the systemic registration of infringing domain names (or systemic cybersquatting) in the Registry Operator's TLD. Whilst it is not possible to define a specific threshold as to what amounts to systemic cybersquatting,⁴⁴ given that the Panel needs to take into account all of the relevant facts and surrounding circumstances, the IRT wishes to specifically state that this mechanism is not intended to be used against Registry Operators that may have infringing domain names within their TLDs where such Registry Operators do not have a bad faith intent to profit from those infringing names.

1. SUMMARY OF IRT SUGGESTED RECOMMENDATIONS

After reviewing the WIPO proposal, reviewing the public comments to the IRT's 24 April, 2009 draft report and having a further consultation with WIPO representatives, the IRT believes that a Post-Delegation Dispute Mechanism is workable and will serve to better protect against egregious practices that harm consumers and trademark owners. Upon further reflection and analysis, however, the IRT agrees with WIPO's position and the position of several parties that submitted comments, that trademark owners should have a more active and clearly defined role in any post-delegation dispute mechanism by having the ability to trigger a proceeding against the Registry Operator under the terms set out below. Similar to our earlier recommendation, the IRT recommends that the mechanism require a complainant to pre-pay a fee to ICANN to initiate a complaint and, under our revised proposal, pre-pay a further filing fee to the dispute resolution provider ("DRP") should the trademark owner choose to pursue its complaint independent of ICANN.

⁴³ The IRT is aware of concerns that have been raised in the past – some in the DAG public comment process – about ICANN's compliance efforts. Nonetheless, the IRT believes that the obligation for addressing post-delegation disputes between ICANN and the contracted registry properly rests with ICANN.

⁴⁴ The term "cybersquatting" is used merely as shorthand and should be interpreted to include all forms of infringing domain name registrations (e.g., typosquatting).

The IRT recommends that a trademark owner initiate a post-delegation dispute by submitting a complaint to ICANN via an online form and pay a refundable deposit⁴⁵ at the time the form is filed. This form would allow a trademark owner to advise ICANN of an alleged breach of the Registry Agreement related to the prohibited practices set forth in the Registry Agreement (this breach would be of the nature set out below in Section 2.1). ICANN should have a system whereby it formally acknowledges the complaint and then have a period no longer than thirty (30) calendar days to investigate and report its conclusion back to the complaining party. In the event that ICANN's investigation should discover that the Registry Operator is in fact in material breach of its contractual obligations, ICANN *must* utilize the various enforcement mechanisms contained within the applicable Registry Agreement. In the event that ICANN's investigation should not discover that the Registry Operator is directly in material breach of its contractual obligations, then ICANN, the complainant and Registry Operator must attempt to resolve the dispute by engaging in good faith discussion over a period of at least fifteen (15) calendar days.

If the Parties are unable to resolve the dispute, upon request from the complainant, ICANN must institute the Post-Delegation Dispute Mechanism set forth below through an accredited DRP. ICANN's initial finding of no material breach is not binding or controlling on the DRP Panel but may be taken into consideration along with other evidence and information submitted by the parties. The complainant shall participate in the DRP. To initiate a Post-Delegation Dispute, the complainant must pre-pay an additional fee to the DRP. The IRT further recommends that this fee be set to cover the provider's cost as well as the Registry Operator's cost should Registry Operator prevail. Furthermore, the IRT believes that the complainant should be required to prepay an additional amount that shall be paid to the Registry Operator if the complaint is found by the Panel to be "without merit" ("*Penalty Fee*").⁴⁶ Alternatively, if the complaint is *not* found to be "without merit," this additional amount would be refunded to the complainant. While the IRT is not in a position to recommend the amount of any fee charged, we believe the additional portion of the fee should be set sufficiently high to discourage abuse or gaming of the system.⁴⁷ The IRT also recommends that all DRPs be required to use three (3) member panels due to the clear significance of the matter to the Registry Operator's business. All decisions by the DRP Panel should be fully appealable by either party in a court of competent jurisdiction located in either the complainant's or the Registry Operator's jurisdiction.

If ICANN should determine that the initial complaint was "without merit" after conducting its investigation, then the complainant would lose its initial deposit. A complainant found

⁴⁵ The amount of the fee should be meaningful enough to deter arbitrary and capricious claims, but also be refunded to the complainant in the event that its claim is meritorious.

⁴⁶ A complaint would be "without merit" only if the complaint is found to be completely baseless and without any tangible support so as to rise to the level of an abuse of the procedure or that it was filed merely to harass the Registry Operator against whom the complaint was filed. The finding of whether a complaint was "without merit" could occur at two separate points in the system. First, ICANN could make such a determination at the end of its investigation. Second, a Panel could make such a determination in its final decision.

⁴⁷ See [Appendix G](#).

to have filed a complaint deemed “without merit” by ICANN at the conclusion of its investigation on three (3) separate occasions would be barred from filing any complaints under the Post-Delegation Dispute Mechanism for a period of one (1) year. After a complainant has served a one (1) year bar, any determination that a complainant has again filed a complaint that is “without merit” will result in the complainant being permanently barred from using the mechanism.

In the event a Panel determines that a complainant has filed a complaint “without merit,” it shall set this finding forth in its decision. A complainant found to have filed two (2) complaints “without merit” by a DRP Panel would be permanently barred from filing any further complaints under the mechanism. If the complainant in question has already served a one (1) year bar, then only one (1) further finding from a DRP Panel of “without merit” is required for the complainant to be permanently barred from using the mechanism.

2. POST-DELEGATION DISPUTE MECHANISM AS REVISED BY THE IRT

2.1 Applicable Disputes

- 2.1.1 A Registry Operator, as defined in the applicable Registry Agreement with ICANN, shall be required to submit to a mandatory administrative proceeding where a third-party (complainant) has filed a complaint with ICANN asserting that:
 - 2.1.1.1 The Registry Operator's manner of operation or use of a TLD is inconsistent with the representations made in the TLD application as approved by ICANN and incorporated into the applicable Registry Agreement and such operation or use of the TLD is likely to cause confusion with the complainant's mark; or
 - 2.1.1.2 The Registry Operator is in breach of the specific rights protection mechanisms enumerated in such Registry Operator's Agreement and such breach is likely to cause confusion with complainant's mark; or
 - 2.1.1.3 The Registry Operator manner of operation or use of the TLD exhibits a bad faith intent to profit from the systemic registration of domain name registrations therein, which are identical or confusingly similar to the complainant's mark, meeting any of the following conditions: (a) taking unfair advantage of the distinctive character or the reputation of the complainant's mark, or (b) unjustifiably impairing the distinctive character or the reputation of the complainant's mark, or (c) creating an

impermissible likelihood of confusion with the complainant's mark.⁴⁸

2.1.2 For the purpose of determining whether the TLD or domain name registrations therein meet conditions described in Section A, the Panel may take into consideration any decisions rendered under the New gTLD Dispute Resolution Procedure for Legal Rights Objections (Pre-Delegation) or any decisions under the Uniform Domain Name Dispute Resolution Policy against the Registry Operator or any of its affiliates.

2.2 Decisions

In its written decision, the Panel, in addition to providing the reasons for its decision, shall set forth one of the following findings:

- Panel finds for the complainant and provides a remedy (see Section 2.3, below)
- Panel finds for the registry operator and provides a remedy (see Section 2.3, below)
- Panel finds for the registry operator and that the complaint was “without merit”
- Panel finds for the complainant and that the defense was “without merit”

2.3 Remedies

The Panel shall, in its sole discretion, issue a finding determining whether or not it believes the Registry Operator has committed one or more of the acts set forth in Section 2.1.1.1-2.1.1.3 above. In the event of a finding that the Registry Operator has violated this policy with respect to the subject matter giving rise to the dispute, the Panel shall recommend to ICANN the imposition of appropriate enforcement mechanisms available to ICANN under the applicable Registry Agreement. Upon a finding that a complaint is “without merit,” the Panel shall require the complainant’s pre-paid filing fees, including (i) the fee covering the Registry Operator’s costs of the dispute to the Registry Operator (but the Panel shall not have authority to order an award of monetary damages or attorney costs beyond those incorporated into the filing fee pre-paid by the complainant), (ii) the dispute provider’s fee to the Dispute Provider, and (iii) the Penalty Fee to the Registry Operator. Similarly, upon a finding that the Registry Operator’s defense is “without merit,” the Panel shall require the Registry Operator to pay a fee equal to the pre-paid filing fee paid by the complainant. This fee shall be calculated to cover the cost of the action and an additional amount to cover an award to the complainant.⁴⁹

⁴⁸ For example, a Panel could take into account whether the activity encompassed by the manner of operation or use of the TLD that is at issue implicates or involves registrars that are affiliates of the Registry Operator. The IRT offers no comments on whether the registry/registrar separation rules should be relaxed; however, if those rules are relaxed to allow affiliates of a Registry Operator to also serve as a registrar in the same TLD, then such consideration by the Panel may be appropriate. The IRT welcomes comments from the community on this point.

⁴⁹ See table in Appendix G.

All DRP decisions should be published on the DRP's website and the ICANN website and should be fully searchable.

2.4 Enforcement Tools

The IRT further recommends that the draft Registry Agreement be revised to include a variety of graduated enforcement tools such as those recently recommended for implementation in the RAA such as:

- 2.4.1 Sanctions & Suspension – Providing for escalated compliance enforcement tools such as monetary sanctions the suspension of accepting new domain name registrations in the TLD until such time as the violation(s) of Section 2.1.1.1-2.1.1.2 is cured.
- 2.4.2 Group Liability – Preventing "serial misconduct" by registries when another affiliated (by common control) registry's or registrar's agreement with ICANN is terminated, provided that such affiliated registry or registrar has also been involved in the activities violating Section 2.1.1.1-2.1.1.3 set forth above.
- 2.4.3 Termination of Contract – Providing for the termination of a registry agreement should a Registry Operator be found by three (3) separate Panels, arising out of 3 separate and distinct incidents, to have violated its contract under Section 2.1 within any eighteen (18)-month period.

2.5 Costs

As stated above, the Complainant shall be required to pay the dispute provider an initial fixed fee. No action shall be taken by the dispute provider until it has received from the Complainant the initial fee. If the dispute provider has not received the fee within ten (10) calendar days of receiving the complaint, the complaint shall be deemed withdrawn and the administrative proceeding terminated. The Panel may furthermore order that the Registry Operator pay a fee equal to the filing fee initially paid by the complainant to cover the costs of the procedure and, if applicable, an additional amount for presenting a defense "without merit" (but the Panel shall not have authority to order an award of monetary damages or attorney costs beyond those incorporated into the filing fee pre-paid by the complainant) if it issues a finding against the Registry Operator.

The Registry Operator shall pay any fees within thirty (30) days of receiving the DRP final written decision. Should a Registry Operator fail to pay within the allotted time, ICANN shall issue a notice of material breach to the Registry Operator. Failure to cure such breach within the applicable cure period set forth in the Registry Agreement may result in the imposition of any of the enforcement tools available to ICANN under the Registry Agreement, including, but not limited to, suspension of the Registry Agreement until such time as the fees have been duly paid in full and notice of payment has been received by ICANN from the DRP.

2.6 Availability of Court or other Administrative Proceedings

The mandatory administrative proceeding requirements set forth above shall not prevent Registry Operator or ICANN from submitting the dispute to an administrative panel in accordance with its applicable Registry Agreement or to a court of competent jurisdiction for independent resolution *before* such mandatory Post-Delegation Dispute proceeding is commenced or *after* such proceeding is concluded. In those cases where a Registry Operator advises the DRP that it instituted an action prior to the filing date of the complaint in the Post-Delegation Dispute proceeding, the DRP shall suspend or terminate the Post-Delegation Dispute proceeding upon verification that the filing date of the action under the Registry Agreement or the court action in a court of competent jurisdiction pre-dates the filing of the complaint in the Post-Delegation Dispute proceeding. In the event of any legal proceedings initiated in a court of competent jurisdiction during a Post-Delegation Dispute proceeding which is the subject of the complaint, the Panel shall either suspend or terminate the proceeding under the Post-Delegation Dispute Mechanism. In contrast, submitting the dispute to an administrative panel in accordance with its applicable Registry Agreement *after* the filing date of the complaint but prior to conclusion of the proceedings will not suspend or terminate the proceedings under the Post-Delegation Dispute Mechanism.

Any decision by the Panel shall not be implemented for a period of at least ten (10) business days (as observed by ICANN). During such time, either ICANN or the Registry Operator shall have the right to file a formal dispute under the applicable dispute resolution process as set forth in its Registry Agreement. The filing of such a dispute shall suspend the implementation of any remedies ordered hereunder pending the outcome of such dispute resolution process.

Except with regard to the payment of fees and the termination of the Registry Agreement set out in 2.4.3 above, any findings under this dispute process shall not act as precedent or otherwise affect or influence the resolution of subsequent disputes, nor shall it be relied upon or used against either Party in the resolution of any subsequent disputes.

IRT RECOMMENDATION OF THICK WHOIS MODEL (FOR ALL NEW TLDS TO PROVIDE WHOIS INFORMATION UNDER THE THICK WHOIS OR REGISTRY LEVEL WHOIS MODEL)

As part of its charge, the IRT considered the public comments filed during the public comment period on the first Draft Guidebook for New gTLD Applicants (“DAG”). In doing so, the IRT identified numerous public comments calling for ICANN to amend the draft Registry Agreement set forth in the DAG to include a provision requiring all registry operators of new gTLDs to provide WHOIS information under the Thick WHOIS model as is done in the .info and .biz registries.

For clarity, the IRT defines the “Thick WHOIS” model as the central, registry-level provision of WHOIS information for all domain names registered within the registry. This model is in contrast to the “Thin WHOIS” model whereby the registry-level information is very limited and Internet users must rely on the registrar-level for the submission of robust WHOIS data.

As agreed upon by all the members of the IRT, the task force members considered this recommendation in light of the 10 guiding principals that the IRT used as a base line assessment for all possible solutions considered during the IRT process.

After carefully consideration, the IRT believes that the provision of WHOIS information at the registry level under the Thick WHOIS model is essential to the cost-effective protection of consumers and intellectual property owners. For this reason, the IRT recommends that ICANN amend the proposed Registry Agreement to include an obligation that all registry operators for new gTLDs must provide registry-level WHOIS under the Thick WHOIS model currently in place in the .info and .biz registries.⁵⁰

In addition, the IRT recommends that ICANN immediately begin to explore the establishment of a central, universal WHOIS database to be maintained by ICANN. Such a Universal database would provide robust, publicly accessible WHOIS database covering all gTLDs. The IRT understands that ICANN requested that this initiative take place as part of the .net redelegation. However, the IRT is not aware that this project has ever been started.

⁵⁰ The IRT acknowledges that some comments raised privacy concerns about this recommendation. However, it notes that the thick registry Whois model has been employed in many new gTLDs for many years without any evidence of legal problems, and also that ICANN, on the unanimous recommendation of the GNSO Council, has established a procedure that can be invoked by any registry that believes it faces a conflict between its contractual Whois obligations and requirements of national privacy laws. See <http://www.icann.org/en/announcements/announcement-18dec07.htm>. To date, this procedure has never been invoked.

IRT REPORT AND RECOMMENDATION ON USE OF THE ICANN DEVELOPED ALGORITHM IN THE STRING CONFUSION REVIEW DURING THE INITIAL EVALUATION

The IRT reviewed numerous public comments that called for a revision to the string confusion review that will be used during the Initial Evaluation of new gTLD applications. This procedure may be found in Section 2.1.1.1 of the DAG. Specifically, many comments stated that reliance on visual similarity alone was insufficient.

In fact, it is the position of the IRT that expanding the analysis to also include consideration of the aural and commercial impression (meaning) created by the string would assist in passing more applications through the system. Accordingly, the IRT recommends that the algorithm only be used to identify those strings that require the application of further analysis.⁵¹

Given that legacy registries (gTLD, sTLD and ccTLD) and trademark owners (GPML)⁵² will have the opportunity to object at a later point in the application process, it is felt that a simple expansion of the test for string comparison during the initial evaluation will not prejudice any third parties and will assist in eliminating any false positives caused by a simple visual comparison of strings. As agreed upon in its initial face-to-face meeting, the IRT task force charged with considering this issue did consider its proposed recommendation in light of the 10 guiding principles and believes that its recommendation should be implemented by ICANN in the third iteration of the DAG.

⁵¹ It is expected that the same test will be applied all strings to which the proposed gTLD applications will be compared (e.g., legacy TLDs, Reserved Names or Globally Protected Marks List).

⁵² Globally Protected Marks List, see pp. 16-18, supra.

APPENDIX A STATEMENTS OF INTEREST

Caroline G. Chicoine

Participant's Current Vocation, Employer & Position.

- I am employed as Of Counsel to Fredrikson & Byron, P.A., a general practice law firm with 240+ attorneys in five offices, including Shanghai and Mexico. I practice out of Fredrikson & Byron's St. Louis office and am a member of the Missouri and U.S. Patent bars.

Type of work performed in the answer above.

- I practice in the area of intellectual property law. My practice focuses on trademarks, including trademark clearance, prosecution, maintenance and enforcement in the U.S. and abroad, negotiating and preparing trademark licenses, customs recordation in the U.S., and conducting intellectual property due diligence. My particular expertise is in the area of domain names and the Internet where I counsel clients with respect to domain name and online disputes, including preparation and prosecution of complaints under the Uniform Dispute Resolution Policy. On occasion, I register domain names for firm clients.

Identify any financial ownership or senior management/leadership interest in registries, registrars or other entities that are stakeholders or interested parties in ICANN policy or any entity with which ICANN has a transaction, contract, or other arrangement. In particular, disclose if the participant or an affiliate or a client intend or are considering applying for a new TLD.

- Neither I nor Fredrikson & Byron has any financial ownership or senior management/leadership interest in registries, registrars or other firms that are interested parties in ICANN policy or any entity with which ICANN has a transaction, contract, or other arrangement. I have advised and am advising several firm clients that are considering applying for a new TLD. To date, no clients have decided to proceed with an application.

Identify any type of commercial interest in ICANN policy development or implementation outcomes. Is the participant representing other parties with these interests?

- See above. I represent a number of brand owners who have great interest in ICANN policy development and implementation and how it impacts their businesses.

Describe any arrangements or agreements between the participant & any other group, constituency or person(s) regarding the participant's selection as a member.

- There are no such arrangements or agreements.

Mette M. Andersen

Participant's Current Vocation, Employer & Position.

- Director and corporate counsel at LEGO Juris A/S, IP Team.

Type of work performed in the answer above.

- Working with all types of IP, mainly trademarks and domain names. Responsible for the development departments within the LEGO Group, clearing and protecting IP.

Identify any financial ownership or senior management/leadership interest in registries, registrars or other entities that are stakeholders or interested parties in ICANN policy or any entity with which ICANN has a transaction, contract, or other arrangement. In particular, disclose if the participant or an affiliate or a client intend or are considering applying for a new TLD.

- No such interests. We have not yet decided if we want to apply for a new TLD. If we were to apply, it would only be for defensive reasons.

Identify any type of commercial interest in ICANN policy development or implementation outcomes. Is the participant representing other parties with these interests?

- No such representations but I do get input from our Danish companies.

Describe any arrangements or agreements between the participant & any other group, constituency or person(s) regarding the participant's selection as a member.

- None.

Jonathan Cohen

Participant's Current Vocation, Employer & Position.

- Senior Partner with Shapiro, Cohen an Intellectual Property Law Firm in Ottawa, Canada.

Type of work performed in the answer above.

- Full range of IP work including prosecution and enforcement of TM & DN rights; management of firm; involvement actively with ICANN, FICPI, and other organizations relating to global IP issues.

Identify any financial ownership or senior management/leadership interest in registries, registrars or other entities that are stakeholders or interested parties in ICANN policy or any entity with which ICANN has a transaction, contract, or other arrangement. In particular, disclose if the participant or an affiliate or a client intend or are considering applying for a new TLD.

- No conflicting affiliation other than minor TM representation of Canada registrar.

Identify any type of commercial interest in ICANN policy development or implementation outcomes. Is the participant representing other parties with these interests?

- No commercial interest in outcome.

Describe any arrangements or agreements between the participant & any other group, constituency or person(s) regarding the participant's selection as a member.

- None. I work with INTA, FICPI, ICANN, IPC, and other organizations but in our case is there any agreement regarding this position on the IRT.

J. Scott Evans

Participant's Current Vocation, Employer & Position.

- Attorney, Yahoo! Inc., Senior Legal Director, Global Brand & Trademarks.

Type of work performed in the answer above.

- Handle all international trademark clearance, prosecution and maintenance. Client counseling on trademark and copyright issues. Advertising review. In-house education on trademark, copyright and advertising law. Defend company when accused of IP infringement. IP policy. ICANN policy.

Identify any financial ownership or senior management/leadership interest in registries, registrars or other entities that are stakeholders or interested parties in ICANN policy or any entity with which ICANN has a transaction, contract, or other arrangement. In particular, disclose if the participant or an affiliate or a client intend or are considering applying for a new TLD.

- Yahoo! is a reseller of domain names for Melbourne IT. Yahoo! has made no decision regarding whether to pursue a TLD. As one of the world's most famous Internet brands, Yahoo! is looking at the issue and following the implementation phase.

Identify any type of commercial interest in ICANN policy development or implementation outcomes. Is the participant representing other parties with these interests?

- To my knowledge, Yahoo! has no direct commercial interest in ICANN policy development. As a domain name reseller and Internet portal, ICANN policies do indirectly affect Yahoo! and its users.

Describe any arrangements or agreements between the participant & any other group, constituency or person(s) regarding the participant's selection as a member.

- I have agreed to work with the Business Constituency to ensure their views are put forth during the IRT process and to keep the BC informed of the IRT process.

Zahid Jamil

Participant's Current Vocation, Employer & Position.

- Chairman Domain Name Dispute Resolution Center (for .pk ccTLD disputes); Attorney: Head of Chambers, Jamil & Jamil, Barristers-At-Law.

Type of work performed in the answer above.

- Panelist, founding member of the DNDRC, IP & IT attorney. Representing IT companies in Pakistan.

Identify any financial ownership or senior management/leadership interest in registries, registrars or other entities that are stakeholders or interested parties in ICANN policy or any entity with which ICANN has a transaction, contract, or other arrangement. In particular, disclose if the participant or an affiliate or a client intend or are considering applying for a new TLD.

- Neither in the past nor currently have any interest in any entity applying for new TLD or involvement in any consultancy for new TLDs. Have provided gratis input to and a member of the Advisory Body of the ccTLD for .pk (PKNIC).

Identify any type of commercial interest in ICANN policy development or implementation outcomes. Is the participant representing other parties with these interests?

- No commercial interest. Am a BC Counselor to the GNSO.

Describe any arrangements or agreements between the participant & any other group, constituency or person(s) regarding the participant's selection as a member.

- No arrangement or agreement or understanding with any such group, constituency or person(s) to become or be a participant of the IRT. Am member of a BC group focusing on IRT issues.

Stacey King

Participant's Current Vocation, Employer & Position.

- London, United Kingdom; Richemont; Senior Internet Lawyer, IP.

Type of work performed in the answer above.

- Manage all Internet related matters within the Intellectual Property department of Richemont for Richemont and its group companies and maisons, including management of domain name portfolios and enforcement.

Identify any financial ownership or senior management/leadership interest in registries, registrars or other entities that are stakeholders or interested parties in ICANN policy or any entity with which ICANN has a transaction, contract, or other arrangement. In particular, disclose if the participant or an affiliate or a client intend or are considering applying for a new TLD.

- Richemont has no financial ownership or senior management/leadership interest in current registries, registrars or other firms that are interested parties in ICANN policy. Richemont is considering/intending on applying for a new TLD through its group companies.

Identify any type of commercial interest in ICANN policy development or implementation outcomes. Is the participant representing other parties with these interests?

- Richemont has no commercial interest in ICANN policy development or implementation outcomes. I represent Richemont and its Group companies and maisons on the IRT.

Describe any arrangements or agreements between the participant & any other group, constituency or person(s) regarding the participant's selection as a member.

- Richemont has no arrangements or agreements in place but we do work extensively with third parties such as the IPC and INTA.

Héctor Ariel Manoff

Participant's Current Vocation, Employer & Position.

- I am Principal Partner at Vitale, Manoff & Feilbogen International Law Firm in Buenos Aires, Argentina. I am the head of the IP legal practice of the Firm. I am member of the board of ISOC (Internet Society) Argentina chapter. I am arbitrator for disputes related to domain names for NAF. I am President of the Trademark and Patent Committee of the Lawyers Association of Buenos Aires. I am chairing the SC on well known trademark and dilution of INTA.

Type of work performed in the answer above.

- I work advising client about trademarks law, domain names, patents and copyrights, including license agreements. I am also an active litigator. I am arbitrator.

Identify any financial ownership or senior management/leadership interest in registries, registrars or other entities that are stakeholders or interested parties in ICANN policy or any entity with which ICANN has a transaction, contract, or other arrangement. In particular, disclose if the participant or an affiliate or a client intend or are considering applying for a new TLD.

- I do not have financial ownership nor interest in registries, registrars, or other firms interested in ICANN policies. If a client considering applying for a new TLD I was not informed.

Identify any type of commercial interest in ICANN policy development or implementation outcomes. Is the participant representing other parties with these interests?

- My clients, as trademark owners, will be affected for the implementation of the new TLD but I am not representing a client that have specific interest in this process.

Describe any arrangements or agreements between the participant & any other group, constituency or person(s) regarding the participant's selection as a member.

- I am an individual member of the IPC and member of various other Intellectual Property organizations. I do not have any agreement.

Jeffrey J. Neuman, Esq.

Participant's Current Vocation, Employer & Position.

- I currently serve as the Vice President of Law & Policy for NeuStar, Inc., the domain name registry for the .biz and .us top-level domains.

Type of work performed in the answer above.

- In this role, I am responsible for all legal and policy issues with respect to the .biz and .us TLDs as well as for various other non-registry lines of business within NeuStar. In addition, NeuStar may be pursuing new top-level domains both as a front-end and as a back-end registry operator.

Identify any financial ownership or senior management/leadership interest in registries, registrars or other entities that are stakeholders or interested parties in ICANN policy or any entity with which ICANN has a transaction, contract, or other arrangement. In particular, disclose if the participant or an affiliate or a client intend or are considering applying for a new TLD.

- NeuStar is the domain name registry for .biz and .us as well as the back-end operator for .travel and .tel. As a Vice President within NeuStar, I am in a senior leadership position and I do own a very small amount of equity. NeuStar does not own or have any interest in any domain name registrar, nor is it involved currently in any other constituency within ICANN.

Identify any type of commercial interest in ICANN policy development or implementation outcomes. Is the participant representing other parties with these interests?

- Other than being a “contracted party” bound by Consensus Policies, as defined in the .biz top-level domain agreement, and pursuing new gTLDs, NeuStar does not have any other commercial interest in ICANN GNSO policy development outcomes.

Describe any arrangements or agreements between the participant & any other group, constituency or person(s) regarding the participant’s selection as a member.

- I currently serve as the alternate chair for the gTLD Registries Constituency and as the official gTLD Constituency representative for .biz.

Jonathon L. Nevett

Participant’s Current Vocation, Employer & Position.

- I am Senior Vice President for Network Solutions.

Type of work performed in the answer above.

- Responsible for various domain services, policy issues, government affairs, and business ethics.

Identify any financial ownership or senior management/leadership interest in registries, registrars or other entities that are stakeholders or interested parties in ICANN policy or any entity with which ICANN has a transaction, contract, or other arrangement. In particular, disclose if the participant or an affiliate or a client intend or are considering applying for a new TLD.

- Network Solutions and its affiliates, NameSecure and SRSPPlus, are ICANN-accredited registrars. As such, we have a potential interest in New TLDs. The Central Registry Solutions joint venture has an interest in serving as a back-end registry provider for New TLD applicants.

Identify any type of commercial interest in ICANN policy development or implementation outcomes. Is the participant representing other parties with these interests?

- Due to my various positions, I consult with and discuss New TLD policy issues with various other registrars and industry-related entities.

Describe any arrangements or agreements between the participant & any other group, constituency or person(s) regarding the participant's selection as a member.

- I serve on the Board of 2 Network Solutions's joint ventures – NameJet LLC and Central Registry Solutions LLC. Since May 2006, I have served as Chair of the ICANN Registrar Constituency. Additionally, I currently serve as co-chair of the DNS Working Group of the United States Council of International Business.

Russell Pangborn

Participant's Current Vocation, Employer & Position.

- In-house counsel for Microsoft; Associate General Counsel – Trademarks.

Type of work performed in the answer above.

- Head of the Trademark group, responsible for group management, oversight of clearance, counseling, enforcement, prosecution/maintenance, licensing, domain name enforcement/UDRP, trademark related policy and outreach.

Identify any financial ownership or senior management/leadership interest in registries, registrars or other entities that are stakeholders or interested parties in ICANN policy or any entity with which ICANN has a transaction, contract, or other arrangement. In particular, disclose if the participant or an affiliate or a client intend or are considering applying for a new TLD.

- Microsoft is an accredited registrar. Also, as a leading technology company, Microsoft has a vested interest in maintaining the security and viability of the Internet. Microsoft is closely monitoring the developments surrounding the proposed gTLD expansion. Whether Microsoft pursues any new TLD is yet to be determined.

Identify any type of commercial interest in ICANN policy development or implementation outcomes. Is the participant representing other parties with these interests?

- I represent Microsoft's interests in this effort.

Describe any arrangements or agreements between the participant & any other group, constituency or person(s) regarding the participant's selection as a member.

- INTA is active with ICANN and I am a member of the INTA Board of Directors and Executive Committee.

Mark V.B. Partridge

Participant's Current Vocation, Employer & Position.

- I am a partner with Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP, a law firm focused on trademark, copyright and Internet issues. I serve on the IPC as a

representative of the American Bar Association and the Association Internationale pour la Protection de la Propriete Intellectuelle (AIPPI).

Type of work performed in the answer above.

- I represent clients of the firm in matters falling within the scope of our firm's practice. This has included representation of registries, registrars, registrants and trademark owners in domain name disputes and other internet matters. I also serve as a neutral in UDRP proceedings for WIPO and I have served as a mediator in federal court proceedings involving domain names.

Identify any financial ownership or senior management/leadership interest in registries, registrars or other entities that are stakeholders or interested parties in ICANN policy or any entity with which ICANN has a transaction, contract, or other arrangement. In particular, disclose if the participant or an affiliate or a client intend or are considering applying for a new TLD.

- I have no financial or other interest in any parties with any contract with ICANN. I am aware that some clients of my firm have considered the new TLD proposals, but I am not aware of any client that intends to apply for a new TLD.

Identify any type of commercial interest in ICANN policy development or implementation outcomes. Is the participant representing other parties with these interests?

- I am not aware of any specific commercial interest in this regard, although I represent a ccTLD registry that may have such an interest.

Describe any arrangements or agreements between the participant & any other group, constituency or person(s) regarding the participant's selection as a member.

- I have no arrangement or agreement with anyone regarding my selection as a member of IRT. As noted above, I participate in the IPC as a representative of ABA and AIPPI.

Kristina Rosette

Participant's Current Vocation, Employer & Position.

- I am employed as a Special Counsel by Covington & Burling LLP ("Covington"), a general practice law firm with over 650 lawyers in eight offices in four countries. I am resident in Covington's Washington, DC office and am a member of the District of Columbia bar.

Type of work performed in the answer above.

- I specialize in Internet and trademark matters, and represent trademark owner clients in connection with such matters. Among my responsibilities, I develop and implement strategies in the areas of offensive and defensive domain name registration, Internet monitoring and enforcement, anti-counterfeiting and anti-fraud; reclaim domain names through negotiation, arbitration (under the UDRP, .biz STOP, and .mobi Sunrise Challenge policies, thus far), and litigation; advise clients on the purchase and use of keywords and trademark aspects of search engine

optimization; negotiate and draft transactional documents relating to Internet-related assets and perform due diligence reviews of such assets; and design trademark usage policies and guidelines and anti-counterfeiting strategies for use in virtual worlds. In connection with advising firm clients of generally noteworthy trademark- or Internet-related developments, I have also provided information and updates on domain name system developments (e.g., posting of reports for public comment, announcements of new policies such as the Domain Name Transfer Policy, .eu Sunrise requirements). All such communications have been, and will continue to be, based solely on publicly available information and documents.

From time to time, I register or acquire in my own name domain names for firm clients. I am currently the registrant of several domain names, both on behalf of firm clients and in an individual capacity. From time to time and as circumstances warrant, I have completed and submitted Whois Data Problem Reports and submitted registrar compliance complaints to ICANN on behalf of firm clients.

Since 2004, I have been a member of the Registration Practice and DNS Administration Subcommittee of the International Trademark Association's Internet Committee, and chair the Subcommittee for the 2008-2009 term.

The Czech Arbitration Court ("CAC"), which the ICANN Board approved as a UDRP Provider in January 2008, has selected me as a UDRP panelist.

I have determined that Covington does not represent ICANN and does not represent any clients in matters in which ICANN is an adverse party. Covington did represent the International Cooperative Alliance in connection with the formation and establishment of DotCooperation LLC, the .coop registry operator, but that matter has been closed for some time. I have also determined that Covington neither represents any gTLD or sTLD registry operator in matters relating to its capacity as a registry operator nor represents any client in matters adverse to such registry operators as registry operators. Based on the responses to my inquiries, Covington does not represent any ccTLD registry operator in its capacity as a registry operator nor does it represent any client in matters adverse to any ccTLD registry operators as registry operators.

To the best of my knowledge, Covington does not represent any ICANN-accredited registrar in its capacity as a registrar nor does it represent any firm client in a matter adverse to a registrar as registrar. From time to time, Covington has represented firm clients in intellectual property matters adverse to registrars, and it is likely to do so periodically in the future. I have been involved in such matters and expect to be involved in additional such matters in the future from time to time.

I am not representing any firm client through my participation on the IRT.

Identify any financial ownership or senior management/leadership interest in registries, registrars or other entities that are stakeholders or interested parties in ICANN policy or any entity with which ICANN has a transaction, contract, or other arrangement. In particular, disclose if the participant or an affiliate or a client intend or are considering applying for a new TLD.

- I have advised and am advising several firm clients that are considering applying for a new TLD. Among these clients, the only ones that have made decisions about whether to apply for a new TLD have decided against doing so.

Identify any type of commercial interest in ICANN policy development or implementation outcomes. Is the participant representing other parties with these interests?

- See above.

Describe any arrangements or agreements between the participant & any other group, constituency or person(s) regarding the participant's selection as a member.

- There are no such arrangements or agreements.

Ellen B. Shankman

Participant's Current Vocation, Employer & Position.

- Attorney, head of own firm, Ellen Shankman & Associates.

Type of work performed in the answer above.

- Advise on Trademark & Internet issues; brand protection.

Identify any financial ownership or senior management/leadership interest in registries, registrars or other entities that are stakeholders or interested parties in ICANN policy or any entity with which ICANN has a transaction, contract, or other arrangement. In particular, disclose if the participant or an affiliate or a client intend or are considering applying for a new TLD.

- If I have any clients who are considering applying for new TLDs, I have not been so informed.

Identify any type of commercial interest in ICANN policy development or implementation outcomes. Is the participant representing other parties with these interests?

- Represent a number of trademark brand owners who care deeply about the outcome of the policy and implementation — but only as part of the general community.

Describe any arrangements or agreements between the participant & any other group, constituency or person(s) regarding the participant's selection as a member.

- Currently a member of the Board of Directors of INTA — but have not received any special instructions in that regard, other than my general fiduciary duties. Nothing more formal than desire to represent range of brand owners.

David Taylor

Participant's Current Vocation, Employer & Position.

- Partner in Lovells LLP international law firm heading up the Lovells Domain Name Practice.

Type of work performed in the answer above.

- Advising clients in intellectual property and technology issues and in particular the protection of brands online and domain names; I assist clients with domain name strategy, domain name registrations and domain name recovery on a global basis.

Also act as a domain name panelist with WIPO (for the UDRP) the Czech Arbitration Court (for .EU and the UDRP) and Nominet (for .UK).

Identify any financial ownership or senior management/leadership interest in registries, registrars or other entities that are stakeholders or interested parties in ICANN policy or any entity with which ICANN has a transaction, contract, or other arrangement. In particular, disclose if the participant or an affiliate or a client intend or are considering applying for a new TLD.

- None. Lovells has made no decision regarding whether to pursue a TLD. I am involved in advising clients on new gTLD progress and issues and certain of these clients are considering applying for a new TLD.

Identify any type of commercial interest in ICANN policy development or implementation outcomes. Is the participant representing other parties with these interests?

- No direct commercial interest in ICANN policy development.

Describe any arrangements or agreements between the participant & any other group, constituency or person(s) regarding the participant's selection as a member.

- I am an individual member of the IPC & member of various other Intellectual Property organizations; INTA, Marques, ECTA and the Society of Computers and Law. No agreement or understanding with any of these groups as to participation or views in connection with the IRT.

Fabricio Vayra

Participant's Current Vocation, Employer & Position.

- NY, Washington, DC; Time Warner Inc.; Senior Counsel – Intellectual Property.

Type of work performed in the answer above.

- Head of trademark function and related online enforcement as well as lead on internet governance issues.

Identify any financial ownership or senior management/leadership interest in registries, registrars or other entities that are stakeholders or interested parties in ICANN policy or any entity with which ICANN has a transaction, contract, or other arrangement. In particular, disclose if the participant or an affiliate or a client intend or are considering applying for a new TLD.

- Time Warner owns AOL, an accredited registrar. The Time Warner Companies are still evaluating the new TLD proposal, and at this time, have no intention of filing for a new TLD.

Identify any type of commercial interest in ICANN policy development or implementation outcomes. Is the participant representing other parties with these interests?

- We represent the Time Warner Companies as a whole (about Time Warner http://www.timewarner.com/corp/aboutus/our_company.html).

Describe any arrangements or agreements between the participant & any other group, constituency or person(s) regarding the participant's selection as a member.

- There are no agreements/arrangements in place, but Time Warner works actively within numerous constituency groups, including IPC, COA, BC, and INTA.

Mary W.S. Wong

Participant's Current Vocation, Employer & Position.

- I am a Professor of Law with the Franklin Pierce Law Center, an American Bar Association ("ABA") accredited, non-profit US law school. The Law Center is well-known internationally for its intellectual property program, innovations in practice-based learning and an international student body.

Type of work performed in the answer above.

- I teach and do research in the areas of copyright and Internet law, with particular emphasis on international and comparative issues and the legal challenges posed by new technology to intellectual property policy.

Identify any financial ownership or senior management/leadership interest in registries, registrars or other entities that are stakeholders or interested parties in ICANN policy or any entity with which ICANN has a transaction, contract, or other arrangement. In particular, disclose if the participant or an affiliate or a client intend or are considering applying for a new TLD.

- None. As far as I am aware, the Law Center, its trustees, employees and partner institutions are not currently considering applying for a new TLD.

Identify any type of commercial interest in ICANN policy development or implementation outcomes. Is the participant representing other parties with these interests?

- No. Although I am involved with various committees and activities in the ABA, I do not represent any clients, nor do I have any commercial interest in ICANN policy development or implementation outcomes.

Describe any arrangements or agreements between the participant & any other group, constituency or person(s) regarding the participant's selection as a member.

- None. Although I am on the GNSO Council representing the Non-Commercial Users Constituency ("NCUC"), neither the NCUC nor any of its members were involved either in my selection as a member of the IRT or my acceptance of the invitation to join the IRT.

Nick Wood

Participant's Current Vocation, Employer & Position.

- In charge of domain name management company working exclusively with intellectual property owners and the professionals who advise them. Position: Managing Director.

Type of work performed in the answer above.

- Responsible for vision of company, P&L, all marketing & communications, client relations, strategic consultancy from time to time delivered through Valideus Ltd., a company formed for that purpose.

Identify any financial ownership or senior management/leadership interest in registries, registrars or other entities that are stakeholders or interested parties in ICANN policy or any entity with which ICANN has a transaction, contract, or other arrangement. In particular, disclose if the participant or an affiliate or a client intend or are considering applying for a new TLD.

- Com Laude is the trading name of NomIQ which is an ICANN accredited registrar. I am the co-owner and MD of Com Laude and NomIQ. We have consulted with Deloitte on validation matters in the past. Deloitte has been retained by ICANN in the past. We are coordinating a not-for-profit bid for a DOT LONDON. We have the support of the Mayor of London and other key agencies. Some of our clients may be interested in applying under the new gTLD process and it may be that we will assist them.

Identify any type of commercial interest in ICANN policy development or implementation outcomes. Is the participant representing other parties with these interests?

- I am representing MARQUES, the European Association of Trade Mark Owners.

Describe any arrangements or agreements between the participant & any other group, constituency or person(s) regarding the participant's selection as a member.

- MARQUES is a member of the IPC. I'm also a member of various other professional associations.

David H. Maher

Participant's Current Vocation, Employer & Position.

- I am Senior Vice President – Law & Policy of Public Interest Registry (PIR), manager of the registry .ORG.

Type of work performed in the answer above.

- General Counsel of PIR, develop and oversee implementation of policy for the company. Chair of Registries Constituency.

Identify any financial ownership or senior management/leadership interest in registries, registrars or other entities that are stakeholders or interested parties in ICANN policy or any entity with which ICANN has a transaction, contract, or other arrangement. In particular, disclose if the participant or an affiliate or a client intend or are considering applying for a new TLD.

- PIR is manager of the .ORG registry, and I am Senior Vice President – Law & Policy. PIR may apply for IDN versions of .ORG and may apply for other gTLDs, but no decision has been made on any such application.

Identify any type of commercial interest in ICANN policy development or implementation outcomes. Is the participant representing other parties with these interests?

- ICANN policy development and implementation outcomes may have a financial impact on TLD registries including PIR. I also serve as Chair of the Registries Constituency.

Describe any arrangements or agreements between the participant & any other group, constituency or person(s) regarding the participant's selection as a member.

- I have been asked to serve as an alternate member representing the Registries Constituency.

Tim Ruiz

Participant's Current Vocation, Employer & Position.

- I am the Vice President of Corporate Development and Policy for GoDaddy.com, Inc., an ICANN accredited registrar.

Type of work performed in the answer above.

- Identify/coordinate strategic opportunities. Represent GoDaddy.com in the Registrar Constituency and develop, recommend, and champion GoDaddy.com positions on relevant ICANN policy issues.

Identify any financial ownership or senior management/leadership interest in registries, registrars or other entities that are stakeholders or interested parties in ICANN policy or any entity with which ICANN has a transaction, contract, or other arrangement. In particular, disclose if the participant or an affiliate or a client intend or are considering applying for a new TLD.

- GoDaddy.com is an ICANN accredited registrar. I am also on the Board of Directors of doMEn, doo, the government contracted registry operator for the .me ccTLD. I represent GoDaddy.com as a member of the dotMOBI Advisory Group (MAG). I have been elected by MAG members to the MAG Steering Committee & represent the MAG Steering Committee on the dotMOBI Policy Advisory Board. GoDaddy.com has not decided whether it will, or even will be able to, apply for a new gTLD. doMEn has an interest in possible IDN versions of the .me ccTLD, but no definitive plans to apply for one.

Identify any type of commercial interest in ICANN policy development or implementation outcomes. Is the participant representing other parties with these interests?

- Policy development outcomes of the GNSO have financial and/or commercial impact on ICANN accredited registrars, including GoDaddy.com. I represent GoDaddy.com's membership within the Registrar Constituency. I have been elected to the GNSO Council by the Registrar Constituency and represent them in that role.

Describe any arrangements or agreements between the participant & any other group, constituency or person(s) regarding the participant's selection as a member.

- I have been asked to serve as an alternate member representing the Registrar Constituency.

APPENDIX B FORM COMPLAINT

Note: This is an example of the fields that should be contained on the form complaint with check boxes and the ability to fill in specific information where noted.

FORM COMPLAINT

1. "Perjury" penalty/indemnification statement (to be determined)
2. Identification of owner or authorized agent
3. Accurate/true and up-to-date
4. Good faith belief that the domain name infringes on one of the tm owner's rights
5. Contact info (already in form for pre-registered)
6. Trademark reg./examination country (already in form for pre-registered)
7. Request to freeze upon receipt of notice
8. Request to take down upon successful completion (either default or answer)
9. Identify registrant (PDF of Whois attached)
10. Domain Names

Trademark	Domain Names
ABC	Abc.xyz Abc.xyz
XYZ	Xyz.abc Xyz.abc

11. No legitimate right or interest (all three)
 - Not known by name
 - Not bona fide use
 - Not related or authorized
12. Bad Faith factors (one or more of these)
 - Sold for profit
 - Pattern
 - Disrupting a competitor
 - Sold for commercial gain

Comment Section (mandatory)

13. PDF copy of site is attached
14. Electronic signature

**APPENDIX C
TIERED FEE SCHEDULE**

RECOMMENDED FEE STRUCTURE

Examination	Complainant	Respondent
0-25	\$200	\$0
26-100	\$250	\$250
101-200	\$300	\$300
200+	TBD	TBD

Complainant pays at filing.
 For 26 or more names, respondent pays Answer fee.
 Loser pays; winner gets refund (prorated if some domains are excluded).

Default Post-30 days	Respondent
0-25	\$50
26-100	\$300
101-200	\$350
200+	TBD + \$50

Respondent pays normal Answer fee plus \$50.
 For 26 or more names, loser pays. Winner gets refund (prorated if some domains are excluded). If Respondent wins, does not get \$50 late filing fee back.

Appeal	Appellant
Ombudsman	\$100
Reinstate site pending filed appeal in court	\$100

Appeal filing fees refundable if successful.

APPENDIX D FORM ANSWER

Note: This is an example of the fields that should be contained on the form answer with check boxes and the ability to fill in specific information where noted.

FORM ANSWER

1. Confirmation of holder ID
2. Confirm accurate and up-to-date Whois
3. I have a legitimate right/interest in the domain name(s).
 - Known by the name
 - Related to or authorized
 - Non-commercial/fair useComments (mandatory) _____

- Designation of rights to certain domain names only:
(List of domain names contesting)
4. Not registered or using bad faith
Response Comments (mandatory) _____

5. Complaint re: abusive use of process
Comments (mandatory) _____

6. Statement that Answer is true and correct
7. Electronic signature

APPENDIX E FORM URS DECISION

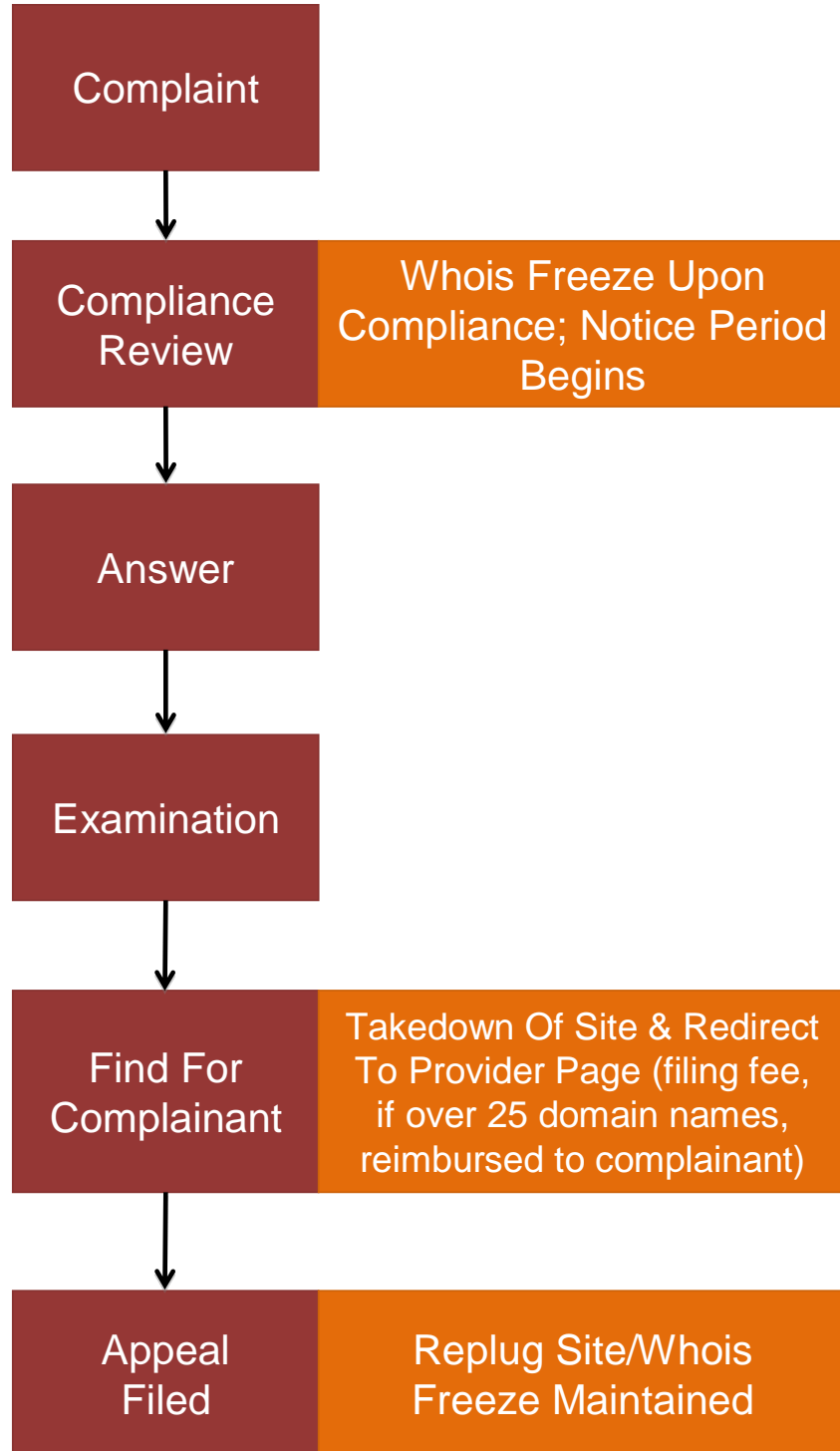
Note: This is an example of the fields that should be contained on the form decision with check boxes and the ability to fill in specific information where noted.

FORM DECISION

1.	The Parties
2.	Domain Name(s) – Automated list inserted
3.	Mark/Registration at Issue – Automated list inserted
4.	Compliance with Notice Requirements Date of first email: Date of certified letter:
5.	Domain Name(s) is: <input type="checkbox"/> Identical to mark(s) <input type="checkbox"/> Confusingly similar to mark(s) Comments _____
6.	Legitimate Rights to the Domain Name <input type="checkbox"/> Not known by name <input type="checkbox"/> Not bona fide use <input type="checkbox"/> Not related or authorized Comments _____
7.	Bad Faith Use and Registration <input type="checkbox"/> Sold for profit <input type="checkbox"/> Pattern <input type="checkbox"/> Disrupting a competitor <input type="checkbox"/> Sold for commercial gain Comments _____
8.	Decision (mandatory) _____ _____
9.	Abusive Filing of Complaint <input type="checkbox"/> Alleged in answer Findings (mandatory) _____ <input type="checkbox"/> Is an abusive use of the URS
10.	Any Comments (optional) _____ _____
11.	Signed
12.	Date

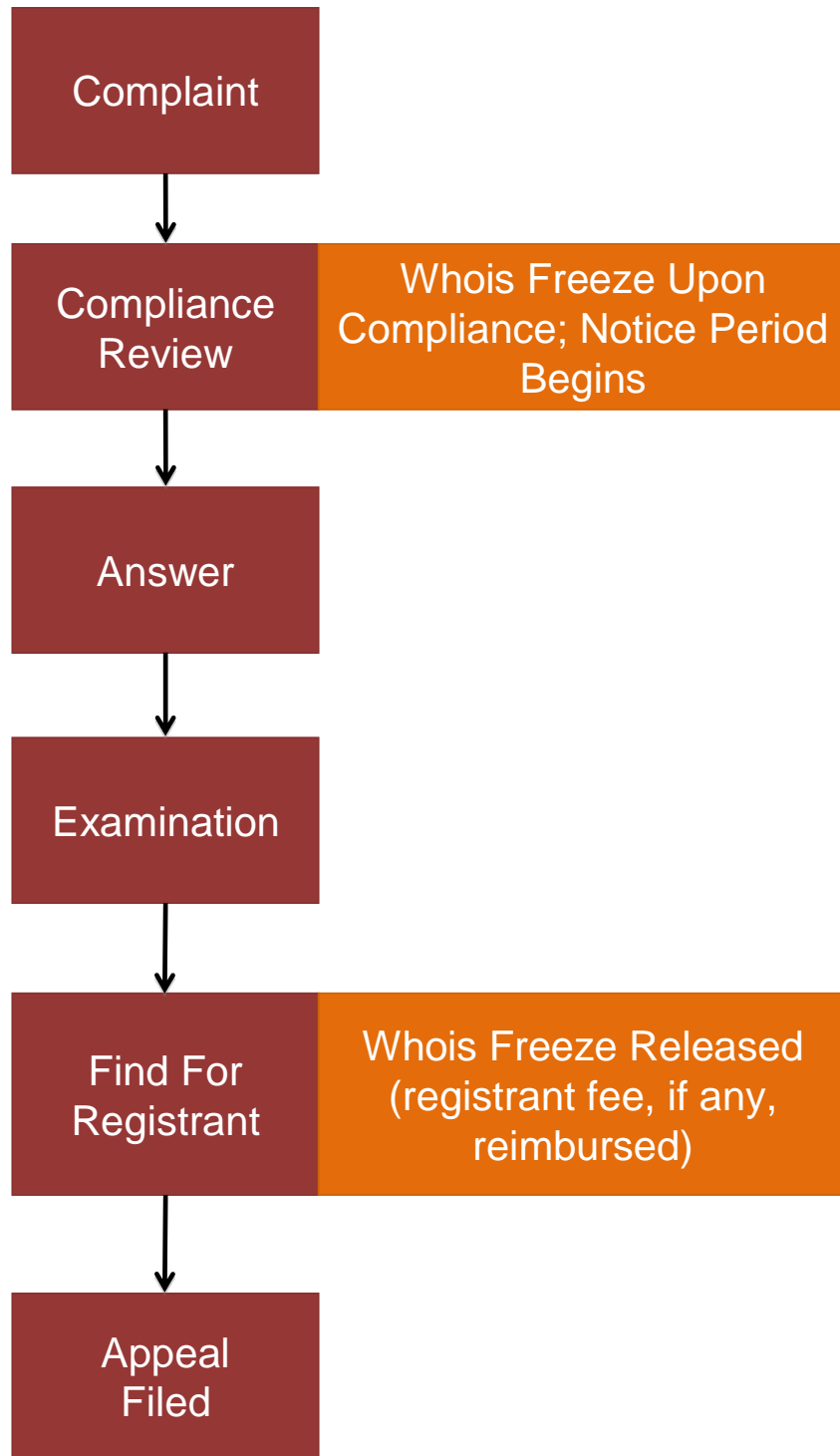
APPENDIX F

**URS
PROCESS –
FINDING
FOR
RIGHTS
OWNER**



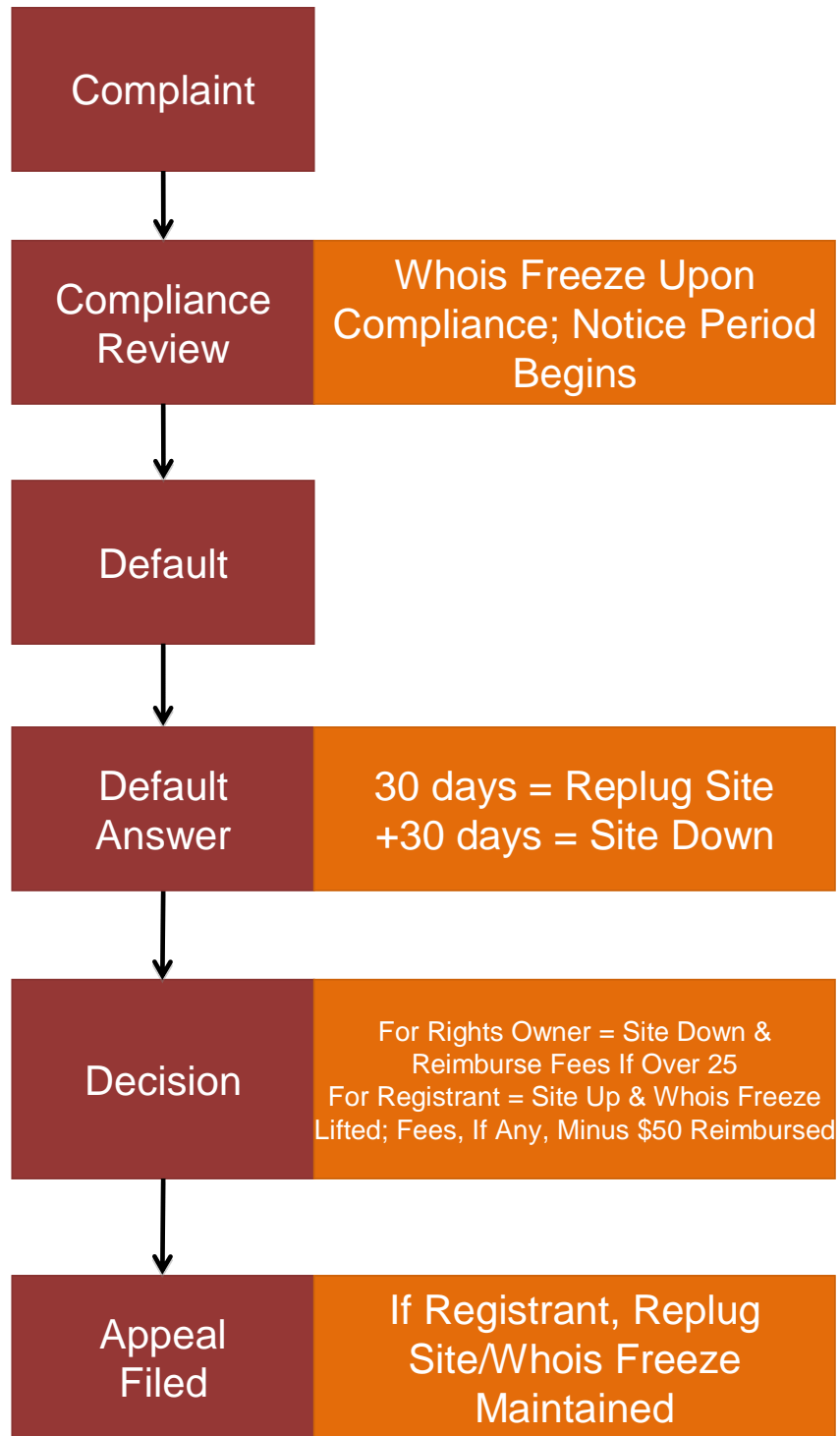
**APPENDIX F
(cont'd)**

**URS
PROCESS –
FINDING
FOR
DOMAIN
NAME
OWNER**



**APPENDIX F
(cont'd)**

**URS
PROCESS –
DEFAULT**



**APPENDIX G
POST-DELEGATION DISPUTE MECHANISM**

OUTCOME	BASE FEE	PENTALTY PORTION	REFUND
Complainant Wins	\$0.00	\$0.00	\$25,000.00
Complainant Loses	\$15,000.00	\$0.00	\$10,000.00
Complainant Loses and Complaint "Without Merit"	\$15,000.00	\$10,000.00	\$0.00
Registry Operator Wins	\$0.00	\$0.00	N/A
Registry Operator Loses	\$15,000.00	\$0.00	N/A
Registry Operator Loses and Defense "Without Merit"	\$15,000.00	\$10,000.00	N/A

The above table is for discussion purposes only. The fee amounts used are for illustrative purposes only and merely reflect the IRT's recommendation that the fees be substantial enough to cover costs and deter gaming of the system by either trademark owners or Registry Operators.

The table assumes a total fee of US\$25,000.00 which consists of two components:

1. US\$15,000.00 administrative fee and costs.
2. US\$10,000.00 additional portion for compensation to winning party upon a finding that a complaint or Registry Operator defense is "without merit." Under certain determinations, this portion of the fee may be refunded.

As set out in the body of the proposal, this US\$25,000.00 fee is paid up front by the complainant upon initiation of the Post-Delegation Dispute. The fees are collect from the Registry Operator only in the event a Panel finds against the Registry Operator.