CCT-RT Draft Report November 2016

SAFEGUARDS AND TRUST

Section 4: Rights Protection Mechanisms

The CCT Review T~~t~~eam examined ~~looked~~ at whether existing rights protection mechanisms and/or new rights protection mechanisms developed in connection with the introduction of the new gTLD Program ~~improved - a word like "promoted" could be better than "improved. Improved suggests that trustworthiness was previously below par -~~ the trustworthiness in the DNS. DEFINE "TRUSTWORTHINESS" HERE.

Prior to the 2012 gTLD expansion in the number of gTLDs, aside from action taken by ~~before~~ courts, the main rights protection mechanism for the Domain Name System was the Uniform Domain Name Dispute Resolution Policy (UDRP), an alternative dispute resolution procedure (adopted by ICANN on 26 August 1999) that applied to all generic Top Level Domains. However the trademark community had voiced concerns that this mechanism alone would be insufficient to adequately protect trademark rights in an expanded DNS[1]. IS "TRUSTWORTHINESS" THE SAME AS "ADEQUARE PROTECTION OF TRADEMARKS"?

With the introduction of the new gTLDs, new rights protection mechanisms were proposed by the Implementation Recommendation Team (IRT), namely: Uniform Rapid Suspension System (URS); Post-Delegation Dispute Resolution Procedures (PDDRPs); the Trademark Post-Delegation Dispute Resolution Procedure (TM-PDDRP); Registry Restriction Dispute Resolution Procedure (RRDRP); Public Interest Commitments Dispute Resolution Procedure (PICDRP); and the Trademark Clearinghouse (Sunrise and Claims Service)[2]. THESE SHOULD BE DESCRIBED HERE.

The CCT Review Team looked at whether the~~se~~ ~~New Rights Protection M~~mechanisms ~~(RPMs)~~ have helped to mitigate risks to proprietary trademark (?) interests that might arise with the expansion of gTLDs.

1. *Were they used? How were they used?*
2. *Did their existence deter infringers?*
3. *Did they provide an effective solution to the overarching issue of trademark protection in the new gTLDs?*
4. *Were other new gTLD RPMs introduced by Registry Operators (i.e. above ~~over~~ the baseline of obligatory RPMs) effective?*

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[1] CITATION TO CONCERNS. The ICANN Board established an Implementation Recommendation Team (IRT) to address rights protection mechanisms.

[2] In addition, string contention processes were introduced for applications for the gTLDs themselves, relating to string confusion, limited public interest, community objection and legal rights objection. These are discussed in more detail in the Application and Evaluation section.

5. *Did the availability of new RPMs cause an increase in the total number of complaints (URS/UDRP) being brought overall?*
6. *If there was an increase in number of complaints, (URS/UDRP) how did this compare to the total number of new domain name registrations across all gTLDs?*
7. *Did the availability of these RPMs reduce TM infringement (by discouraging abuse)?*
8. *What other enforcement measures were taken in addition to complaints (cease and desist, watching, lawsuits, increase registrations?)*
9. *Did the launch of new gTLDs create an increase in enforcement costs for brand owners compared to pre-new gTLD status quo?*
10. *What type of abuse is prevalent in new gTLDs?*
    a. *Bad Faith Registration and Use*
    b. *Malware*
    c. *Phishing*
    d. *Security breaches*
11. *Has the rate of transfer or cancellation changed in the UDRP since the existence of new gTLDs?*
12. *Has the TMCH functioned satisfactorily? Has there been abuse of it?*
13. *Has the URS functioned satisfactorily? Has there been abuse of it?*
14. *Has the PDDRP functioned satisfactorily? Has there been abuse of it?*
15. *Has the TM Claims Service functioned satisfactorily? Has there been abuse of it?*
16. *Has the Sunrise Period system functioned satisfactorily? Has there been abuse of it?*
17. *Has the Legal Rights Objection Mechanism functioned satisfactorily? Has there been abuse of it?*
18. *Has the String Confusion Objection Mechanism functioned satisfactorily? Has there been abuse of it? What if anything should be changed?*
19. *Has the Community Objection Mechanism functioned satisfactorily? Has there been abuse of it?*

A full and robust analysis is not possible given the lack of relevant data. WHY ARE THE RELEVANT DATA NOT AVAILABLE? , hHowever, the following CONCLUSIONS (?) is are based on the information that was available as of November 2016:

Numbers of Cases filed (UDRP and URS)
According to metrics available to ICANN which have been compiled from Uniform Dispute Resolution Procedure (UDRP) and Uniform Rapid Suspension (URS), there has been a decline providers we have seen a drop in the number of UDRP complaints since the introduction of new gTLDs. There were If we take 2012 as a baseline there were 3987 UDRP complaints filed in 2012. In 2013, this had dropped 15% to 3371 UDRP complaints before rising slightly in 2014 and 2015. PROVIDE THE NUMBERS. However, the number of complains in but both years were still

13% below ~~down on~~ the 2012 level. On possible explanation for the decline is that ~~T~~he URS may have ~~picked up some of the slack and~~ been found to be more attractive to certain brand trademark? owners. In both 2014 and 2015, there were 229 and 220 URS complaints filed, respectively. However, even taking these into account, the total number of complaints filed through ~~whether~~ either the UDRP or the URS were still ~~remain~~ lower than the total number of ? in 2012 by around 7.5%.

~~In both instances we need to look at data for 2016 as soon as it is available to see whether we can see a specific trend.~~THIS SEEMS VAGUE.

~~Based on this data alone it is difficult to conclude that there has been a higher enforcement cost since the introduction of new gTLDs to brand owners in the form of using the available ICANN mechanisms. However,~~ It is important to note, however, that the number of UDRPs and URSs filed reflect ~~are clearly~~ only part of the costs incurred by trademark ? ~~brand~~ owners in defending their brands ~~and as such may only represent the tip of the iceberg~~ and the bulk of enforcement costs may have been incurred in the form of ~~by~~ defensive registrations / watching / cease and desist letters for which we do not presently have data. *It is anticipated that the INTA Impact Study will provide data in this respect.* BLOCKING?

Year	Total OF WHAT?
2012	3,987 (UDRP)
2013	3,371 (UDRP)
2014	3,436 (UDRP) & 229 (URS)
2015	3,466 (UDRP) & 220 (URS)

~~A different picture is painted if we look at data available from the major UDRP provider, WIPO.~~ We also note that ~~T~~the number of complaints filed under the UDRP before the World Intellectual Property Organisation (WIPO)~~, for instance,~~ has been steadily increasing since the introduction of the first new gTLDs in 2013, with 2,754 complaints filed in 2015 compared with 2,634 filed in 2014, representing a growth of 4.6 percent year over year. DOES NOT SEEM VERY LARGE. While the number of domain name disputes filed with WIPO in 2015 did not surpass the all-time record high of 2,884 cases filed in 2012, it did reach the third highest level since 1999. From th~~is~~ese data, we can conclude that cybersquatting is growing for rights holders, with the number of complaints filed increasing with the introduction of new gTLDs. But of course we are also looking at a greater number of domain name registrations overall with the new gTLDs being introduced. We need to look at the 2016 figures when available. CONCLUSION DOES NOT FOLLOW FROM THE DATA. FIRST MENTION OF CYBERSQUATTING. USE CONSISTENT TERMINOLOGY.

~~One data point that is interesting though is that as reported by~~ WIPO reports that, domain name disputes under new gTLDs accounted for 10.5 percent of all UDRPs filed

with WIPO in 2015, with .XYZ, .CLUB and .EMAIL amongst the new gTLDs with the most disputed domain names.[3]

Indeed, the current figures for 2016 show that new gTLDs currently account for 15% of the 2016 caseload for WIPO. With new gTLDs being less than 10% of registration volume of gTLDs, theseis data suggests that points to there may be being more proportionately more trademark infringements proportionally in new gTLDs than in the legacy gTLDs. and that it is on the increase.

Complaints to ICANN concerning Implementation of UDRP and URS decisions

ICANN's role in ? is to ensure that the registrars comply with the UDRP and UDRP Rules as well as the URS procedure and rules.

For example, a UDRP provider may file a UDRP complaint that a registrar did not timely lock a domain subject to a UDRP or respond to the provider's verification request. The Complainant may then ? submit a complaint to ICANN when the registrar fails to timely implement a UDRP decision.

With regard to the URS, for example, the registry operator must also timely lock, and if applicable suspend, the relevant domain name(s) in accordance with the URS determination and the URS procedure and rules. The prevailing Complainant in the URS proceeding and the URS Provider may submit a URS complaint regarding such alleged violations to ICANN via the URS compliance web form.

Looking at the number of complaints made to ICANN concerning implementation of UDRP and URS decisions, the number of UDRP complaints has been declining going down year on year from 2012 to 2015, with 2015 seeing complaints down by some 70% compared to 2012. However, URS complaints have risen in the two years for which data are available, and indeed were some 42% higher in 2015. It is too early to make conclusions other than it would seem that there are potentially more issues with URS complaints and registrar compliance with the respective rules than UDRP complaints since as a percentage of total complaints in 2015 the UDRP saw 6% complaints compared to the URS with a little over 12%. PERCENTAGES OF WHAT? The URS is a more recent creation and registrars need to get used to it. SAYS WHO? On the other hand, it should be taken into account that the UDRP related to some 22 gTLDs whereas the URS was applicable to more than 1000, even if many only came onto the market at later stages. LATER STAGES OF WHAT?

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[3]   http://www.wipo.int/pressroom/en/articles/2016/article_0003.html

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It should be noted that Complaints regarding the merits of the decision are outside of ICANN's contractual scope. FOOTNOTE?

Year	UDRP Complaints
2012	658
2013	408
2014	226
2015	210

Year	URS Complaints
2014	19
2015	27

The Trademark Post-Delegation Dispute Resolution Procedure (TM-PDDRP)

ICANN Contractual Compliance has received no complaints regarding a registry operator's non-compilance with the PDDRP. However, it should be noted that there is currently a GNSO Working Group conducting a Policy Development Process (PDP) to Review all Rights Protection Mechanisms (RPMs) in all gTLDs that is exploring possible impediments to implementation of the PDDRP since there are no known PDDRP filings with such providers to date. IMPLICATION?

Registry Restrictions Dispute Resolutions Procedure (RRDRP) Decisions

The RRDRP is intended to address circumstances in which a community-based New gTLD Registry Operator deviates from the registration restrictions outlined in its Registry Agreement. As of 22 February 2016, there have been no RRDRP cases.

Share of Sunrise Registrations and Domain Blocks to Total Registrations in Each TLD

At the time of writing (November 2016), the only available data is from ICANN on the number of sunrise registrations compared to total registrations in new gTLDs are from ICANN. There are no data available With regard to Domain blocks or regarding commercial blocking services offered by registries there is no current consolidated data available. TO THE REVIEW TEAM? TO ANYONE?

To review the data available on the share of sunrise registrations to total registrations in each TLD

Sources:

PARLIB01/PADWT/1664962.2   Hogan Lovells

Compilation of procedures related sources:
https://community.icann.org/display/CCT/Procedures

Compilation of impact of safeguards & PICs related sources:
https://community.icann.org/pages/viewpage.action?pageId=59649288

https://www.icann.org/resources/pages/cct-metrics-rpm-2016-06-27-en

PRIORITY TO ADDRESS:

Full INTA Impact Study results and other data is needed to fully inform the community

RECOMMENDATIONS:

1. A Full Impact Study would help identify the actual costs incurred by brand owners with regard to new gTLD enforcement and defensive registrations. ==This will be provided by the INTA Impact Study in February 2017== INCONSISTENT TERMINOLOGY. SOMETIMES TRADEMARK OWNERS, SOMETIMES BRADN OWNERS.

2. The Impact Study should be repeated at regular intervals eg 18 -24 months in order to see the evolution over time as the new gTLD programme gains speed SPEED? and comes into full operation

3. A review should be carried out to determine whether there should be a transfer option with the URS rather than only suspension, whether two fully systems should continue to operate (namely UDPR and URS in parallel) and their relative merits, as well as any improvements and applicability to all gTLDs, and alternatives. GARBLED SENTENCE. It is important for all gTLDs to have a level playing field and having different mechanisms applicable in different gTLDs serves to confuse. WHY WERE SO MANY DIFFERENT MECHANISMS ESTABLISHED?

4. Carry out an assessment to determine whether the scope of the TMCH should be expanded beyond merely SOMETHING MISSING HERE identical matches to include mark+keyword or common typographical errors of the mark in question, if so under what basis. ???

THESE SHOULD BE DESCRIBED BRIEFLY WHEN THEY ARE FIRST MENTIONED ABOVE.

Annex I : Description of the RPMs

1.   UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY (UDRP)

The Uniform Domain Name Dispute Resolution Policy (UDRP) is an alternative dispute resolution procedure adopted by ICANN on 26 August 1999 that applies to all generic Top Level Domains (gTLDs), including legacy gTLDs (such as .com, .net, .info) as well as new gTLDs, and certain country code Top-Level Domains (ccTLDs) that have adopted it. To be successful under the UDRP, a complainant must demonstrate by preponderance of the evidence the following three requirements: (i) the domain name registered by the respondent is identical or confusingly similar to a trade mark or service mark in which the complainant has rights; and (ii) the respondent has no rights or legitimate interests in respect of the domain name; and (iii) the domain name has been registered and is being used in bad faith.

    A procedure under the UDRP takes approximately 2 months, from the filing of a complaint to a decision. Costs for filing a complaint under the UDRP range between USD 1500 for 1 to 5 domain names (single-member panel) and USD 4000 for 1 to 5 domain names (three-member panel), excluding lawyers' fees.   The remedies available under the UDRP are limited to the transfer or cancellation of a domain name. No damages are awarded and there is no appeal mechanism in place.   A decision is generally implemented after 10 business days following the notification of the decision, unless court proceedings are initiated in a court of competent jurisdiction.

UDRP complaints are filed electronically with an ICANN-approved dispute resolution provider. To date, the following providers have been approved by ICANN: the Asian Domain Name Dispute Resolution Centre (ADNDRC), the Forum (NAF), World Intellectual Property Organization (WIPO), the Czech Arbitration Court Arbitration Center for Internet Disputes (CAC) and the Arab Center for Domain Name Dispute Resolution (ACDR).

2.   UNIFORM RAPID SUSPENSION SYSTEM (URS)

The Uniform Rapid Suspension System (URS) is an alternative dispute resolution procedure launched in 2013 that was originally designed for clear-cut cases of cybersquatting under new generic Top Level Domains (gTLDs), although it has been voluntarily adopted by a handful of ccTLDs and "sponsored" TLDs (such as .pw, .travel, .pro and .cat).   The substantive requirements under the URS are similar to those under the UDRP, although the required burden of proof is heavier ("clear and convincing evidence", as opposed to "preponderance of the evidence"). A complainant must thus prove the following 3 requirements: (i) that the domain name is identical or confusingly similar to a word mark: (a) for which the Complainant holds

a valid national or regional registration and that is in current use; or (b) that has been validated through court proceedings; or (c) that is specifically protected by a statute or treaty in effect at the time the URS complaint is filed (1.2.6.1 of the URS); (ii) that the registrant has no rights or legitimate interests in the domain name; and (1.2.6.2 of the URS) and (iii) the domain name was registered and is being used in bad faith (1.2.6.3 of the URS).   Complaints are limited to 500 words. The URS is intended for the most clear-cut cases of cybersquatting and so it is generally not appropriate for domain name disputes involving more complex, genuine contestable issues (such as fair use).

The only remedy available under the URS is the suspension of the domain name, as opposed to the transfer or cancellation (which are remedies available under the UDRP).

Under the URS a domain name may be suspended in as quickly as 3 weeks from the filing of a complaint. In the event of a favourable decision for the complainant, the domain name is suspended for the remainder of the registration period (which may be extended for an additional year). WHICH WEBSITE? The website will display a banner stating "This Site is Suspended" but the Whois for the domain name will continue to display the information of the original registrant (except for the redirection of the nameservers). If the decision in favour of the complainant was a judgment by default, the registrant may seek a *de novo* review by filing a response up to 6 months after the notice of default (which may be extended by 6 additional months upon request by the registrant).

In the event the decision is denied, the URS provides for an appeal mechanism based on the existing record.

Costs for filing a URS complaint are approximately around USD 375 (for 1 to 14 domain names).

Only three providers have thus so far been accredited for the URS: the Asian Domain Name Dispute Resolution Centre (ADNDRC), the Forum (NAF) and MSFD Srl (based in Milan, Italy).

3.   **POST-DELEGATION DISPUTE RESOLUTION PROCEDURES (PDDRP)**

Post-Delegation Dispute Resolution Procedures are rights protection mechanisms that have been designed to provide relief against a new gTLD Registry Operator's conduct (as opposed to a domain name registrant or registrar). There are three PDDRPs:

3.1 **The Trademark Post-Delegation Dispute Resolution Procedure (TM-PDDRP)** allows a trade mark holder to file a complaint against the Registry Operator for its involvement in trade mark infringement either at the top or second level of a new gTLD.

At the top level, a complainant must demonstrate by "clear and convincing evidence" that "the registry operator's affirmative conduct in its operation or use of a new gTLD that is identical or confusingly similar to the complainant's trade mark, causes or materially contributes to the gTLD doing one of the following: (a) taking unfair advantage of the distinctive character or the reputation of the complainant's trade mark; or (b) impairing the distinctive character or the reputation of the complainant's trade mark; or (c) creating a likelihood of confusion with the complainant's mark" (paragraph 6.1 of the TM-PDDRP).

At the second level, complainants are required to demonstrate by "clear and convincing evidence" that "through the registry operator's affirmative conduct: (a) there is a substantial pattern or practice of specific bad faith intent by the registry operator to profit from the sale of trade mark infringing domain names; and (b) the registry operator's bad faith intent to profit from the systematic registration of domain names within the gTLD that are identical or confusingly similar to the complainant's mark, which: (i) takes unfair advantage of the distinctive character or the reputation of the complainant's trade mark; or (ii) impairs the distinctive character or the reputation of the complainant's trade mark, or (iii) creates a likelihood of confusion with the complainant's trade mark" (paragraph 6.2 of the TM-PDDRP).

If the Registry Operator is found liable by the expert panel, a number of remedies may be recommended, including remedial measures to prevent future infringing registrations; suspension of accepting new domain name registrations in the gTLDs at stake until the violation has ceased or for a set period of time prescribed by the expert; or termination of the Registry Agreement, in extraordinary circumstances, where the Registry Operator has acted "with malice" (paragraph 18 of the TM-PDDRP). Ultimately, ICANN has the authority to impose the remedies it deems appropriate, if any.

To date, ICANN has appointed the following dispute resolution providers to resolve disputes under the TM-PPDRP: the Asian Domain Name Dispute Resolution Centre (ADNDRC), the Forum (NAF), and World Intellectual Property Organization (WIPO).

3.2 **Registry Restriction Dispute Resolution Procedure (RRDRP)**, allows an established institution to file a complaint against a community-based new gTLD Registry Operator for failing to meet registration restrictions set out in its Registry Agreement. For a claim to be successful, a complainant must demonstrate by "preponderance of the evidence" that: "(i) the community invoked by the objector is a defined community; (ii) there is a strong association between the community invoked and the gTLD label or string; (iii) the TLD operator violated the terms of the community-based restrictions in its agreement; (iv) there is a measureable harm to the Complainant and the community named by the objector". The remedies recommended by the expert panel are similar to those prescribed under the TM-PDDRP. Ultimately, ICANN has the authority to decide whether to impose such remedies.

3.3 **Public Interest Commitments Dispute Resolution Procedure (PICDRP)**, allows any person or entity (the "reporter") to file a complaint against a new gTLD Registry Operator for failure to comply with the Public Interest Commitment(s) in Specification 11 of its Registry Agreement. The Reporter must file a "PIC report" with ICANN by completing an online form. The "PIC Report" must (i) identify which PIC(s) form the basis for the report, (ii) state the grounds for non-compliance with one or more PICs and provide supporting evidence and (iii) state how the "reporter" has been harmed by the alleged noncompliance. ICANN may undertake a compliance investigation or invoke a "Standing Panel". If the Registry Operator is found to be not in compliance with its PIC, it ~~will have~~ has 30 days to resolve its noncompliance. If the Registry Operator fails to resolve the noncompliance issues, ICANN will determine the appropriate remedies.

4. **TRADEMARK CLEARINGHOUSE (TMCH)**
The Trademark Clearinghouse (TMCH) is a centralized database of verified trademarks from all over the world mandated by ICANN to provide protection to trade mark holders under the new gTLDs. The TMCH performs several important functions, including authenticating and verifying trade mark records, storing such trade mark records in a database, and providing this information to new gTLD registries and registrars. The data contained in the TMCH support~~s~~ rights protection mechanisms such as Sunrise Services ,(which provide an opportunity to trade-mark holders to register domain names corresponding to their trade marks prior to general availability), and the Trademark Claims services (a notification service to domain name registrants and trade mark holders of potentially infringing domain name registrations). Registration of a trade mark with the TMCH is required to be able to participate not only in the Sunrise Period and Trademark Claims services but also in other registry-specific rights protection mechanisms such as domain name blocking mechanisms such as Donuts' Domain Protected Marks List (DPML) (although it is optional for other RPMs, such as the URS). The TMCH is therefore an important tool to protect trade mark rights under the new gTLD program.

Description of the The Objection Processes

- String Confusion Objection

- Limited Public Internet Objection

- Community Objection

- Legal Rights Objection

SUMMARY OF OBJECTIONS

The objection process allows interested parties to object to against the introduction of certain new gTLDs into the domain name system (DNS). The aApplicants whose gTLD are had been subject to an objection have had thus three options, : either negotiate with the objector, respond to the objection, or simply withdraw its application. If an Applicant failed to respond to an objection, the objector prevailsed by default and thus the application cannot was unable to proceed to the next stage (section 3.2.4 Applicant Guide Book (AGB)).

There are fFour different types of objections that may be filed against a new gTLD prior to delegation.

1. STRING CONFUSION OBJECTION

A String Confusion Objection (SCO) is an objection raised against a gTLD string that is "confusingly similar to an existing TLD or to another applied-for gTLD string in the same round of applications", as defined in article 2(e)(i) of the New gTLD Dispute Resolution Procedure (the "Procedure"). Thus, only existing TLD operators or a gTLD applicant in the current round had standing to object to a gTLD on this ground. In order to be successful in a SCO proceeding, the objector must demonstrate that the applied-for gTLD is so similar to another existing or applied-for gTLD that "it is likely to deceive or cause confusion". Such confusion must be probable and not merely possible.

The International Centre for Dispute Resolution (ICDR) was the dispute resolution service provider (DRSP) in charge of administrating such cases in the first round of new gTLDs. Sixty-seven (67) SCOs were filed with the ICDR. As a result of a several inconsistent SCO determinations, a procedure for perceived inconsistent SCO expert determinations was implemented.

2. LIMITED PUBLIC INTEREST OBJECTION

Comments:

[3]: These descriptions are repeated in the String Confusion section written by Megan, though that paper seems to muddle string similarity and the singular vs. plural determinations with the overall objection process, which are separate items. May want to reconsider where these descriptions will reside in the paper as a whole. Are we treating objections as an RPM and thus including them in this section? Only the legal rights objection was intended to serve as an RPM.

[4]: I put this wording together coveing them all (Legal Rights Objections, Community Objections, String Confusion Objections and Limited Public Objections as in the broader context of Safeguards and Trust and Objections. The String Confusion Objections were essentially based on Trade Mark Rights, hence would seem to fit in here. Happy of course for Megan to use elsewhere or perhaps tie in the string similarity to here?

[5]: Are these a placeholder? If not, we can delete

[6]: Margie's comment

[7]: Plae holders that no longer need to be here as I put the missing text together. Thanks!

A second type of objection is the "Limited Public Interest Objection". A Limited Public Interest Objection may be raised against a gTLD that is "contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law", pursuant to article 2(e)(iii) of the Procedure. Any legal or natural person, without any further requirement, has standing to file a Limited Public Interest Objection.

The DRSP in charge of administering Limited Public Interest Objections in the first round of new gTLDs was the International Center of Expertise of the International Chamber of Commerce (ICC), which is based in Paris. Twenty-three (23) limited public interest objections were filed with the ICC in the first round of new gTLDs.

3.   COMMUNITY OBJECTION

The third type of objection is the "Community Objection". A Community Objection may be raised where there is "substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted". Only an "established institution" associated with a "clearly delineated community" may have standing to file a community objection.

To be successful in a Community Objection, the objector must prove all of the following 4 factors, as set out in section 3.5.4 of the AGB: (i) the community invoked by the objector must be a clearly delineated community; and (ii) community opposition to the application must be substantial (iii) there must be a strong association between the community invoked and the applied-for gTLD string (iv) The application must create a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted.

The ICC was also the designated DRSP to hear the one hundred and four (104) Community Objections filed in the first round of new gTLDs.

4.   LEGAL RIGHTS OBJECTION

Finally, the fourth type of objection is the Legal Rights Objection (LRO), which may be raised against a gTLD that potentially infringes the Objector's registered or unregistered trade mark rights. Thus, only rights holders have standing to file an LRO.

To be successful in an LRO proceeding, the Objector must demonstrate that the potential use of the applied-for gTLD by the Applicant: (i) takes unfair advantage of the distinctive character or the reputation of the Objector's registered or unregistered trade mark or service mark ("mark"), and/or(ii) unjustifiably impairs the distinctive character or the reputation of the Objector's mark, and/or (iii) otherwise creates an impermissible likelihood of confusion between the applied-for gTLD and the Objector's mark.

In assessing these standards, the Panel may consider a series of non-exclusive factors provided in Section 3.5.2 of the AGB, including the following:

1.   Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound, or meaning, to the objector's existing mark.

2.   Whether the objector's acquisition and use of rights in the mark has been bona fide.

3.   Whether and to what extent there is recognition in the relevant sector of the public of the sign corresponding to the gTLD, as the mark of the objector, of the applicant or of a third party.

4.   Applicant's intent in applying for the gTLD, including whether the applicant, at the time of application for the gTLD, had knowledge of the objector's mark, or could not have reasonably been unaware of that mark, and including whether the applicant has engaged in a pattern of conduct whereby it applied for or operates TLDs or registrations in TLDs which are identical or confusingly similar to the marks of others.

5.   Whether and to what extent the applicant [respondent] has used, or has made demonstrable preparations to use, the sign corresponding to the gTLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise by the objector of its mark rights.

6.   Whether the applicant has marks or other intellectual property rights in the sign corresponding to the gTLD, and, if so, whether any acquisition of such a right in the sign, and use of the sign, has been bona fide, and whether the purported or likely use of the gTLD by the applicant is consistent with such acquisition or use.

7.   Whether and to what extent the applicant has been commonly known by the sign corresponding to the gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide.

8.   Whether the applicant's intended use of the gTLD would create a likelihood of confusion with the objector's mark as to the source, sponsorship, affiliation, or endorsement of the gTLD.

However, some factors may be more relevant than others depending on the circumstances of the case at hand.

The DRSP for LROs was the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center. Sixty-nine (69) LROs were filed before WIPO in the first round of new gTLDs.