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March 20, 2012

Mr. Rod Beckstrom
Internet Corporation for Assigned
Names and Numbers (ICANN)
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601

Submitted via: newgtlds-defensive-applications@icann.org

Re: Intellectual Property Owners Association Comments Regarding Comments on Defensive Applications for New gTLDs

Dear Mr. Beckstrom,

Intellectual Property Owners Association (IPO) appreciates this opportunity to address the Comments posted in response to the request by ICANN for comments concerning the possible adoption of enhanced protections for trademark owners in the new generic top level domain names (gTLD) program, in view of the perceived need for "defensive" gTLD applications at the top level. As stated in our initial comments, IPO is a trade association, based in the United States, representing companies and individuals in all industries and fields of technology who own or are interested in intellectual property rights. IPO's membership includes more than 200 companies, and over 12,000 individuals who are involved in the association either through their companies or law firms or as IPO individual members. Our members hold trademarks around the world. As such, IPO has a significant interest in the new gTLD introduction generally and, more specifically, the rules, requirements, and processes of applying for new gTLDs.

IPO notes that numerous initial comments supported the concept of a "Do Not Sell" list, also referred to as a "do not register" list, a "blocking" list, and a "white list," in various forms as put forth and supported by Verizon, GAP, AT&T, the Business Constituency, the Coalition for Responsible Domain Name Oversight (CRIDO), the National Cable & Telecommunications Association (NCTA), the Association of National Advertisers (ANA), and the American Intellectual Property Law Association (AIPLA). IPO supports a Do Not Sell list at the top level as proposed by ANA and CRIDO. This concept appears to have wide backing among rights holders who stand to suffer the greatest damage from the new gTLD program. However, any Do Not Sell list proposal adopted by ICANN should have a mechanism to discourage cybersquatters from registering domains on the Do Not Sell list. One possibility, as was suggested by ANA, is a mechanism by which the Do Not Sell registrant would, within 30 days of a naming conflict, bear the burden of demonstrating legal rights to the mark in question.

An alternative could be a requirement that the Do Not Sell registrant provide such evidence at the time of registration.

IPO further notes that several comments, including those of the International Trademark Association (INTA), the Intellectual Property Constituency (IPC), AIPLA, NCTA, Microsoft and Yahoo! support the concept of offering new gTLD applicants the ability to obtain a full or more significant refund than what is currently contained in the Applicant Guidebook. Some encouraged a full refund (INTA, AIPLA, NCTA and IPC) and Microsoft encouraged a more generous \$162,000 refund than what is currently offered. The timing of a decision to seek the refund ranged from shortly after the list of new gTLD applications is announced (INTA, AIPLA, Microsoft and IPC) to the end of the Initial Evaluation Period (NCTA), with the AIPLA suggesting that applicants be able to submit incomplete applications that could be completed or withdrawn within 6 months. IPO supports the concept of a full refund within a reasonable time after the initial list of new gTLD applications is released.

A number of comments, including those by AT&T, Yahoo!, INTA, IPC, and MARQUES, suggested that ICANN should consider batching new gTLD applications to allow applications for strings with the most serious concerns to be batched later in the process, thereby allowing ICANN to test the Rights Protection Mechanisms (RPMs) before registering the gTLDs that have the highest incidence of abuse. Verizon also mentioned the idea of a limited beta test to allow ICANN to test the operational aspects of expanding the new gTLD system and to measure the volume of cybersquatting, fraud and abuse, along with the effectiveness of the proposed RPMs, suggesting perhaps 30 new gTLDs to be allowed in such a test. IPO supports the concept of batching in order to reduce the damage to rights holders by the rollout of the new gTLDs.

Many comments impliedly addressed the need for ICANN to announce a second round for new gTLD applications, as the current uncertainty is forcing some businesses to file defensive applications or to apply sooner than they would like to avoid being left out of the process (e.g., see comments by AIPLA and INTA). The Coalition Against Domain Names Abuse (CADNA) explicitly urges ICANN to formally initiate a policy development process to determine when the next round of new gTLD applications will occur. CADNA states that a transparent timeline would give business and organizations greater flexibility and strategic planning ability. IPO believes strongly that ICANN should be obligated to hold a second round in the near future, particularly if the Do Not Sell list is not adopted. However, we urge ICANN not to construe this position as tacit approval of the new gTLD program in its current form. As IPO has pointed out in its numerous comments and communications over the past two years, the new gTLD program must be revised to include more substantial RPMs for brand owners at both the top level and the second level, and such RPMs must be implemented as efficiently as possible – certainly prior to a second round application phase.

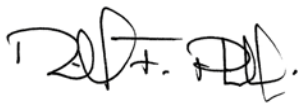
INTELLECTUAL PROPERTY OWNERS ASSOCIATION

Some commentators in the initial comment round addressed the difficulties rights owners will encounter in the second level domains in the new gTLDs. Although IPO is currently restricting its comments to the top level domains, IPO strongly believes that second level domain difficulties deserve separate treatment and attention in the months ahead, once the new gTLD concerns have been addressed.

For the foregoing reasons, IPO urges ICANN to take, at a minimum, the steps discussed above in order to minimize the damage that intellectual property rights holders will suffer as a result of the new gTLD program.

We thank ICANN for this opportunity to provide the foregoing comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Phillips', written in a cursive style.

Richard Phillips
President