

September 24, 2010

The Intellectual Property Constituency (IPC) is pleased to respond to the request for public comment on the proposed ICM Registry Policy (“Policy”).

Introductory Comments

At the outset, we applaud the initiative taken in this initial proposed ICM Registry Policy. We find it to be a good start, and commend a strong commitment to rights protection mechanisms in the new registry (although we also expect no less, given the unique issues associated with the proposed .xxx registry). Our principal, general concern stems from the lack of specificity detailed in the proposed Policy.

Many aspects of the proposed Policy must naturally be fleshed out with the necessary detail and transparency to allow for a complete understanding of the implementation and application of the proposed Policy as a way to prevent abusive registrations. Given the nature of this new extension, there are uniquely sensitive implications for trademark owners. Accordingly, the final Policy to prevent abusive registration of .xxx domain names must recognize and address the sensitivity and real world implications for trademark owners and consumers.

As this issue is of significant interest to IPC, we look forward to the Policy being revised to provide the necessary specificity to understand the procedures that will be applied to implement the Policy’s stated goals, and naturally reserve final judgment based on how the general policy promises will be fleshed out.

Particular Areas for Further Specificity

In accordance with the comments above the following lists some of the areas in which we believe further detail is necessary and warranted:

- In the case of abusive domain name registrations, how will the Policy treat domain names recovered by successful complainants under the ICANN UDRP, if the complainant does not otherwise meet the eligibility requirements under .xxx?
- The meaning of and criteria for restricting proxy service providers to those that “have demonstrated responsible and responsive business practices.” (Paragraphs 1-6 of the Proposed Policy.)
- What components will be included in the “Charter Eligibility Dispute Resolution Procedure (CEDRP)” (Paragraph 8)
- Is the CEDRP the process proposed to combat abusive registrations in Section 10, and the mechanism through which ICM would use the “Rapid Takedown” and/or “Registrant Disqualification” proposed in Sections 11 and 12?
- The nature of the “‘tie-breaker’ mechanism” to resolve disputes among parties having competing, valid pre-reservations and the “special mechanism” that will be in place to resolve conflicts between reservations for competing reservations. (Paragraph 9)
- What constitutes a “trademark holder” so as to be able to enjoy access to “long term” ... “deeply discounted registration,” such as whether common law rights holders can qualify. (Paragraph 9.)

- The system for making lapsed non-resolving domain names available to those who submitted pre-reservations. (How long does this privilege last, and what if the party is no longer part of the Sponsored Community?)
- The STOP Process (such as how much notice will be provided to claimants, who will arbitrate competing claims, and whether the will process be similar (or even identical) to STOP processes already approved (and/or proven) for other registries).
- The definition of “*culturally significant names*” or “*country and geographic designators reserved list*” in connection with “abusive registration” in Paragraph 10, and how they relate to trademark rights.
- The Rapid Takedown process (the rules to be applied, what would be required in a “short and simple statement of a claim,” and who will be the service provider(s)).
- Paragraph 12’s “Registrant disqualification” system (When a registrant would be considered a repetitive infringer; How long the infringer would be disqualified from registering .xxx domains; Whether this disqualification would affect other domains by the same registrant.)

Thus, while we find this initial proposed ICM Registry Policy to be a good start, IPC encourages the Policy’s drafters to add the detail necessary to make the Policy clear and effective not only for intellectual property owners but for all users.

Thank you for considering our views on these important issues. The IPC looks forward to assisting the ICM Registry in revising its Policy to address the concerns raised in our submission.