

Comments of the Internet Committee of the International Trademark Association (INTA) on Proposed ICANN Process for Handling Requests for Removal of Cross-Ownership Restrictions for Existing gTLDs

June 1, 2011

The Internet Committee of the International Trademark Association is pleased to provide its comments to the Internet Corporation for Assigned Names and Numbers (“ICANN”) on the proposed process for existing gTLD registry operators to transition to the new form of Registry Agreement (“Proposed New Registry gTLD Agreement”) or to request an amendment to their Registry Agreement to remove the cross-ownership restrictions.¹

As a preliminary matter, this call for comments is premature. The Proposed New gTLD Registry Agreement is not in final form. ICANN should either (i) extend this comment period until thirty days following finalization of any Proposed New gTLD Registry Agreement, or (ii) initiate a new public comment period after the Proposed New gTLD Registry Agreement is finalized.

We believe that it will be in the public interest for existing gTLD operators to transition to the Proposed New gTLD Registry Agreement. The Proposed New gTLD Registry Agreement, while imperfect in its present form, represents an improvement over current registry agreements in terms of ICANN’s efforts to fulfill the transparency and accountability requirements of the Affirmation of Commitments. Additionally, the rights protection mechanisms contained in the Proposed New gTLD Registry Agreement, while not sufficient, represents an attempt by the ICANN community to protect consumers from confusion by addressing the systematic brand abuse currently driving inappropriate monetization of the Domain Name System.

If, however, ICANN decides instead to allow existing gTLD registry operators to amend their Registry Agreement to remove the cross-ownership restrictions, it is imperative that removal of cross-ownership restrictions be contingent on additional amendments. Amended Registry Agreements should conform as closely as possible to the Proposed New gTLD Registry Agreement and at a minimum, further amendments must include: (i) the Registry Code of Conduct (as finalized

¹ <http://www.icann.org/en/announcements/announcement-02may11-en.htm>

in the Proposed New gTLD Registry Agreement); (ii) thick Whois (to the extent not already applicable); and (iii) the text of Section 2.8 of the final Proposed New gTLD Registry Agreement (concerning rights protection mechanisms) and paragraphs 1 and 3 of the Specification 7 referenced therein. With regard to this last amendment, compliance with the PDDRP, RDDRP, and URS should apply to, and consent to them should be required in the registration agreements for, all new second-level registrations and all second-level registrations renewed on or after the effective date of the amendment of the existing gTLD registry amendment. Given that ICANN itself identified trademarks and rights protection mechanisms as one of four overarching issues needing to be addressed before the rollout of new gTLDs could begin, allowing registries to remove the cross ownership prohibition without the additional safeguards provided through these amendments would be reckless and contrary to the public interest.

Requiring these additional amendments is consistent with the stated goals of both a requesting Registry Operator (Neustar) and the Board in the rationale for its Resolution 2011.04.21.13, namely “to ensure that [operators of both new and existing gTLDs are] able to compete on a level playing field.” Without these additional amendments, the playing field will not be level. To the contrary, existing gTLD operators would have the competitive advantage of being freed from cross-ownership restrictions without the obligation to comply with additional responsibilities of new gTLD registry operators.

Thank you for considering our views on these important issues. Should you have any questions regarding our submission, please contact INTA External Relations Manager, Claudio DiGangi at: cdigangi@inta.org.

About the INTA Internet Committee

The International Trademark Association (INTA) is a 131-year-old global organization with members in over 190 countries. One of INTA’s key goals is the promotion and protection of trademarks as a primary means for consumers to make informed choices regarding the products and services they purchase. During the last decade, INTA has served as a leading voice for trademark owners in the development of cyberspace, including as a founding member of ICANN’s Intellectual Property Constituency (IPC).

INTA’s Internet Committee is a group of over two hundred trademark owners and professionals from around the world charged with evaluating treaties, laws, regulations and procedures relating to domain name assignment, use of trademarks on the Internet, and unfair competition on the Internet, and to develop and advocate policies to advance the balanced protection of trademarks on the Internet.