

News Corporation
Comments on the Proposed Final Applicant Guidebook
for new gTLDs
Submitted: December 9, 2010

Introduction

News Corporation appreciates the on-going opportunities to comment on the policy development process relating to new gTLDs.

News Corporation is a global media company headquartered in the United States. Its wholly-owned subsidiaries include Twentieth Century Fox, HarperCollins, Dow Jones, Fox Cable Networks, News International, News Limited, and Sky Italia. News Corporation companies own and promote their offerings (e.g. films, audio/visual programming, books, newspapers, etc.) under numerous globally recognized and famous trademarks, such as Fox, 20th Century Fox, FX, Fox News, The Wall Street Journal, Barron's, HarperCollins, New York Post, The Times, The Sunday Times, The Sun, and News of the World. News Corporation companies actively engage in the advertising, marketing, promotion, distribution and/or sale of their respective offerings via the Internet and invest substantial human and financial resources in the development, protection, and enforcement of their respective brands and related offerings on a worldwide basis in an effort to defend and enhance their valuable intellectual property rights and protect consumers from confusion and fraud.

This new draft of the applicant guidebook, formally referenced as the "proposed final applicant guidebook" (DAG), is improved from the last draft; however, it still falls short of addressing the overarching issues that we and other stakeholders have repeatedly raised in prior comment periods.

Lack of Transparency and Accountability

The lack of explanation about how and why ICANN selectively incorporated input from the many stakeholders who filed comments on the previous version of the DAG makes reviewing and commenting on this DAG challenging and time consuming, particularly under the tightest timeframe to date. We do not feel like our voice, or that of other stakeholders, has been heard or acknowledged in the policy development process for the implementation of new gTLDs. We call on ICANN to provide such explanations as agreed to in the *Affirmation of Commitments*.

Outstanding Overarching Issues

In all of our prior comments, we have stressed that protection of intellectual property (IP) is essential to the successful introduction of new gTLDs. Concerns remain --and are growing stronger-- regarding not just the weak rights protection mechanisms (RPMs) but also the lack of efficiency of the Uniform Rapid Suspension System (URS) as outlined in this DAG.

The just released "Economic Considerations in the Expansion of Generic Top-Level Domain Names, Phase II Case Studies" (Phase II report) clearly states that "new gTLDs will trigger defensive registrations and impose associated costs on trademark owners." The Phase II report ultimately finds that, "[t]here is value in giving trademark holders the ability to block the use of trademarked terms beyond a sunrise period. ... Hence the problem is not remedied simply by letting trademark holders have a right of first refusal during a start-up registration period." This Phase II analysis supports the advice previously recommended by the IP community, including the Implementation Recommendation Team, that there should be a low-cost, permanent mechanism to protect brands.

The URS, other than a reduction of days from 20 to 14 for responses, is still an ineffective mechanism for trademark owners to challenge abusive domain name registrations. The reformulated URS still imposes upon brand-owners a higher burden of proof and time consuming process for the temporary fix of suspension (not transfer) of an abusive domain name registration. We stress again that the URS should be amended to follow the IRT recommendations, and that it should be in addition to (not instead of) the current Uniform Domain Name Dispute Resolution policy (UDRP).

Without adequate RPMs and an expedited dispute resolution mechanism, ICANN runs a very serious risk of inadvertently compounding opportunities for malicious conduct, and thereby tarnishing user trust in the Internet. This argument alone, which is inextricably linked to the protection of Internet users, should drive ICANN to ensure that necessary RPMs and effective dispute resolution mechanisms are employed.

Economic Analyses

Our prior comments supported the recommendation of the first economic analysis, “An Economic Framework for the Analysis of the Expansion of Generic Top-Level Domain Names.” We particularly supported the recommendation for case studies on past introductions of new gTLDs as well as the conclusion to continue the “practice of introducing new gTLDs in discrete, limited rounds” and “adopt practices that will facilitate the assessment of the net benefits from the initial rollout of additional gTLDs.” We truly believe that a phased rollout would allow ICANN and the multi-stakeholder community to make informed decisions regarding the implementation of procedures, compliance, and enforcement to assure brand-owners and the public that the DNS is safe and secure.

We welcome the publication of Phase II of the economic study. While we would have preferred more time to review it prior to submitting comments on this DAG, we believe that it provides some valuable insight that supports positions that brand-owners have advocated throughout the new gTLD process. ICANN should take these recommendations under advisement and resolve the important outstanding issues prior to the introduction of new gTLDs.

While the Phase II report recognizes that the launch of new gTLDs will create new costs for brand-owners, it does not analyze or even estimate these costs. Therefore, it is impossible to draw firm conclusions on how new gTLDs will impact brand-owners and the public –which brings us back to the need to follow the advice of the first economic study to introduce discrete, limited rounds, or the similar advice of the Government Advisory Committee for a pilot program.

The Phase II report also reviews the trademark protection practices applied by different gTLDs (.info, .biz, .mobi, .name) and concludes from those case studies that the four different mechanisms used had varying degrees of success. This is the case and point that ICANN needs to have more robust RPMs than just the pre-launch Sunrise or Trademark Claims Services, and more effective dispute resolution mechanisms.

Conclusion

Again, we appreciate the opportunity to comment on the new gTLD process and remain willing to work with ICANN to address outstanding overarching issues. Protecting our brands is essential to the vitality of our business and to protecting our customers from confusion and fraud. Many members of the IP community have continuing concerns with the DAG and ICANN’s plans to introduce new gTLDs. We urge ICANN to respond to these concerns, which have been made throughout this process, with meaningful rights protection mechanisms consistent with the IRT recommendations prior to introducing new gTLDs. This will also allow ICANN to fully consider the Phase II report and seek the necessary additional information to make sound policy based on sound evidence. Thank you.