



November 20, 2008

INTA Internet Committee Comments on Draft AGP Limits Policy and Draft Implementation Plan

The Internet Committee of the International Trademark Association (INTA) is pleased to provide the following comments on the Draft AGP Limits Policy and Draft Implementation Plan (the "Plan").

While INTA is pleased that there has been a recent 84% decrease in the number of domain names deleted before the end of the five-day grace period, INTA cautions that this alone is not at all conclusive proof of the cessation of domain name tasting. Preliminary data from VeriSign's July 2008 registry report suggests that two registrar groups account for about 65% of remaining deletes in the add grace period in .com. This suggests that the tasting of higher-value domain names (many of which likely include registered trademarks) continues. As a result, ICANN must work rapidly to implement the new consensus policy restricting the applicability of the add grace period, which carries a much higher financial penalty for engaging in domain name tasting compared to the recently adopted FY2009 budget provision.

1. The Plan should define more precisely what is meant by "extraordinary circumstances" and the level of detail required to be provided to the Operator. For example, non-payment by a Registrant should not be considered an "extraordinary circumstance." Beyond the already-generous 10% cap, the risk of non-payment is a business risk that appropriately rests with the Registrar, who should not be able to transfer that risk to an Operator by seeking a refund, and who is in the best position to adopt business practices to ensure that non-payment is not systematically employed to circumvent the AGP Limits Policy. Also, in identifying the "extraordinary circumstances," a Registrar should be required to disclose whether it previously sought an exception based on those extraordinary circumstances and to describe the basis for such past requests. If the answer is yes, the Registrar should explain why it was not possible to prevent the recurrence of same.
2. The details of the "extraordinary circumstance" should be made public through the monthly report.
3. The term "reoccur regularly" should be defined. In our view a reasonable definition would be to limit the use of an "extraordinary circumstance" to no more than once in a given year.
4. The Plan should set a limit to the cumulative number of claims based on "extraordinary circumstances" a Registrar can submit in a given year, even if each claim is based on different circumstances. If the cap on claims is exceeded, there should be a presumption that the claims are not based on extraordinary circumstances.

5. If the Registrar is relying on the conduct of a registrant as a justification for “extraordinary circumstances,” the Registrar should disclose any relationship between the Registrar and the registrant, and there should be a prohibition against a refund where there is a corporate or other close relationship.
6. There should be a positive obligation on Registrars to use best efforts to minimize the occurrence of any “extraordinary circumstances.” This should include taking appropriate steps to ensure that its system prevents multiplicity of refund applications from the same registrant. The failure to take such positive steps would be a basis to conclude that further requests based on the same or a similar issue are not “extraordinary.”
7. The handling of requests should be transparent. Information as to requests made, the number of registrations involved, the identity of the person making the request, and the determination of whether a showing of exceptional circumstance was made or not made, and the basis for such determination, should be publicly disclosed preferably through the Registry Operator monthly report to ICANN.

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

INTA (<http://www.inta.org>) is a not-for-profit membership association of more than 5,800 trademark owners, from more than 190 countries, dedicated to the support and advancement of trademarks and related intellectual property as elements of fair and effective national and international commerce. INTA has served as the leading voice for trademark owners in the development of cyberspace, including as a founding member of the GNSO Intellectual Property Constituency (IPC) of ICANN.