

**INTA Internet Committee Reply Comments on Implementing Rights Protection  
Mechanisms in the Name Collision Mitigation Framework  
October 7, 2014**

The Internet Committee of the International Trademark Association (INTA) writes to reiterate its support for the considered and balanced proposal for addressing the release of block-listed second-level domain names (SLDs) that has been jointly offered by the Registry Stakeholder Group (RySG), the Business Constituency (BC), and the Intellectual Property Constituency (IPC) (the “Consensus Proposal”). As it was outlined in the July 17, 2014 joint RySG/BC/IPC letter to the New gTLD Program Committee (NGPC), and in the September 16, 2014 joint RySG/BC/IPC comment, the Consensus Proposal deftly balances the operational concerns of registries with the insistence by INTA and others that the process for releasing SLDs from name collision blocklists comply with all previously negotiated rights-protection mechanisms (RPMs). Specifically, the Consensus Proposal adequately addresses the main concern that INTA outlined in its July 18th letter to the NGPC and its September 12, 2014 comment: namely, that all block-listed SLDs not available for allocation during an original Sunrise period be subject upon release to a period of exclusive registration for trademark holders. The Consensus Proposal addresses this concern by including specific implementation details in response to the questions raised by the August 25, 2014 ICANN Staff Paper. INTA agrees with the Consensus Proposal’s answers to those questions, and urges ICANN to adopt the Consensus Proposal in whatever name collision framework it ultimately adopts.

The Consensus Proposal illustrates that ICANN’s multi-stakeholder model can work well to forge collective solutions to shared problems as demonstrated by the number of other organizations which have supported the Consensus Proposal.<sup>1</sup> Even the lone dissent to the Consensus Proposal, submitted by ARI Registry Services (ARI),<sup>2</sup> does not as much challenge the proposal on its substance as it instead seeks to discredit the proposal as “yet another attempt by certain sectors of the community to re-open old issues . . .” ARI rests its “no-second-bites-at-the-apple” argument on the premise that “[t]he reservation of names on the SLD Block List does not present a significantly new set of circumstances incapable of being addressed by the current requirements.”

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<sup>1</sup> See: <http://forum.icann.org/lists/comments-name-collision-rpm-25aug14/pdfUIf4hL55rE.pdf> , <http://forum.icann.org/lists/comments-name-collision-rpm-25aug14/pdf1q6SW16P9u.pdf> , and <http://forum.icann.org/lists/comments-name-collision-rpm-25aug14/pdf6UEhFyWzvR.pdf> .

<sup>2</sup> See: <http://forum.icann.org/lists/comments-name-collision-rpm-25aug14/msg00004.html> .

We must point out that ARI’s “nothing new” premise is deeply flawed. While the RPMs were subject to considerable community input and comment, there was absolutely no discussion or anticipation at that time that the name collision issue would have any impact on the agreed-upon mechanisms.<sup>3</sup> Indeed, the RPMs were drafted and negotiated prior to the publication of the “phase one” draft report of the study by JAS Global Advisors to develop a Name Collision Occurrence Management Framework. Thus, as the issue of releasing block lists consisting of trademarked names is indeed entirely new, i.e. arising *after* the publication of the RPMs, the current discussion and consideration by the ICANN community is absolutely necessary<sup>4</sup>.

The RySG, BC, and IPC all agree with this viewpoint. Moreover, it is not even clear that ARI disagrees with this point of view. In fact, a year ago, ARI’s comments instead called the New gTLD Collision Occurrence Management Plan “a dog’s breakfast” and lamented that: “The actions and processes discussed in the document are completely new.”<sup>5</sup> ARI’s assertion was right then but is wrong now, and to the extent that its criticism of the Consensus Proposal rests on its more recent argument to the contrary, it must be discounted.

As INTA noted in its July 18, 2014 letter to the NGPC, each RPM is part of a “tapestry” of interrelated and interdependent solutions that were negotiated under certain assumptions as to how the new gTLD program would unfold. Adjusting that tapestry to account for unforeseen events – such as the release of SLDs from name collision blocklists – is not easy. The Consensus Proposal’s ability to make such adjustments while simultaneously balancing registries’ operational concerns is laudable. Accordingly, INTA urges ICANN to adopt the Consensus Proposal including the implementation recommendations that are in response to the questions raised by the August 25, 2014 ICANN Staff Paper.

### **About INTA and the Internet Committee**

INTA is a 136 year-old global not for profit association with more than 5,700 member organizations from over 190 countries. One of INTA’s goals is the promotion and protection of trademarks as a primary means for consumers to make informed choices regarding the products

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<sup>3</sup> See summary of public comments: <https://www.icann.org/en/system/files/files/report-comments-rpm-requirements-30sep13-en.pdf>.

<sup>4</sup> See: <http://forum.icann.org/lists/comments-name-collision-rpm-25aug14/pdfloLb5eK2Pz.pdf> (noting that “[n]ame collision block lists were not contemplated when the RPMs were developed . . .”).

<sup>5</sup> See: <http://domainincite.com/14667-dotshabaka-diary-day-17-collisions-plan-is-a-dogs-breakfast>.

and services they purchase. During the last decade, INTA has also been the leading voice of trademark owners within the Internet community, serving as a founding member of the Intellectual Property Constituency of the Internet Corporation for Assigned Names and Numbers (ICANN).

INTA's Internet Committee is a group of over 200 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, whose mission is to advance the balanced protection of trademarks on the Internet.