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Submitted to: comments-tel-renewal-04aug16@icann.org

September 13, 2016

Ms. Krista Papac
Director, gTLD Registry Services
ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Re: Proposed Renewal of .TEL Registry Agreement

Dear Ms. Papac:

The International Trademark Association (INTA) appreciates this opportunity to comment on the proposed agreement for renewal of the 2006 Registry Agreement for .TEL which is the result of bilateral negotiations between ICANN and Telnic Limited.¹ As INTA has noted in previous comments, its interest in domain-name-related matters is informed by its mission as an association “dedicated to supporting trademarks in order to protect consumers and to promote fair and effective commerce.”² In support of that mission, INTA and its members rely on various provisions in the new gTLD Registry Agreement (the “New RA”)³ that protect consumers and, by extension, protect brand owners’ goodwill and reputation. INTA agrees with ICANN that the New RA has important “technical and operational advantages” and “benefits to registrants and the Internet community”⁴ over earlier, outdated versions. INTA supports ICANN’s efforts at bilateral negotiations with legacy gTLD registries in order to transition, to the extent feasible, to the New RA.⁵

INTA is encouraged that the starting point for the negotiations between ICANN and Telnic Limited was “based on” the New RA.⁶ Notably, there are parts of the New RA that are simply inapposite for a legacy gTLD like .TEL. For example, it is logical that the .TEL registry agreement would exclude those provisions from the New RA that cover the Trademark Clearing House (TMCH) or Registry Restriction Dispute Resolution Procedure (RRDRP),⁷ given that both were developed for as-yet-to-be-launched gTLDs. They are simply not relevant for a gTLD that has been in operation since 2006. That distinction does not hold equally true for other provisions from the New RA such

¹ <https://www.icann.org/public-comments/tel-renewal-2016-08-04-en>.

² <http://www.inta.org/About/Pages/Overview.aspx>.

³ <https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-09jan14-en.pdf>.

⁴ <https://www.icann.org/resources/board-material/resolutions-2015-09-28-en#1.c>.

⁵ <https://forum.icann.org/lists/comments-com-amendment-30jun16/pdfvu531nAPPu.pdf>.

⁶ <https://www.icann.org/public-comments/tel-renewal-2016-08-04-en>.

⁷ <https://www.icann.org/sites/default/files/tlds/tel/tel-proposed-renewal-addendum-04aug16-en.pdf>.

as the URS from Specification 7 § 2(b), or the Public Interest Commitments (PICs) from Specification 11 §§ 3(a) and (b). These provisions are as beneficial for protecting consumers in legacy gTLDs as they are in new gTLDs. INTA supports the inclusion of these new consumer protection tools as they preserve the security, stability and resiliency of the DNS.

Moreover, while the URS and Spec. 11 PICs carry important substantive benefits in their own right, within the context of renewal of a registry agreement for a legacy gTLD they carry an added procedural benefit: consistency. As ICANN has noted, “Transition to the new gTLD Registry Agreement will provide consistency across all registries leading to a more predictable environment for end-users”⁸ ICANN has supported this commitment to consistency by bilaterally negotiating for transition to parts of the New RA not only with .TE but with other legacy gTLDs like .CAT, .PRO, and .TRAVEL.⁹ Transition to the new RA requirements will take some time as the legacy gTLD registry agreements cycle through their respective renewals. Nonetheless, the march of progress with respect to ICANN’s negotiations with those various legacy gTLD registry operators has been steady and INTA hopes that it will continue.

There has been one notable exception to ICANN’s progress in incorporating new consumer protection tools into legacy TLD agreements and that is with the .COM registry agreement with Verisign. ICANN has recently proposed to mechanically extend the .COM RA until 2024 without any apparent effort to negotiate to modifications to Verisign’s terms comparable to the updates negotiated for .CAT, .PRO, .TRAVEL and, now, .TEL. INTA has already outlined its concerns on the specifics of the .COM proposed renewal.¹⁰ Rather than restating those points here,¹¹ INTA wishes to highlight ICANN’s treatment of .COM in the broader context and to emphasize that .COM has become even more of an exception. Along with INTA, other members of the multi-stakeholder community have commented on ICANN’s “disparate treatment” of .COM and have found it “puzzling” and “mystifying.”¹²

It seems that the scale and market position of .COM would justify inclusion of new consumer protection tools in any new agreement with Verisign as the broadest range of end users would enjoy such protections. As of 2015, the .TEL registry included ~129,000 domain names.¹³ By contrast, as of the most recent release of public figures, there are ~126.6 million .COM domains.¹⁴

⁸ <https://www.icann.org/resources/board-material/resolutions-2015-09-28-en#1.c>.

⁹ <https://www.icann.org/resources/board-material/resolutions-2015-09-28-en#1.c>.

¹⁰ <https://forum.icann.org/lists/comments-com-amendment-30jun16/pdfvu531nAPPu.pdf>.

¹¹ INTA will however use this opportunity to respond to one criticism leveled against its comment on the proposed .COM renewal: namely, that INTA’s position somehow seeks to short-circuit the ongoing work of the Working Group examining all Rights Protection Mechanisms by advocating that RPMs like the URS be made mandatory for .COM. See <https://forum.icann.org/lists/comments-com-amendment-30jun16/pdfOSkGeToqeq.pdf> and <http://domainincite.com/20868-industry-lays-into-verisign-over-com-deal-renewal#comment-404317>. The criticisms do not accurately reflect INTA’s position. INTA does not advocate that RPMs like the URS should be made mandatory for .COM or other legacy gTLDs. To the contrary, INTA’s comment on .COM acknowledges that any adoption of the new RPM’s should be based on the bi-lateral negotiation process. INTA understands that none of the new consumer protections are mandatory for legacy TLDs and that they can only be agreed upon through good faith negotiations. INTA is asking ICANN and Verisign to negotiate in good faith to incorporate as many consumer protections as reasonably possible.

¹² <https://forum.icann.org/lists/comments-com-amendment-30jun16/pdfPZlfnIGTd2.pdf>.

¹³ <https://icannwiki.com/tel>.

¹⁴ http://files.shareholder.com/downloads/VRSN/2438741956x0x888759/DD42B092-41BE-4AED-AF2D-7A1124453CDC/Q1-2016_Earnings_Slides_-_Final.pdf. Note: this figure includes those .com domain names that are

The .COM registry is almost 1000 times larger than .TEL and it is not employing the updated best practices for registries. This disparity causes deep concern for INTA members and we ask ICANN to reconsider its position on this matter and open bi-lateral negotiations with Verisign.

As a final point, INTA incorporates its comments submitted November 10, 2007 concerning the revised proposals from Telnic for modification of its registry contract with ICANN with regard to Whois data (see <http://forum.icann.org/lists/telnic-whois-proposal/msg00009.html>). In the 2007 joint comment with the Coalition for Online Accountability (COA), INTA stated,

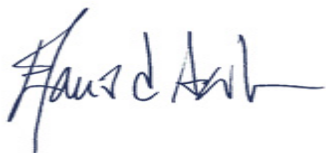
“the approval of any such modification [of Whois obligations] should be conditioned upon Telnic’s continued adherence to its stated plan of storing only NAPTR records in the DNS for its registry. If in the future it changes course and adopts a new business model, under which the registry is no longer exclusively devoted to the presentation of contact information to the public in the form of NAPTR records, it should be required to notify ICANN, so that any modification allowed to the registry contract with regard to Whois can be automatically terminated, or at least subject to immediate review and reconsideration.”

It appears that the unique conditions that could have justified a relaxation of Whois obligations in 2007 no longer apply since .TEL no longer follows the “unique business plan”. Therefore, any Whois modifications should be reviewed and considered in light of .TEL’s revised business model. Submitted to: comments-gtld-marketplace-health-beta-19jul16@icann.org

About INTA: INTA is a 137 year-old global not for profit association with more than 6,400 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 and services they purchase. 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 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.

Should you have any questions about our comments, I invite you to contact Lori Schulman, INTA’s Senior Director of Internet Policy at 202-261-6588 or at lschulman@inta.org.

Sincerely,



Etienne Sanz de Acedo
Chief Executive Officer

in the active zone, plus those that are registered but not configured for use, plus those that are in a client or server hold status.