



**PHILIP MORRIS**  
**INTERNATIONAL MANAGEMENT S.A.**

TRADEMARK PRACTICE  
AVENUE DE RIODANIE 50 CASE POSTALE 1171 1001 LAUSANNE SWITZERLAND TELEPHONE +41-58 242 0000 FAX +41-58 242 0101

27 January 2010

To: Internet Corporation for Assigned Names and Numbers  
Kurt Pritz, Senior Vice President, Services  
Marina del Rey, CA, USA  
4676 Admiralty Way, Suite 330  
Marina del Rey, CA 90292-6601  
USA

Dear Mr. Pritz,

On December 18<sup>th</sup>, 2009 the Internet Corporation for Assigned Names and Numbers (ICANN) requested comments on the Draft Expressions of Interest/Pre-Registrations Model for new generic top-level domains ("Draft EOI Model"). Public comment to this initiative is due by January 27<sup>th</sup>, 2010.

Philip Morris International, Inc ("PMI") appreciates ICANN's inclusion of public comment in its further consideration of the Draft EOI Model and takes this opportunity to express its comments. PMI is the leading international tobacco company, with products sold in approximately 160 countries. We own a large portfolio of brands. We have the industry's strongest and most diverse brand portfolio, led by Marlboro, the world's number one selling brand, and L&M, the fourth most popular brand. This portfolio includes a variety of blends and styles, across 150 distinct brands and over 1,900 variants, and includes Marlboro, L&M, Chesterfield, Bond Street, Philip Morris, Parliament, A Mild, Lark, Morven Gold, Next, Dji Sam Soe, Diana, Optima, Sampoerna Hijau, Muratti, Virginia Slims, Merit, Red & White, Apollo-Soyuz, Delicados, Boston, Multifilter, Longbeach, SG, and Peter Jackson.

**Draft EOI Model**

According to the Draft EOI Model, entities interested in participating in the first round of the new generic top-level domain ("gTLD") program are required to submit basic information about the participating entity and requested gTLD in an Expression of Interest ("EOI").

Notably, the Draft EOI Model is proposed at a time of substantial uncertainty regarding the process for such new gTLDs. In particular, ICANN has indicated that there will be subsequent changes to the Draft Applicant Guidebook & Proposed Processes ("Draft Applicant Guidebook"). Despite this uncertainty, EOIs are proposed as mandatory in order to subsequently submit a gTLD application in the first round of the to-be established program. Other characteristics of this mandatory EOI include:

- A deposit of USD 55,000 must accompany the EOI; this fee is credited against the evaluation fee of USD 185,000 in the event a subsequent application is made for the gTLD in the first round of the to-be established program (such deposit being refundable only in very limited situations);
- The EOI shall request a specific set of information concerning the participating entity and the intended name of the new gTLD of interest; and

- The EOI participant information and new gTLD of interest will be made public.

### **PMI Comments on Draft EOI Model**

ICANN's proposal for the implementation of EOI comes at a time when the rules applicable to the program for new gTLDs are under review and subject to modification, notably with respect to measures to ensure IP rights protection – a matter understandably of great importance to PMI.

Briefly stated, PMI believes it is inappropriate to require a potential applicant for a new gTLD, via an EOI, to blindly start a process, at great expense, before that process is defined in such key respects.

PMI's specific comments follow.

#### **Changing rules**

The Draft Applicant Guidebook has been subject to various reviews and comments. In October 2009, ICANN has put forward the third version of the Applicant Guidebook,<sup>1</sup> which is most likely to be subject to further revision. Because it is not finalized, any discussion of an EOI procedure should be postponed. To do otherwise would require applicants to begin the process with an EOI at a time when it is unclear as to what possibilities or risks exist in later stages of a to-be-finalized process.

ICANN states, however, that the Draft EOI Model could assist in measuring the level of interest in the new gTLDs, determine what new gTLDs will be requested, assist in finalizing rules in the new gTLD process to address issues presented by the requested new gTLDs and also enable the drafting of an operation plan. But faced with an indeterminate process for applying for new gTLDs, an applicant will be operating blind when filing an EOI. For example, will IP rights protection measures in the final process be sufficient to protect IP rights? Right now, that process is uncertain and a trademark owner may, for example, feel compelled to file EOIs to protect its trademarks because there is no transparent and defined process for guarding against infringement of its rights. In contrast, once the new gTLD process is settled and communicated, the potential applicant could assess actual need for applying for a new gTLD.

#### **Proposed timeframe for refund of EOI fee**

Under the Draft EOI Model, the EOI fee would not be refunded if the later gTLD application is granted within 18 months. This timeframe sets up a strong financial incentive for a "mad dash" to register gTLDs, even as the applicable rules are not finalized. In the registration rush, the mechanisms for the protection of IP rights will still be formative and unlikely to be able to efficiently handle inevitable conflicts.

#### **EOI – mandatory submission and publication**

The principle of a pre-application or intent procedure is foreign to the registration of domain names. Moreover, there are no guarantees associated with the EOI process. ICANN is free to change the registration rules after the implementation of the EOI, by adding additional charges and steps to the process.

---

<sup>1</sup> This third version follows the first Draft Applicant Guidebook proposed in October 2008 and the second Draft Applicant Guidebook proposed in February 2009.

As the proposed EOI would be mandatory, companies will need to submit EOI even if they have not finalized their domain name plan in light of rules which have yet to be finalized. Companies not submitting an EOI would be precluded from submitting an application in the first wave of applications and no timeframe is established for the second wave of new gTLD application. This will obviously pressure companies into submitting EOI and as consequence EOI will most likely not be a reliable instrument for assessing true demand for gTLDs.

In addition, the proposed public disclosure of the information submitted in the EOI could create additional problems, as the new gTLD of interest may be considered to be confidential information until the related new product, communication or other initiative would be launched. Moreover, ICANN has not clarified when the information contained in the submitted EOI will become available to the public (i.e. on any rolling basis or only at end of process), further frustrating the ability of potential applicants to protect confidential information.

### **EOI - fee**

Applicants will invest a significant amount of money for each EOI – USD 55,000 -- and it is not clear what they would receive in return, since nothing about the process is guaranteed. The fee is refundable only in limited situations.

But a mandatory EOI requirement would create great pressure on potential new gTLD applicants to make this submission and pay this fee even without a clear intention of applying for a new gTLD application – an intention that can only truly be formed once the potential applicant understands the rules surrounding the new gTLD application process. EOI submissions in such an atmosphere of procedural uncertainty will not reflect true demand for new gTLDs . Rather, an EOI requirement at this uncertain stage risks encouraging gamesmanship, not rational planning, by potential applicants – as well as active participation by speculators who are not deterred by clear rules for protecting IP rights.

### **Conclusion and recommendation**

The Draft EOI Model is an ill-advised and unprecedented pre-application procedure at a time of uncertain applicable rules. In considering whether to submit EOI(s), potential applicants would not know the rules that govern their applications or those of third parties, what further costs will be, or whether and when their confidential information will be publicly disclosed -- potential applicants would be flying blind. In particular, by requiring EOIs when the rules for the protection of trademarks in the new gTLD process are not clear, the Draft EOI Model may compel owners of IP rights to submit voluminous – and expensive -- EOI in order to protect their IP rights. Consequently, the Draft EOI Model risks increasing the costs of businesses with little possible benefit.

For the reasons explained above, PMI cannot support the Draft EOI Model while so many issues remain unresolved.

Sincerely,



Celia Ullmann  
Assistant General Counsel  
Philip Morris International Management S.A.  
IP Law Group / Trademarks