



The Intellectual Property Constituency position on the proposed amendments made by ICANN staff to the IRT report is straightforward. While we are not entirely satisfied with the IRT report and believe that other safeguards are needed, we believe that the IRT's five main proposals address some of the immediate concerns of the stakeholders, and are properly identified as having a high priority. These five proposals are:

- IP Clearinghouse, Globally Protected Marks List and associated rights mechanisms, and standardized pre-launch rights protection mechanisms;
- Uniform Rapid Suspension System ("URS");
- Post delegation dispute resolution mechanisms at the top level;
- Thick Whois requirements for new TLDs; and
- Use of algorithm in string confusion review during initial evaluation.

We believe that, together, all of the above-mentioned proposals provide a tapestry of globally-effective, compromise solutions to some of the major overarching issues of trademark protection in connection with the introduction of new gTLDs. By eliminating or significantly modifying the proposals as set forth in the IRT Report, Staff has "unwound" the tapestry leaving incomplete solutions and ideas. The IPC position is that the GNSO Council should adopt the proposals as set forth in the IRT Report, not as modified or eliminated by Staff. Without limiting the generality of the above, we believe that::

1. The URS should be mandatory for all new gTLD registries and for all gTLD registries whose contracts are renewed by ICANN in the future. Otherwise, bad actors will find a safe haven with registries who do not adopt the URS policy, and the responsible registries who do adopt it may face a competitive disadvantage. Further, for those registries with U.S. registrants, U.S. law provides limited immunity for transfers and suspensions made in accordance with a "reasonable policy." We are unsure that a "best practice" fits the definition of a "reasonable policy" under the U.S. law and, as a result, registries and registrars may be unwilling to adopt the URS out of fear of litigation brought by cybersquatting registrants and their overzealous counsel. The better position is to make it a mandatory policy. The IPC also favors the proposal made within the community in response to the IRT report that the URS should include an optional remedy of transfer in addition to the remedy of suspension if there is no appeal of the decision.

2. The Globally Protected Marks List should be restored to alleviate harm to serial victims of global cybersquatting. Based on objective criteria of global trademark registration and multiple UDRP and related decisions, the GPML is the only proposal that satisfies ICANN's commitment to address the problem of defensive registrations. The proposal is modest in that it does not preclude registration of domain names on the GPML list, but merely shifts the burden to the registrant to demonstrate at the time of application that its planned use would be in good faith and not a violation of the UDRP.
3. The Clearinghouse should be a single databases that allows for recordation of all trademark registrations of national or multi-national effect so that no members of the global community are excluded. Making value judgments about which national trademark systems are "good enough" is far outside the scope of ICANN's role.
4. The Clearinghouse should be designed to accommodate recordation of common law and other rights relevant to the gTLD registries in additional to trademark registrations of national effect..
5. While not specifically part of the IP Clearinghouse or the URS, we also note that the Staff significantly amended the Post-Delegation Dispute Mechanism recommended by the IRT when it removed ICANN as a first instance check against possible gaming of the mechanism. This change fundamentally altered this proposal and we believe that the next version of the DAG should be revised to contain the compromise mechanism originally recommended by the IRT in its May 29, 2009 report.

Respectfully submitted,

The Intellectual Property Constituency

/s/

J. Scott vans