

## **INTA Internet Committee Comments on Process for Amendments to New gTLD Registry Agreements April 1, 2010**

The Internet Committee of the International Trademark Association (“INTA”) appreciates this opportunity to comment on the Process for Amendments to New gTLD Registry Agreements.

### **I. Process Concerns**

As of the April 1 due date of this submission, ICANN has issued nineteen separate topics for public comment, with nine topics closing for comment on the same day. This overload of information, especially under the short deadlines, has significantly curtailed the public’s ability to provide meaningful evaluation and input on the issues under consideration. The Committee continues to strongly encourage ICANN to reassess and restructure its public comment process to enable it to adequately consult the public as it is required to under the Affirmation of Commitments.

### **II. Introduction**

The Committee understands that the wholesale ability to unilaterally amend registry agreements is worrisome to potential new registry operators. However, the Committee does see the need for certain critical registry agreement terms to be standardized and easily modified by ICANN to ensure it keeps within its mission of Internet security and stability.

In an effort to address the concerns of both ICANN and the registry operators, the Committee proposes a hybrid amendment procedure, whereby ICANN has the ability to unilaterally amend a uniform registry agreement with respect to provisions that are critical to the security and stability of the Internet DNS, while carving out certain provisions for negotiation between ICANN and individual registry operators.

### **III. Standardized Terms for Unilateral Amendment**

The Committee believes that in order to maintain the security and stability of the domain name system, ICANN needs to be able to amend certain agreement terms unilaterally via a notification process and/or public posting, similar to the process used by Registrars with their customers.

ICANN should be able to standardize at least the following provisions to ensure stability and predictability with registry operators:

- Sanctions and Cure Period
- Reasons or Timing for Suspension or Termination
- Group Liability for Affiliates and Sub-licensees or Resellers
- Contractual Relationships with Sub-licensees or Resellers
- Notice Provisions
- Change of Ownership Notification

- Right to Audit
- Private Registration and Registrar Data Escrow Requirements
- Operator Training and Testing Requirements
- Data Retention Requirements

Nonetheless, from the provisions listed above, at least the following four provisions should be subject to unilateral amendment by ICANN at anytime in order to address potentially changing circumstances that jeopardize the stability and security of the DNS:

- Right to Audit
- Private Registration and Registrar Data Escrow Requirements
- Operator Training and Testing Requirements
- Data Retention Requirements

If a particular registry operator does not agree to the amendment of one of the suggested terms, then that operator would have the option to immediately terminate (or phase out) its registry agreement and cease operations. Contrarily, if an operator does not abide by the amendment within a specified cure period or contact ICANN if it needs more time to cure, ICANN will have the right to terminate that operator's agreement. Without this ability, ICANN will be hindered in assuring consistency among operators as well as in maintaining a secure environment, safe from bad actors and misconduct.

#### **IV. Carve-outs to Standardized Terms**

The Committee realizes that certain proposed standardized terms to new gTLD registry agreements may not logically apply in whole or in part to certain types of registries, such as community, closed or dotBrand registries. For instance, provisions relating to contractual relationships with resellers may not reasonably apply to a dotBrand registry which permits no registrations outside of the owner company. Depending on the type of new gTLD and the registry's method of operation, such inapplicable terms may also include:

- Private Registration and Registrar Data Escrow Requirements
- Contractual Relationships with Sub-licensees or Resellers

Accordingly, the Committee understands that the terms in any new gTLD registry agreement for certain types of registries may not be subject to standardizations.

#### **V. Conclusion**

ICANN should have the ability to unilaterally amend a uniform registry agreement with respect to provisions that allow ICANN to ensure security and stability, while providing registry operators predictable and stable agreements based on clear terms around such matters as notice, sanctions, cure periods and termination. Although a difficult issue to address, the Committee believes this balance is struck every day in business dealings where a licensee is granted the right to operate in a designated space.

Thank you for considering our views on these important issues. Should you have any questions regarding our submission, please contact INTA External Relations Manager, Claudio Digangi at: [cdigangi@inta.org](mailto:cdigangi@inta.org)

## **About INTA & The Internet Committee**

The International Trademark Association (INTA) is a more than 131-year-old global organization with members in over 190 countries. One of INTA's key 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. During the last decade, INTA has served as a leading voice for trademark owners in the development of cyberspace, including as a founding member of ICANN's Intellectual Property Constituency (IPC).

INTA's Internet Committee is a group of over two hundred 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.