



Comments on the Draft Implementation Recommendation Team (IRT) Report

The Coalition Against Domain Name Abuse (CADNA) is pleased to have the opportunity to offer its comments on the Draft IRT Report. As a coalition of brand owners, CADNA is particularly invested in the domain name space and the proposed process for releasing the TLDs.

CADNA would first like to acknowledge the importance of the IRT's work. If the TLDs do move forward, they should do so in a way that does not compromise the safety and stability of the Internet, and the IRT has demonstrated its dedication to developing mechanisms that will foster a secure space. The Coalition is happy to provide constructive comments regarding which of the proposed mechanisms hold the most promise, how mechanisms can be improved and potential pitfalls that should be avoided. However, CADNA would like to point out that with the report there is an underlying assumption that the march forward towards the introduction of new TLDs is irreversible. The Coalition maintains that the move towards an onslaught of new TLDs should be reevaluated. There is no reason or demand for introducing an avalanche of new TLDs.

If the launch of new TLDs does move forward, however, CADNA would like to offer the following considerations and comments on sections of the IRT's preliminary report:

IP CLEARINGHOUSE

It seems beneficial to have an organization that operates to reduce the money and time necessary for brand owners to register in and police the new TLD space. However, CADNA would like to know more about what third-party would be considered capable of handling the responsibility of "operating cost-effective RPMs [rights protection mechanisms] of all kinds that do not place a heavy financial or administrative burden on trademark owners." The IP Clearinghouse would be tasked with supporting applications such as the Watch Service, IP Claims Service, Uniform Rapid Suspension System (URS) and Globally Protected Marks List; as a result, the IP Clearinghouse would not only require certain types and certain levels of expertise, but would also probably be a for-profit organization. The Coalition would like to know how such a for-profit organization would be able to provide low-cost mechanisms and demonstrate the proper level of expertise.

THE GLOBALLY PROTECTED MARKS LIST ("GPML")

CADNA's submitted comments for both drafts of the Applicant Guidebook touched upon the development of a Reserved Names list, where trademarks that are able to meet a pre-determined set of criteria could be added. Possible criteria were listed as the following:

- The trademark owner must prove ownership of a national trademark registration

in at least the majority of the five ICANN geographic regions.

The trademark owner must demonstrate that their mark has been the subject of widespread cybersquatting. Acceptable documentation to prove this would include successful UDRP proceedings or other proceedings brought in national courts of competent jurisdiction.

Any prospective applicant who wishes to register an extension or domain found on the Reserved Name list can approach the owner of that Reserved Name to negotiate and reach an agreement. If no agreement can be reached, a proceeding could be administered by the arbitration and mediation center of the World Intellectual Property Organization, which has already been identified by ICANN as a potential dispute resolution service provider (DRSP) and has established expertise in resolving trademark and domain name disputes.

The GPML attempts to provide the protection of the Reserve list, but the Coalition is skeptical about its ability to do so. With its criteria that a trademark owner must prove “200 trademark registrations of national effect” (which can increase to 300 registrations) or that 3 courts determined its mark was “famous” (which most courts do not weigh in on during infringement hearings), the GPML may not be of help to most trademark owners.

Also, it appears that the GPML would protect against infringements on a trademark owner’s exact mark, whereas the vast majority of infringements combine a trademark with other words or contain misspellings of that trademark.

The Coalition recommends that the IRT focus on the Uniform Rapid Suspension System, which has the potential to provide trademark owners with relief from infringement.

DRAFT UNIFORM RAPID SUSPENSION SYSTEM (URS)

The development of a low-cost and rapid takedown of an infringing domain is a top concern for brand owners (and, by proxy, consumers). As a result, the URS is the most important proposal in the IRT’s preliminary report.

CADNA is pleased to see that the URS is based on a low cost pre-registration system, where trademarks can be placed on file for potential future disputes, and that the system makes it easy to file against multiple registrants and multiple domain names. However, CADNA would like to see this provision move forward and become more fully developed for the following reasons:

The IRT maintains that the URS would preserve a registrant’s right to a hearing and/or appeal and would not replace other current options available, such as the UDRP or other litigation options. While the URS might not replace the other enforcement options, the



way that a URS decision could impact the outcomes of those other avenues should be taken under consideration during the further development of the URS.

For example, according to the report, the URS does not result in the transfer or cancellation of a domain name registration; instead, “domain name registrations found to be violating a brand owner’s rights will be placed in a locked state, for the life of the registration, and will not resolve to an active website.” How can a trademark owner gain the domain name back for his own use? Would the trademark owner have to file a UDRP in order to do so? How would the outcome of the UDRP be affected by the URS?

The URS should also include provisions that shift the burden of payment for the dispute process to the infringer. A system in which the party that loses the dispute is responsible for the cost of the dispute will create a deterrent against future abuse.