



July 6, 2009

Ms. Caroline Chicoine
c/o ICANN
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601

RE: Comments of Yahoo! Inc. to the IRT Final Report posted May 29, 2009

Dear Ms. Chicoine:

Yahoo! Inc. ("Yahoo!") is pleased to submit these comments in response to the Final Report of the Implementation Recommendation Team (the "IRT") posted for public comment on May 29, 2009 (the "Final Report"). As stated in our comments to the Draft Report, Yahoo! appreciates the opportunity to provide ICANN and the broader stakeholder community with our comments on the rights protection mechanisms proposed by the IRT. Yahoo! continues to support the efforts of the IRT in proposing a set of practical, scalable and reasonable solutions to the troublesome issue of trademark protection in new gTLDs. Notwithstanding our support generally for the proposed recommendations, Yahoo! continues to believe that ICANN has failed to demonstrate a plausible economic analysis supporting a wholesale expansion of the DNS¹ and that any expansion of the DNS should be in a controlled fashion and only for specific and justifiable reasons.²

We turn now to the specific proposals set out in the Final Report:

IP CLEARINGHOUSE

Yahoo! remains supportive of the IP Clearinghouse proposed by the IRT. As shown by many of the comments submitted to the first iteration of the Draft Applicant Guidebook (the "DAG"), trademark owners find the simultaneous administration of numerous (and often different) pre-launch rights protection mechanisms to be confusing and overly burdensome. Yahoo! also supports the concept of having an IP Clearinghouse that can accommodate a wide range of third party rights so that gTLD registry operators will have more flexibility in providing pre-launch mechanisms for trademarks as well as other rights that may be recognized in the registry operator's country of origin. We note that such databases have been used in TLD launches in the past (*e.g.*, .eu and .asia) with a high level of success. Similarly, by centralizing data storage and data verification, the IP Clearinghouse can serve all the new TLDs in any rollout. This centralization should greatly reduce the cost and inconvenience normally associated with operating and using pre-launch rights protection mechanisms for trademark owners, new gTLD registry operators and registrars.

¹ See, Yahoo! comments on Economic Analysis dated April 17, 2009.

² See, Yahoo! comments on second version of DAG dated April 13, 2009.





Ms. Caroline Chicoine
c/o ICANN
July 6, 2009
Page 2 of 4

GLOBALLY PROTECTED MARKS LIST

Yahoo! continues to support the concept of a Globally Protected Marks List ("GPML"). We note that the Final Report has clarified that the initial block at both the top and second level will only be for proposed names that are identical to the mark on the GPML. While we are disappointed that the GPML will not also include plurals as suggested in our comments to the Draft Report, we still believe providing an initial block for globally protected marks has some utility, even if it is somewhat limited. Additionally, we support the concept that any applicant (either at top or second level) that is initially blocked by a mark on the GPML should have a right to reconsideration whereby the applicant can make a showing that its use of the blocked term will be a legitimate, non-infringing use. Unfortunately, the Final Report does not set forth the specific criteria for establishing eligibility on the GPML. Without this detail, we can only endorse the establishment of the GPML at the conceptual level.

In the event that ICANN should reject the GPML concept, we believe that, at a minimum, ICANN should revise the DAG to include an initial block for any string that has been successfully opposed during the objection process. Of course, we would support a right of reconsideration for any applicant whose application is initially blocked by a previously successful string. Such a procedure would lessen the burden on legitimate rights holders from having to repeatedly object to applications. Once an initial objection is successful, the burden would then shift to future applicants seeking to obtain an identical string. We believe that any subsequent applicants for identical strings should already be aware of the earlier successful objection prior to submitting their application and, therefore, these applicants should bear the burden of demonstrating how their proposed string will not infringe the rights of the previously successful rights holder.

UNIFORM RAPID SUSPENSION SYSTEM ("URS")

Yahoo! remains supportive of the URS which is designed to provide a fast, fair and cost effective action for policing obvious cases of brand abuse. However, Yahoo! agrees that great care needs to be taken to ensure that the URS is not abused by overly aggressive brand owners or professional cybersquatters. To this end, we renew our suggestion that the URS be revised to empower the Examiner to award the full cost of the proceeding to the prevailing party in any URS action in which a sufficient answer is filed. Such a mechanism would serve as a further deterrent for gaming of the URS mechanism.

POST-DELEGATION DISPUTE MECHANISM

Given ICANN's apparent inclination to remove the vertical separation between registries and registrars, Yahoo! considers a post-delegation dispute mechanism essential to protecting third



Ms. Caroline Chicoine
c/o ICANN
July 6, 2009
Page 3 of 4

party rights. Having a mechanism with a more defined process will greatly assist in ensuring that current abuses in the registrar space will not be as easily repeated in the registry space. Additionally, we believe that allowing third parties to pursue abuses will aid ICANN in ensuring that registry operators are held accountable for running their registries pursuant to industry best practices and in accordance with representations made to the community during the application process.

THICK WHOIS MODEL

Yahoo! strongly endorses the IRT recommendation that ICANN require all new TLDs under contract to offer WHOIS information under the Thick WHOIS model and we are very pleased to see that ICANN Staff has already incorporated this recommendation into the excerpts from version 3 of the DAG that were posted for public comment on May 31, 2009.

ICANN DEVELOPED ALGORITHM

Yahoo! continues to endorse the IRT recommendation that the ICANN developed algorithm only be used as a filter to identify those applied-for gTLD strings which will require further analysis whereby the evaluators consider the sound and meaning of the applied for string before making a final determination as to confusing similarity.

SUMMARY

Yahoo! remains supportive of the IRT recommendations contained in the Final Report. At the same time, Yahoo! is unclear as to how ICANN intends to deal with these recommendations. We note that the compressed timeline set for the IRT by the ICANN Board necessitated the IRT publishing the Final Report without finalizing a great many of the implementation details necessary for these recommendations. To this end, Yahoo! strongly encourages ICANN to assimilate the feedback from the public comments and scheduled consultations for submission to the IRT for consideration and, if necessary, permit the IRT to prepare revisions to the proposed recommendations before inclusion in the third iteration of the DAG. We also encourage ICANN Staff to work closely with the IRT in fleshing out the implementation details of all the recommendations found in the Final Report.

Yahoo! also wishes to emphasize that trademark/brand protection is only one of four overarching threshold issues identified by ICANN Staff. Yahoo! strongly urges ICANN to fully explore and resolve all four of these issues before moving forward with any expansion of the DNS.

In closing, we want to re-emphasize that Yahoo!'s participation in the IRT and the public comment process should not be interpreted as tacit approval of the expansion of the domain



Ms. Caroline Chicoine
c/o ICANN
July 6, 2009
Page 4 of 4

name system. Yahoo! remains firm in its position that ICANN has not demonstrated a sufficient economic case justifying how or why the benefits surrounding the wholesale expansion of gTLDs outweigh the overwhelming burdens placed on consumers, law enforcement and brand owners.

Kind regards.

Yahoo! Inc.

A handwritten signature in blue ink, which appears to read "Laura H. Covington", followed by a long horizontal line extending to the right.

Laura H Covington
Associate General Counsel
Global Brand & Trademarks, Global IP Policy