



AT&T Comments on ICANN Implementation Recommendation Team (IRT) Final Draft Report on Trademark Protection Issues

The IRT Final Draft report preserves the essential preliminary recommendations of the IRT Interim Draft Report. AT&T supports many of those recommendations, for the reasons set forth in its comments to the Interim Draft Report. For the sake of brevity, AT&T attaches and resubmits those comments here, and takes this opportunity to once again applaud the IRT for producing a significant report in the context of time constraints that we documented in our earlier filed comments. As we noted then and note again now, trademark protection is one of four overarching, unresolved issues that must be viewed as both interrelated and mutually dependent, and all four must be fully addressed by ICANN.

AT&T is aware that the IRT Final Draft Report has already received comment at the Sydney Open Meeting and through the Public Comment process. AT&T is concerned that the valuable work accomplished by the IRT not be undermined substantively or procedurally. AT&T believes that the IRT's work should serve as the foundation for any future work in the area of rights protection. The ICANN Board's chartering of a group of experts to develop solutions to address the risks to brand holders, and the problems of consumer confusion and potential fraudulent uses of brand names was an important step forward. The examination of the IRT's work and further input regarding the IRT's proposals should continue through the public comment process now open.

To this end, while we have reviewed the criticisms and feedback provided to ICANN on the IRT Final Draft Report to date, we do not find criticism of the Globally Protected Marks List (GPML) persuasive. In particular, concerns that the GPML will somehow create a new species or form of intellectual property rights are simply unfounded. The list is nothing more than a "reserve" list of names that meet defined criteria, and serves the essential purpose of minimizing end user confusion and transactional costs with regard to the names that meet the defined criteria. The names proposed for inclusion on the GPML are limited to those which possess a high threshold of global recognition, and which have been exploited by third parties unrelated to the owner of the name. AT&T agrees with the concept that the registration threshold must be sufficiently rigorous so that only globally recognized brands are placed on the list. We note that IRT proposal provides for a mechanism to appeal the 'reserved' status of any such name; AT&T supports this safeguard. Finally, the GPML parallels, conceptually (and appropriately), the reserved list of ICANN names. Holders of globally recognized brands are just as legitimately concerned as ICANN is that confusion would result if their respective names were allocated to unrelated third parties to operate as registries.

Again, trademark protection is but one of four overarching issues that ICANN has acknowledged must be resolved prior to any introduction of new gTLDs. With the growth of cyber crime and online fraud, ICANN needs to assert leadership in supporting



the availability of the essential tools that allow law enforcement and other legitimate interests to identify both infringing registrations as well as registrations that are used for malicious purposes, such as identity theft, malware, phishing, etc. Along with trademark protections and malicious conduct, security and stability concerns remain threshold issues that must be thoroughly analyzed and addressed before any future versions of the guidebook are released, and the long-sought foundational economic study and analysis must be completed. All four issues must be considered holistically, and all must be resolved before any new gTLD is introduced.