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February 27, 2012

Mr. Rod Beckstrom
Internet Corporation for Assigned
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Attn: Kurt Pritz

Submitted via: <http://www.icann.org/en/public-comment/newgtlds-defensive-applications-06feb12-en.htm>

Re: Comments of Intellectual Property Owners Association on Defensive Applications for New gTLDs

Dear Mr. Beckstrom:

The Intellectual Property Owners Association (IPO) appreciates this opportunity to respond to the request by ICANN for comments concerning the possible adoption of enhanced protections for trademark owners in the new generic top level domain name (gTLD) program, in view of the perceived need for "defensive" gTLD applications at the top level.

IPO is a trade association, based in the United States, representing companies and individuals in all industries and fields of technology who own or are interested in intellectual property rights. IPO's membership includes more than 200 companies, and approximately 12,000 individuals who are involved in the association either through their companies or law firms or as IPO individual members. Our members hold trademarks around the world. As such, IPO has a significant interest in the new gTLD introduction generally and, more specifically, the rules, requirements, and processes of applying for new gTLDs.

IPO remains concerned that, despite years of deliberations, the Applicant Guidebook and the new gTLD program have not adequately taken account of the hundreds of comments, including IPO's, received by ICANN regarding the importance of suitable rights protection mechanisms (RPMs) for intellectual property owners. The fact that ICANN has already opened the application process for the first round and is still soliciting comments on ways to remediate and alleviate the concerns surrounding defensive gTLD registrations underscores this.

Trademark owners are seriously concerned because they believe they need to participate in the first round of the new gTLD program for a number of reasons.

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First, trademark owners whose trademarks consist of common words used in a suggestive or arbitrary manner and perhaps shared by other trademark owners, are concerned that if they do not participate in the first round, other trademark owners with the same or similar mark will participate and will thereby preclude them from participation in the future because their gTLD will no longer be available.

Second, trademark owners, in particular those whose trademarks consist of shorter word strings or combinations of letters are concerned that the adoption of similar strings by other applicants may preclude them from obtaining their own gTLD in a later round because of string contention issues. For example, a successful gTLD application for .nyc might prevent a future application for .nyce.

Third, businesses are uncertain whether the new gTLD program will be successful, but they understand that their competitors may be submitting applications for new gTLDs and they do not wish to be kept out of the process and precluded from a marketing opportunity until subsequent gTLD rounds. Anyone not participating in the first round may be made to wait several years for the second and subsequent rounds to participate.

Trademark owners in any of the above situations feel significant pressure to participate in the new gTLD program for defensive purposes. The process of applying for a gTLD places a significant economic burden on such parties, not simply because of the ICANN application fee, but because of the need to hire consultants to prepare and file the application, the need to commit or obtain resources to run a gTLD registry over an extended period of time, and the need to create an entire business plan for running a registry when their primary business is not remotely related to such activities. Businesses need to focus on their primary activities to produce more efficient products and services and remain competitive in the marketplace; they do not need the significant distraction and expense of securing defensive gTLDs that have little or no economic benefit as evidenced by the studies that ICANN has commissioned.¹

For the foregoing reasons, IPO believes that many of its members may feel forced and constrained to participate in the new gTLD program primarily, and in cases solely, for defensive purposes. The expense of such participation will be a significant burden on the U.S. and global economies.

We are not opposed to the creation of a limited number of new gTLDs to satisfy demonstrated needs. For example, we do not oppose the creation of internationalized domain names to enable people in non-English speaking countries to browse the internet in their languages. We must continue to question, however, the value of additional competition and choice that have been cited as justifications for the new gTLD program as introduced. We are aware of the “Do Not Sell” List solution proposed by the Association of National Advertisers and the Coalition for Responsible Domain Name Oversight (CRIDO) (of which IPO is a member). The “Do Not Sell” List would

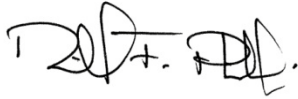
¹ <http://www.icann.org/en/topics/new-gtlds/phase-two-economic-considerations-03dec10-en.pdf>

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eliminate many concerns of trademark owners, and we encourage ICANN to evaluate such alternative proposals, but we cannot say without further study whether it is an adequate answer to all trademark owner concerns.

We thank ICANN for this opportunity to provide the above comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Phillips', written in a cursive style.

Richard Phillips
President