



July 8, 2010

**VIA EMAIL**

Mr. David A. Giza  
Senior Director, Contractual Compliance  
ICANN  
4676 Admiralty Way, Suite 330  
Marina del Ray, CA 90292

Re: Comments of Microsoft Corporation on Draft Advisory re: RAA  
Subsection 3.7.7.3

Dear Mr. Giza:

Microsoft Corporation ("Microsoft") welcomes this opportunity to provide its comments to ICANN on the Draft Advisory re: RAA Subsection 3.7.7.3. ("Draft 3.7.7.3 Advisory").

Microsoft is a worldwide leader in the IT industry, with a mission to enable people and businesses throughout the world to realize their full potential. Since the company was founded in 1975, it has worked to achieve this mission by creating technology that transforms the way people work, play, and communicate. Microsoft's businesses rely heavily on the Internet and the current system of top level domains, and Microsoft is an ICANN-accredited registrar. Further, Microsoft is also an owner and champion of intellectual property rights. It maintains sizable trademark and domain name portfolios and takes pride in the worldwide recognition of multiple of its trademarks. Unfortunately, however, such worldwide recognition means that Microsoft's trademarks are frequently the target of cybersquatters and other parties committing online fraud, many of whom utilize proxy services to conceal their identities. As such, Microsoft is well positioned to provide meaningful comments to ICANN on the Draft 3.7.7.3 Advisory.

Microsoft applauds ICANN for the helpful clarity provided by the Draft 3.7.7.3 Advisory. It is our experience that many proxy services are unaware that they, not their client/licensee, are the Registered Name Holder of a domain name. Many proxy services are similarly unaware that they are liable for harm caused by the wrongful use of the domain name by their licensee unless they promptly identify their licensee and provide its current contact information to a party that provides them with reasonable evidence of actionable harm. Indeed, it is often the case that the proxy service is not familiar with RAA Subsection 3.7.7.3 at all.

Mr. David Giza  
July 8, 2010  
Page 2

“Prompt”. It would be preferable that a delay of no more than three (3) business days be considered “prompt”.

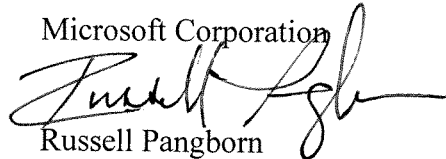
“Reasonable Evidence of Actionable Harm”. Microsoft agrees that “with respect to claims of intellectual property infringement, documentation of ownership of a trademark or copyright, along with documentation showing alleged infringement, should generally constitute reasonable evidence of actionable harm.” Similarly, we support the clarification that a party is not required to file a UDRP complaint or court action or to obtain a subpoena in order to demonstrate “reasonable evidence of actionable harm.”

Response by Registered Name Holder. ICANN should amend the the Draft 3.7.7.3 Advisory to clarify that a Registered Name Holder must respond to the complaining party. Its response should take one of three forms: (i) identification of the licensee and provision of its current contact information; (ii) a statement that the Registered Name Holder accepts the liability and will neither identify the licensee nor provide its contact information; or (iii) a statement that the Registered Name Holder believes that the “reasonable evidence of actionable harm” is not complete and, in that event, identify specifically what additional information and/or documentation is required. Such an amendment would avoid a situation in which a trademark owner that has received no response to a 3.7.7.3 submission or inquiry assumes (and reasonably so) that the Registered Name Holder has accepted liability for the wrongful use of the name and takes enforcement action against it.

\* \* \*

Thank you for your consideration. If you have questions or wish to discuss any of the points raised herein, please contact Russell Pangborn ([russpang@microsoft.com](mailto:russpang@microsoft.com)).

Respectfully submitted,

Microsoft Corporation  
  
Russell Pangborn  
Associate General Counsel – Trademarks