

### **Introduction**

International Business Machines Corporation (“IBM”) appreciates the opportunity offered by the Internet Corporation for Assigned Names and Numbers (“ICANN”) to submit comments on Version 3 of the New gTLD Applicant Guidebook and the Proposed Rights Protection Mechanisms in New gTLDs. IBM believes this opportunity for comment promotes openness and transparency in the new gTLD application process. IBM encourages ICANN to continue this spirit of openness and transparency not only throughout the new gTLD application process, but also throughout any dispute resolution procedures recommended by the Implementation Recommendation Team (“IRT”) that are adopted by ICANN.

### **Economic Justification**

IBM encourages ICANN to justify the necessity of the new gTLD program. More specifically, IBM requests ICANN to provide the economic rationale supporting ICANN’s proposition that consumer benefits outweigh the potential costs to the consumer resulting from the new gTLD program that was requested by the ICANN Board several months ago. Cyber-squatting costs brand owners significant money each year, and the more globally recognized the brand, the more heavily targeted by cyber-squatters. IBM is concerned that such costs would outweigh the benefits obtained under a much wider gTLD regime.

### **Issues for Brand Owners in Securing .brand gTLDs**

One aspect promoted by ICANN and existing registries and registrars as an attraction for the proposed new gTLD regime is the ability for brand owners to obtain “.brand” TLDs for their most important trademarks and brands. However, the current program is not set up at all to deal with the needs of an entity like IBM obtaining a TLD for a brand, and results in significant unjustified costs. For example, a brand owner would be required to use an accredited registrar even if the brand owner has the technical ability to act as its own registrar. This is a particularly unjustified imposition where the proposed .brand TLD of the brand owner will be private or restricted registration to a closed community, and IBM submits that in such circumstances, where the brand owner can show that it has the technical ability, it should be permitted to effect its own registrations without using an external party.

In addition, the proposed gTLD regime will impose a requirement to have a DNS infrastructure that supports IPv6 and DNSSEC, which may also force brand owners to use third parties, even for private or restricted gTLDs. Again, this is not justified for .brand TLDs particularly where the brand owner has a current sophisticated network infrastructure which can support its .brand TLD.

IBM feels that the proposed gTLD program should be changed to be more friendly to .brand TLDs generally. These points may be applicable to other entities besides brand owners who may seek gTLDs (e.g., government bodies).

### **Rights Protection Mechanisms**

Another area which is of great concern to brand owners large and small, is their ability to prevent the “hijacking” of their brands in gTLDs of third parties. The IRT proposed several balanced mechanisms to address this. Regrettably, ICANN has not included one of these mechanisms, a Globally Protected Trademarks List (“GPML”), in Version 3 of New gTLD Applicant Guidebook.

IBM supports the concept of a GPML, as well as the strict eligibility requirements for inclusion of a mark on the GPML. A brand becomes internationally recognized as a result of the direct and indirect significant financial investments in developing and protecting the brand by the brand owner. Internationally recognized brands suffer the most adverse effects of cyber crime, as cyber criminals piggyback on the financial investment of the brand owner and deceptively entice cyber traffic by misuse of the brand owner’s trademark.

We question the assumption that a \$185,000 application fee will, in every case, deter a cyber squatting entity who may anticipate a profit many times that figure as a direct result of criminally misusing another’s internationally-recognized brand, and urge ICANN to reconsider implementing a GPML mechanism as part of the new gTLD regime.

### **IP Clearinghouse**

IBM supports the concept of an IP Clearinghouse proposed by the IRT and included as a proposed Rights Protection Mechanism, although we think the name should be changed to Domain Name Clearinghouse or something similar, so as not to suggest all intellectual property would be “cleared” by the clearinghouse. IBM encourages requiring the IP Clearinghouse to be functional at the onset of the first sunrise period. Further, IBM encourages requiring only a nominal fee for an entity to list its trademarks and other relevant assets in the IP Clearinghouse.

### **Uniform Rapid Suspension**

IBM also supports the concept of a Uniform Rapid Suspension (“URS”), another Rights Protection Mechanism proposed by the IRT and accepted by ICANN. However, rather than defaulting to freezing a TLD following an adverse decision for the applicant, IBM recommends that the successful objector should have the option of having the TLD transferred to it, as in a standard Uniform Domain Name Dispute Resolution (“UDRP”). IBM also recommends that an appeal right be maintained through either a UDRP proceeding or redress in court.

### **Thick WhoIs?**

IBM supports the proposal that new gTLDs be required to have a thick WhoIs? Cyber-squatting imposes a significant economic cost on trademark owners. Such cost is magnified by the fact that cyber criminals can easily mask their identities through a thin WhoIs? IBM appreciates the concerns around freedom of speech and privacy as providing legitimate bases for domain owner anonymity in some domain name registrations. However, as a brand owner, IBM is frequently required to combat cyber criminal activity, and therefore also recognizes the need to balance these freedom of

speech and privacy concerns with the need to stop cyber crime and identify the entities behind such cyber criminal activity. A thick WhoIs? offers the ability to register a domain anonymously, while at the same time providing the additional information about the domain name registrant needed for identifying cyber criminals.

### **Conclusion**

IBM supports the (1) Globally Protected Marks List, (2) IP Clearinghouse, (3) Uniform Rapid Suspension and (4) thick WhoIs? recommendations by the IRT as mechanisms to properly balance the rights of brand owners and third parties. IBM finds it regrettable that ICANN has not included a GPML mechanism in Version 3 of the New gTLD Applicant Guidebook.

IBM feels that some of the technical requirements proposed in Draft 3 are not necessary for gTLDs that will be private or restricted registration to a closed community, such as “.brand” gTLDs that would be attractive to brand owners. These requirements should be relaxed where an applicant can clearly demonstrate the technical ability to maintain and handle registrations for a gTLD without third party assistance.

IBM also supports openness and transparency in the new gTLD application process and encourages ongoing openness and transparency in implementation of the various rights protection mechanisms. This includes the application process itself; IBM supports the proposition that, with the exception of confidential information, such as an entity’s financial information and technical wherewithal to support the applied for new gTLD, applications for new gTLDs should be publically available. IBM also supports the proposition that all the objections to a new gTLD application and responses thereto be treated as public information and made publically available. Finally, IBM supports the notion that objectors in a dispute resolution proceeding must not be forced to give up all legal rights beyond the ICANN proceeding, particularly the right to seek redress in court.

Thank you for the opportunity to comment.

Leonora Hoicka  
Associate General Counsel  
Intellectual Property Law  
International Business Machines Corp.