

Sarah B. Deutsch
Vice President and Associate General Counsel
Verizon Communications Inc.



1320 North Court House Road
9th Floor
Arlington, Virginia 22201

Phone 703 351-3044
Fax 703 351-3669
sarah.b.deutsch@verizon.com

July 20, 2010

VIA EMAIL ONLY (4gtld-guide@icann.org)

Mr. Rod Beckstrom, President and CEO and
Mr. Peter Dengate Thrush, Chairman of the Board of Directors
Internet Corporation for Assigned Names and Numbers (ICANN)
4676 Admiralty Way, Suite 330
Marina del Ray, California 90292

**Re: Request for Comments on Fourth Draft of the
New gTLD Draft Applicant Guidebook**

Dear Messrs. Beckstrom and Dengate Thrush:

Verizon comments on ICANN's fourth version of the new gTLD Applicant Guidebook ("DAG 4"). As others undoubtedly will repeat to ICANN in their individual comments, Verizon is disappointed that the many concerns and suggestions voiced in response to prior versions of the DAG have not been adopted in the latest DAG. We do not believe that there has been significant progress on the four overarching issues raised by ICANN during the first comment period. For example, while Verizon appreciates the posting of the Economic Framework document, it was only released days before the last ICANN meeting, with little time for review by the community. Given the concerns elaborated below about the lack of meaningful trademark protections, ICANN must first perform an economic analysis, including the cost to trademark holders and users from the rollout of new gTLDs, including the actual consumer demand for various types of new gTLDs. It appears IDNs have the most demand and other gTLDs have little if any. At a minimum, ICANN should heed the advice in the framework report to move slowly in rolling out new gTLDs and carefully study the implementation, demand and potentially negative consequences arising from such rollout.

The DAG 4 appears to move steadily toward finality without including the critical input from many ICANN stakeholders, including the trademark, IP and business communities. The overarching issues surrounding new gTLD rollout, including securing the security and stability of the domain name system, and ensuring protections against malicious conduct, remain unresolved. The recent Security Report issued by KnujOn highlights that ICANN is not devoting enough resources today to critical compliance activities. The KnujOn Report indicates that 162 ICANN accredited registrars may be in breach of their contractual obligations, including engaging in activities such as blocking and manipulating WHOIS data, falsifying applications and facilitating illegal activities. Given that ICANN's Compliance Department requested and did not receive additional resources to deal with today's compliance challenges, the issue of compliance raises a

Messrs. Rod Beckstrom and Peter Dengate Thrush

July 20, 2010

Page 2

serious red flag and specter over any planned expansion of the DNS. The recent loss of senior executives, especially in ICANN's Compliance Office only adds further uncertainty. There remain serious questions about whether ICANN can effectively deal with security, stability or malicious conduct when it increases the number of registries, registrars and gTLDs operating on a global scale. We see no assurances in the DAG 4 that the rollout of new gTLDs will not spawn further criminal activity, including spam, phishing, malware, WHOIS abuse and other illegal activities or how ICANN will prevent and address these abuses in an expanded DNS.

The final overarching concern, to which we devote the remainder of our comments, concerns the overarching issue of trademark protection. By correctly identifying the protection of trademarks as an overarching issue, ICANN should step back and reflect on what this really means. Protecting trademarks should not simply mean having pages of processes outlined in a guidebook, especially when such processes are not widely supported by the trademark community and are unlikely to be widely adopted in the future. At a minimum, all trademark protection remedies must (1) be effective as a remedy, (2) reasonably expedited, (3) stringent enough to avoid gaming, (4) based on actual costs (which avoids further monetization and extraction of unnecessary fees from trademark holders), (5) provide for increased certainty, and (6) result in making the trademark owner whole.

Unfortunately, despite the many prior comments urging critical changes to the trademark section, the current DAG 4 is a step backward. When ICANN convened the IRT, the intent was to develop a "tapestry" of long-term solutions for trademark holders. ICANN has inexplicably chosen to dilute those proposals. This "tapestry" is now in reality a few tattered threads. The largely empty proposals on the table today are far too burdensome, expensive and unwieldy compared to existing trademark remedies such as the UDRP or civil remedies available under the ACPA. As a result, we do not foresee the business or trademark community either endorsing or making any widespread use of these proposals in the future. Without adequate and effective remedies, the overarching issue of trademark protection remains unresolved. Bad actors throughout the ICANN distribution chain will undoubtedly flock to register and use domain names of well known and respected brands in the new gTLDs as they do today in the existing domain name space.

Uniform Rapid Suspension Mechanism

As Verizon indicated in its prior filings, the URS was intended to be both a low cost (and as its name clearly indicates) *rapid* mechanism for addressing cybersquatting. Unfortunately, the URS as currently proposed, is largely a meaningless remedy wrapped in pages of unworkable process. When one adds up the URS timeline, from the date of filing, to notice of complaint issued, to notice of lock, to notice to registrant, the time to answer, the decision from the examiner, and additional possible notice of appeal, the process is at least as long as, and likely longer than, using a UDRP. Incredibly, in cases of a default judgment (note that in a large majority of UDRP cases, the defendant never answers), the registrant is afforded the right to file for *de novo* review for any time up to two full years after the notice of default issues. This timeline completely eviscerates the "Rapid" in "Uniform Rapid Suspension." It also provides no certainty for trademark owners.

Messrs. Rod Beckstrom and Peter Dengate Thrush

July 20, 2010

Page 3

Verizon has strongly urged, along with many others, that the URS provide trademark owners with the ability not only to temporarily suspend a domain name, but to have the option to transfer valuable domain names back into their portfolios. Last year, through domain names Verizon won back and reactivated, we documented 22 million new visitors to our websites and 120,000 confirmed new sales. Yet, the URS, at best, allows only for a temporary suspension for the balance of the registration period with the option to suspend for an additional year. During this suspension period, the trademark owner cannot make any use of a valuable domain name itself. The process forces trademark owners into perpetual monitoring and enforcement obligations as the frozen domain name eventually lapses, falls into the pool and is likely picked up by another cybersquatter.

If the flawed timeline and lack of effective remedy was not enough to discourage the use of the URS, ICANN has sealed its fate with its requirement that the burden of proof be established by “clear and convincing evidence,” a standard not only higher than the UDRP, but higher than that required in most civil actions. The clear and convincing standard will be a difficult hurdle for many trademark owners to meet. It can be easily gamed by defendants to thwart a URS finding.

Yet, ICANN permits a URS complaint to be dismissed by an examiner based on a vague and exceedingly low threshold. If “evidence was presented” to indicate a domain name is non-infringing or “a defense would have been possible” to show the domain name is non-infringing, an examiner can dismiss a complaint. ICANN veers too far in the other extreme, allowing examiners to imagine possibilities rather than rely on equally stringent evidence of non-infringement from the registrant.

All these examples show that the URS fails its intended purpose of being an expedited, fair and effective remedy. The URS as currently structured screams uncertainty for trademark owners. Trademark owners will rationally choose the certainty and full remedies afforded by the UDRP over this flawed process.

Trademark Clearinghouse

As many have indicated, the Trademark Clearinghouse is not a real “remedy” for trademark owners. It is a database that foists additional charges onto the trademark community to extend the IP claims and sunrise processes scale to new gTLDs. Most registries will continue the established practice of offering pre-launch “sunrise processes,” which unfortunately, only work to extract additional fees for defensive registrations most brand owners have no affirmative reason to want. There is no provision to limit the sunrise fees, which ICANN recommends operate “based on market needs,” which means the highest fee the market can extract from the trademark holder. Despite repeated objections from the trademark community, only identical marks can be registered with the Trademark Clearinghouse. Of course, the vast majority of cybersquatted domain names involve variations on or misspellings of well known trademarks. The Clearinghouse, in sum, will be an additional cost to trademark owners with limited usefulness. It cannot be considered as a remedy.

Messrs. Rod Beckstrom and Peter Dengate Thrush
July 20, 2010
Page 4

Post-Delegation Dispute Resolution Procedure (PDDRP) and Registry Restrictions Dispute Resolution Procedure (RRDRP)

As currently drafted, the provisions of the PDDRP, like the URS, will discourage any actual, widespread use by potential complainants. It is unclear why the PDDRP and RRDRP are separate procedures subject to different standards of proof when they could be combined into one procedure.

Like the URS, the PDDRP unrealistically requires a complainant to establish its allegations by “clear and convincing evidence,” which again is higher than the standard required in most civil cases. It is unlikely that complainants using this process, without access to the discovery available in full blown litigation, will be able to meet this evidentiary burden. In contrast, the RRDRP is only subject to a “preponderance of evidence” standard. It is unclear why one stakeholder group should be allowed a reasonable standard of proof for one set of bad faith registry abuses over another stakeholder group with an equally valid set of claims.

In addition to the unrealistically high “clear and convincing” standard, the complainant must not only establish bad faith but “*specific* bad faith intent” by a registry operator to profit from the sale of a domain name. This standard appears to imply that a registry operating with general bad faith intent to profit is free to carry on its illicit activities. It is unclear how a complainant could establish “specific bad faith.” Moreover, a complainant must not only establish a pattern of practice of specific bad faith, but *substantial* pattern of *specific* bad faith.

The PDDRP is not a full remedy because actions are limited only to the “*registry operator’s*” specific bad faith. The process does not apply to the bad faith, specific or otherwise, of registrars, who inevitably will be involved in illicit activities, and will be working in collusion with registries. The concern about registrar abuses is well documented, as evidenced by the many prior ICANN compliance actions, successful lawsuits and UDRPs filed against accredited registrars in the existing domain name space. By requiring the action apply only to the registry operator, the conditions set forth in this process will also encourage black hat registries to set up arm’s-length relationships with registrars and other third parties to engage in bad faith conduct.

By limiting the process to “affirmative conduct,” ICANN also discourages best practices by its registries, including those who intentionally design their operations and activities to engage in bad faith activities through passive mechanisms. In fact, by affirmatively stating that even when the registry is on specific notice of trademark infringements, they are not liable, this sends a message that ICANN will tolerate certain illicit activities by its registries if structured the right way. Although we understand the wish to avoid any duty to affirmatively monitor, the definition of “affirmative conduct,” should be broad enough to include both knowing and intentional bad faith conduct on the part of registries and registrars whether “affirmative” or otherwise.

Any widespread use of the PDDRP is seriously undermined given that ICANN can treat the expert panel’s conclusions as merely advisory with no obligation on ICANN’s part to take any action

Messrs. Rod Beckstrom and Peter Dengate Thrush
July 20, 2010
Page 5

against a registry. Why would a complainant spend the time and money to make a claim (knowing that at most they may get a refund of their fees), if at the end of the day, a finding -- by clear and convincing evidence of specific bad faith intent -- does not trigger any corresponding duty by ICANN to take action? If a finding of specific bad faith intent, including even that established by a *substantial* pattern of misconduct, does not result in serious consequences for the registry operator, what else is required to trigger ICANN taking action? At a minimum, such a finding should trigger immediate action by ICANN against the registry, to provide certainty to all ICANN stakeholders and justify the legitimacy of the PDDRP/RRDRP process.

We look forward to working with ICANN going forward to make critical changes to the DAG and addressing all overarching issues before any proposed roll out of new gTLDs.

Very truly yours,



Sarah B. Deutsch