

December 10, 2010



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RE: Comments of RE/MAX, LLC on the Proposed Final New gTLD Applicant Guidebook

Dear Messrs Beckstrom, Dengate Thrush, and ICANN Board:

RE/MAX, LLC is pleased to respond to the request for comments on the Proposed Final New gTLD Applicant Guidebook, available at <http://www.icann.org/en/topics/new-gtlds/comments-5-en.htm>.

### **About RE/MAX**

RE/MAX is the owner of the famous “RE/MAX” trademark and the RE/MAX balloon design. Based in Denver, Colorado, RE/MAX franchises a network of more than 6,000 real estate brokerages, with over 90,000 affiliated real estate agents in more than 80 countries. No one in the world sells more real estate than RE/MAX.

### **In the Final Analysis, ICANN’s Plan to Introduce New gTLD Registries is Fundamentally Flawed.**

RE/MAX has carefully observed the evolution of ICANN’s proposed process and criteria for new generic top-level domain expansion and participated through our membership in the International Trademark Association. Now that ICANN categorizes the draft Applicant Guidebook as “Proposed Final,” it is time to evaluate the success or failure of this endeavor. ICANN has profoundly failed in its mission to ensure that any introduction of further gTLD registries is in the public interest, as required by ICANN’s Affirmation of Commitments with the U.S. Department of Commerce.

First, the contention that there is sweeping demand for a plethora of new Latin-character .whatever registries has not been borne out by any credible economic analysis, and indeed the just released Phase II report on “Economic Considerations in the Expansion of Generic Top-Level Domain Names,” suggests “additional generic, unrestricted TLDs using the Latin alphabet would be unlikely to provide significant additional competition for .com,” and found no evidence that scarcity of generic second-level domain names is a pervasive problem, and that even for differentiated TLDs, “the incremental benefits of the new gTLD might be low.”

Second, ICANN has watered down the balanced proposals for rights protection proposed by the IRT panel into cumbersome, costly and ineffectual ghosts of their former selves. In particular:

- a) The Trademark Clearinghouse, meant to be a central record of existing trademark rights to avoid repetitive proof of the same rights, has been emasculated: virtually all non-U.S. marks will need to undergo new substantive evaluation, since the TC will not recognize registrations not subject to proof of use or examination against prior trademarks (relative grounds). To our knowledge no jurisdiction outside the U.S. meets this criterion.
- b) The URS, meant as a streamlined process for the most egregious cases, has been substituted with a doppelganger flawed by 5000-word complaints, a higher standard of proof than the UDRP, a

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pre-requisite for lengthy evaluation by the Trademark Clearinghouse (because the URS, too, only recognizes a registration subject to relative evaluation and pre-registration proof of use), and the potential for serial enforcement (because the suspension lasts only as long as the extant registration).

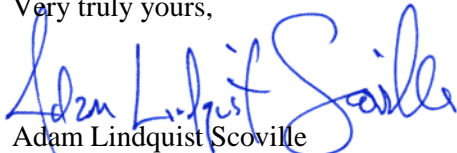
- c) The RRDRP and PDDRP fail to curtail registries that are willfully blind to rampant cybersquatting in their namespace.
- d) The requirement for “thick” Whois data available at both the registrar and registry level exists only on paper because registries are not required to make fully-searchable Whois available.

Third, despite the commendable labors of ICANN’s skeletal compliance staff, it does not appear ICANN is committed to ramping up its compliance capabilities in the face of the exponentially increased oversight that will be needed of new registries and their potentially integrated registries.

### **Conclusion**

In short, ICANN’s performance in the process of drafting the Applicant Guidebook illustrates the difficulties in the DNS being governed, supposedly in the public interest, by an entity that receives its funding from incremental fees on domain name registrations, and whose only means of enforcing its policies is through legal contracts. ICANN’s rush to unleash a torrent of new gTLD registries without strong rules or the capabilities to enforce them reflects, more than anything else, ICANN’s financial interest in continually increasing the number of domain names. Far from a successful launch, ICANN’s performance places into question the very premise behind its place as regulator of the Internet Domain Name System.

Very truly yours,



Adam Lindquist Scoville  
Senior Counsel