

Comments of Time Warner Inc.

January 14, 2011

Time Warner Inc. offers the following comments on “Economic Considerations in the Expansion of Generic Top-Level Domain Names: Phase II Report: Case Studies,” issued in early December 2010. See <http://www.icann.org/en/topics/new-gtlds/phase-two-economic-considerations-03dec10-en.pdf>.

The Phase II study builds upon and reinforces the conclusions that ICANN’s economic consultants reached in their Phase I report last year, which are consistent with Time Warner’s analysis of new gTLDs. These include:

- “Additional generic, unrestricted TLDs using the Latin alphabet would be unlikely to provide significant additional competition for .com.” (page 3)
- “We do not find evidence that scarcity of generic second-level domains is a pervasive problem,” and thus not a good justification for a broad new gTLD launch. (page 3)
- “The benefits of top-level IDNs derived from reduced confusion, increased convenience, and the psychic benefits of inclusion could be meaningful.” (page 3)
- While community-based new gTLDs, and/or those that closely restrict the universe of potential registrants or uses of second level domains, “could in theory [provide] substantial” net social benefits, the track record of such new gTLDs in previous launches is not encouraging with regard to actual consumer benefits achieved. (page 3, and see case studies of .aero and .museum on pages 22-37.)
- Potential external costs of new gTLDs, including misappropriation or dilution of intellectual property and consequential consumer harm, are significant (especially for “holders of the most valued brands” and the general public that relies upon them), and care must be taken to effectively prevent and mitigate these costs, particularly through required rights protection mechanisms. In particular, “there is value in giving trademark holders the ability to block the use of trademarked terms beyond a sunrise period.” (page 74). Surely, greater rights protection mechanisms, including blocks beyond the sunrise period, would have mitigated the Time Warner companies’ having to recover thousands of infringing domain names in the existing gTLD space (e.g., over 1000 domain names were recovered for just two of its well-known brands - CNN and CARTOON NETWORK).
- The Phase II report systematically analyzes the prevalence of costly, wasteful defensive registrations in the existing gTLDs, and concludes that “the [new] gTLDs most likely to attract defensive registration by owners of valuable brands are standard gTLDs with open registration policies.” (page 74) Not surprising, the Time Warner companies’ current domain portfolio (numbering in the tens-of-thousands) already consists of well over 90% costly and wasteful defensive registrations. In fact, we estimate that at least 99% of the Time Warner companies’ registrations outside of .com are defensive. Without

modification, the proposed new gTLD launch appears ripe for additional costs and resource burdens to brand owners and consumers.

Time Warner pointed out in comments filed in July 2010 that the “conclusions and recommendations [of Phase I of the current economic study] are a clarion call for significant corrections to the course ICANN has adamantly persisted in taking toward the new gTLD launch.” <http://forum.icann.org/lists/economic-framework/pdfz6eNcS4pO0.pdf>, page 2. Phase II of the report sounds the same clarion call in greater depth and detail. While ICANN did not heed the first call, we urge it to attend to the second, as well as to apply the lessons that should have been learned from the prior rounds of new gTLD launches.

To maximize the likelihood that the new gTLD launch will be beneficial to consumers and will serve the public interest, and to minimize the external costs that would otherwise be imposed on intellectual property owners and the public, ICANN must:

- REFOCUS the new gTLD launch on those applications that offer the greatest potential benefits, notably IDNs;
- REQUIRE comprehensive and effective rights protection mechanisms, such as those called for in the IRT report, at minimum, and insisted by Time Warner and other brand owners in their previous comments;
- RETAIN effective RPM’s even after launch of a new gTLD, such as notifications to prospective registrants of Trademark Clearinghouse claims, to help reduce the need for unproductive defensive registrations.

Respectfully submitted,

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