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Etienne Sanz de Acedo
Chief Executive Officer

Submitted to: comments-gtld-marketplace-health-beta-19jul16@icann.org

September 8, 2016

Ms. Amy Bivins
Registrar Policy Services Manager
ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Re: gTLD Marketplace Health Index (Beta): Call for Comments

Dear Ms. Bivins:

The International Trademark Association (INTA) is pleased to submit the attached comments regarding the gTLD Marketplace Health Index Beta version.

INTA supports ICANN's data driven efforts to ensure a robust, stable and trusted domain marketplace. We are especially concerned with efforts around creating reliable destinations for end users looking for authentic goods and services. Instances of cybersquatting and counterfeiting are of key concern to INTA members who must protect their brands in the interests of the consuming public they serve. The objective measures proposed by ICANN will aid the community in understanding where and how improvements can be made to operations within the marketplace. INTA is pleased to comment on this important topic and suggest additional data points for your consideration.

Should you have any questions about our comments, I invite you to contact Lori Schulman, INTA's Senior Director of Internet Policy at 202-261-6588 or at lschulman@inta.org.

Sincerely,

Etienne Sanz de Acedo
Chief Executive Officer

INTA Comment on the gTLD Marketplace Health Index (Beta)

The International Trademark Association ("INTA") appreciates this opportunity to comment on the gTLD Marketplace Health Index (Beta)[1] (the "Index") designed to further ICANN's goal of supporting the evolution of the gTLD marketplace into a robust, stable, and trusted environment.

1. Introduction

INTA's views on the Index are informed by its mission as an association "dedicated to supporting trademarks in order to protect consumers and to promote fair and effective commerce."[2] Inherent in this mission is a fundamental concern with preventing the abuse and misuse of trademarks in the Domain Name system ("DNS") and minimizing the potential for increased abuse as a result of the New gTLD Program.

INTA commends ICANN for its role in collecting and promoting the use of objective metrics to help the community study these issues. INTA fully supports the concept of the Index insofar as it can be used to objectively measure consumer trust in the gTLD marketplace and assist the community in identifying ways to improve that level of trust. INTA is pleased to see that "trust" in gTLDs is broadly defined to include not only registry operators, but also registrars, service providers, and registrants, and that the subject involves both compliance with contractual obligations as well as consumer perceptions of trustworthiness.

INTA understands that the Index is currently in the "Beta" stage, and would suggest an expansion of the categories of metrics to be tracked and the level of detail of reporting. For example, there are a number of additional trust-related metrics that may be helpful to examine, such as reported instances of phishing and similar trademark-related fraud involving gTLDs, which are further discussed below.

INTA would also suggest that the Index be published more frequently than twice per year, given the importance of this information in monitoring marketplace trends and identifying possible areas of concern. Introducing a set of defined terms within the Index would also enhance its utility and accessibility for those not closely engaged in the day-to-day work of ICANN. INTA also welcomes continued exploration and input from academics and others who are able to provide more specific insight from various industry sectors such as information technology and economics that would further enhance the utility of the Index.

INTA provides the following more specific comments on the Index regarding geographic diversity, competition, marketplace stability, and trust, as well as some additional miscellaneous comments.

2. Geographic Diversity

INTA supports the envisaged expansion of these metrics to account for additional contracted parties on a country-specific basis.[3] As a result of the new gTLD program, geographic diversity of both registry operators and registrars has increased, as reflected in the Index, which has had

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[1] ICANN, gTLD Marketplace Health Index (Beta) (July 19, 2016), *available at* https://www.icann.org/en/system/files/files/gtld-marketplace-health-index-beta-19jul16-en.pdf [hereinafter "Index"].

[2] http://www.inta.org/About/Pages/Overview.aspx

[3] *See* Index, at 2.

an impact on the ability of brand owners to pursue legal action under the Anti-cybersquatting Consumer Protection Act (ACPA) and other U.S. laws designed to remedy direct and vicarious trademark infringement, as well as inducement, within the DNS.

3. Competition

The Index notes in a rather general sense that "[s]ome . . . registrars and . . . registry operators operate independently, while others are part of larger families that share the same corporate parent."[4] While the Index helpfully provides information regarding the "distinct entities in the gTLD marketplace,"[5] it would be helpful to provide more granular detail regarding affiliations between various entities. INTA notes that certain entities have used affiliates to conduct abusive activity in the DNS while preserving the appearance of integrity from other affiliates or parent companies.[6] This kind of activity, and shell games such as these, erodes trust in the gTLD marketplace, and in ICANN's ability to conduct adequate due diligence regarding potential new registry operators and registrars applying to operate new gTLDs or register domain names therein.

4. Marketplace Stability

INTA appreciates the metrics provided regarding registrar de-accreditation,[7] although again some additional granularity may be helpful in understanding the data. More specifically, a summary of the reasons why registrars were de-accredited, including both voluntary and involuntary de-accreditation, would paint a more useful picture. It would be helpful for brand owners to understand whether registrars have been de-accredited for failing to comply with the UDRP, or obligations regarding responding to reports of abuse, or whether registrars are most commonly de-accredited for failing to pay accreditation fees to ICANN.[8]

INTA also supports ICANN's proposal to report on any registrar operator de-accreditation should it arise in the future,[9] and again would request that detail be provided in any such instances as to the reason(s) for de-accreditation.

5. Trust

As noted above, INTA would appreciate additional detail regarding registrar de-accreditation, including primarily the reason(s) for either voluntary or involuntary de-accreditation. As the Index suggests, this is a matter of consumer trust as well as a matter of marketplace stability and competition.

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[4] Index, at 4.

[5] *See id.*

[6] *See, e.g.,* Domain Incite, ICANN Won't Say How Demand Media Passed Its New gTLD Background Check (May 31, 2013).

[7] *See* Index, at 10.

[8] *See* ICANN, *Contractual Compliance Enforcement Report; Registrar Formal Notices (Enforcement)* (July 2015 – July 2016) (Several instances of RAA termination are substantiated only with the explanation that the registrar failed to "cure breaches of the RAA within 21 days (Article 5.5.4)").

[9] *See* Index, at 10.

INTA appreciates the data provided regarding WHOIS accuracy,[10] although additional detail regarding the number of WHOIS accuracy complaints would be helpful to contextualize the data presented.   Regardless, INTA is concerned that over a third of WHOIS data is both syntactically and operationally inaccurate.[11]   INTA understands that the community is engaged in policy development to overhaul the current WHOIS system,[12] including means of improving data accuracy, and will continue to participate in that work to try to develop solutions for improving registration data accuracy. In the meantime, INTA would encourage ICANN and the community to try to develop and enforce interim solutions for improving the syntactic and operational accuracy of data in the WHOIS system, including mandatory field input requirements for registration data (*i.e.*, all email addresses should have an @ symbol in them), incentives for registrants to provide accurate data (*i.e.*, tying rebate programs to accurate registration data) and for registrars to verify such data, and penalties for failures to provide or verify accurate data.[13]

In addition, INTA agrees that the number of UDRP and URS complaints decided against second-level gTLD registrants (annual total plus percentage of cases filed) is also a helpful metric for evaluating trust.[14]   It would be more helpful to separate out UDRP versus URS cases in the reported data, given the different burden of proof standards required under each procedure (namely, preponderance of the evidence versus clear and convincing evidence, respectively), and the impact that difference may have had on the percentage of decisions decided against registrants (including potentially its relationship to the drop in the complainant success rate as of 2014).

While the three metrics discussed above are very useful, and INTA supports their inclusion in the Index along with the proposed additions or improvements, INTA also encourages ICANN to consider including in the Index a number of the additional trust-related metrics set out for community discussion[15], including in particular:

- The geographic diversity of gTLD domain name registrants (identifying and segregating proxy registration services);

- The incidence of reported phishing, cybercrime, and malicious activity; and

- The incidence of abuse, including but not limited to:

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[10] *See id.*

[11] *See id.*

[12] Specifically, we refer to the ICANN Policy Development Process on a Next-Generation Registration Directory Service (RDS) to Replace WHOIS.

[13] *See* Registrar Accreditation Agreement, Article 3.7.8 and WHOIS Accuracy Program Specification (June 27, 2013) ("Upon the occurrence of a Registered Name Holder's willful provision of inaccurate or unreliable WHOIS information, its willful failure promptly to update information provided to Registrar, or its failure to respond for over fifteen (15) calendar days to inquiries by Registrar concerning the accuracy of contact details associated with the Registered Name Holder's registration, Registrar shall either terminate or suspend the Registered Name Holder's Registered Name or place such registration on clientHold and clientTransferProhibited, until such time as Registrar has validated the information provided by the Registered Name Holder.)"

[14] *See* Index, at 11.

[15] See Index, at 15.

- The number of abuse complaints against gTLD registrars involving malicious or abusive registrations.

- The number of unique second-level domain names in gTLDs that had abuse complaints filed against them.

- The number of second-level domain names in gTLDs suspended for abuse.

6. Additional Improvements to the Index

In addition to the proposals above, INTA also suggests the following additional improvements to the Index.

First, it would be helpful to capture additional metrics for measuring gTLD competition and the robustness of the gTLD marketplace, such as domain name renewal rates, new registration velocity, average registration and renewal prices at retail, and the number of accredited registrars per gTLD. It would also be helpful to distinguish between renewals and new registrations; to the extent this distinction is not already captured in the Index.

Second, in addition to the foregoing, it would be useful to measure how often non-renewed domain names are purchased by new buyers, and whether these result in trademark disputes.

Third, it may be helpful to separate out legacy gTLDs, including .com, .net, and .org, from new gTLDs in the data as well as brand gTLDs from new gTLDs with respect to the above trust-related metrics, among other data where it might be helpful to compare legacy versus new gTLDs trends and brands vs. other new gTLD trends.

Fourth, it would be helpful to present distinct data regarding domain name resellers versus registrars to provide a clearer picture of overall marketplace activity.

Finally, as noted above, INTA believes that ICANN should publish the Index more frequently than twice per year, and include period-over-period data in each successive report to help the community identify marketplace trends.

7. About INTA

INTA is a 137 year-old global not for profit association with more than 6,400 member organizations from over 190 countries. One of INTA's goals is the promotion and protection of trademarks as a primary means for consumers to make informed choices regarding the products and services they purchase. INTA has also been the leading voice of trademark owners within the Internet Community, serving as a founding member of the Intellectual Property Constituency of ICANN. INTA's Internet Committee is a group of over 200 trademark owners and professionals from around the world charged with evaluating treaties, laws, regulations and procedures relating to domain name assignment, use of trademarks on the Internet, and unfair competition on the Internet, whose mission is to advance the balanced protection of trademarks on the Internet.