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Submitted to: comments-mobi-renewal-23dec16@icann.org

January 31, 2017

Ms. Krista Papac
Director, gTLD Registry Services
ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Re: Proposed Renewal of .MOBI Registry Agreement

Dear Ms. Papac:

The International Trademark Association (INTA) appreciates this opportunity to comment on the proposed agreement for renewal of the 2005 Registry Agreement for .MOBI which is the result of bilateral negotiations between ICANN and Afiliis Technologies Limited (“Afiliis”).¹ As INTA has noted in earlier comments, its interest in domain-name-related matters is informed by its mission as an association “dedicated to supporting trademarks in order to protect consumers and to promote fair and effective commerce.”² In support of that mission, INTA and its members rely on various provisions in the new gTLD Registry Agreement (the “New RA”)³ that protect trademark interests – and by extension protect the consuming public. INTA agrees with ICANN that the New RA has important “technical and operational advantages” and “benefits to registrants and the Internet community”⁴ over earlier, outdated versions. As such, INTA supports bilateral negotiations between ICANN and legacy gTLD registries in order to transition (as much as is possible) to the New RA at renewal time.⁵

INTA is encouraged to see that the starting point for negotiations for the renewal of .mobi was “based on” the New RA.⁶ Obviously, parts of the New RA are simply not applicable to a legacy gTLD like .MOBI. For example: the .MOBI registry agreement should not include those provisions from the New RA that cover the Trademark Clearinghouse (TMCH) or Registry Restriction Dispute Resolution Procedure (RRDRP)⁷ given that both were developed to apply to gTLD registries during their pre-launch phase. They certainly do not apply for a gTLD that has been in operation

¹ <https://www.icann.org/public-comments/mobi-renewal-2016-12-23-en>.

² <http://www.inta.org/About/Pages/Overview.aspx>.

³ <https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-09jan14-en.pdf>.

⁴ <https://www.icann.org/resources/board-material/resolutions-2015-09-28-en#1.c>.

⁵ See <https://forum.icann.org/lists/comments-com-amendment-30jun16/pdfvu531nAPPu.pdf> and <https://forum.icann.org/lists/comments-tel-renewal-04aug16/pdfuda8JEfz7p.pdf>.

⁶ <https://www.icann.org/public-comments/mobi-renewal-2016-12-23-en>.

⁷ <https://www.icann.org/sites/default/files/tlds/mobi/mobi-proposed-addendum-23dec16-en.pdf>.

since 2005. However, that distinction does not hold equally true for other provisions from the New RA such as Uniform Rapid Suspension (URS) described in Specification 7 § 2(b), or the Public Interest Commitments articulated in Specification 11 §§ 3(a) and (b). Those provisions are as beneficial for protecting consumers in legacy gTLDs as they are in the new gTLDs. That they should be included by ICANN and Afilias in their renewal of the .MOBI registry agreement would seem obvious: if a new tool comes along that will help protect consumers and help to preserve the security, stability, and resiliency of the DNS, why not use it?

Moreover, while the URS and Spec. 11 PICs carry important substantive benefits in their own right they carry an additional benefit within the context of renewal of a legacy gTLD registry agreement namely, consistency. As ICANN has noted: “Transition to the new gTLD Registry Agreement will provide consistency across all registries leading to a more predictable environment for end-users”⁸ True to that sentiment, ICANN has bilaterally negotiated for transition to parts of the New RA, not only with .MOBI, but also with other legacy gTLDs like .CAT, .PRO, .TRAVEL, .XXX, and .TEL.⁹ While that transition will take some time to achieve as the legacy gTLD registry agreements cycle through their respective renewals, the march of progress from ICANN’s negotiations with those various legacy gTLD registry operators has been steady.

In light of the foregoing substantive and procedural benefits, it is difficult to imagine any objection to Afilias and ICANN adopting certain relevant provisions from the New RA into the renewal of the .MOBI registry agreement. Yet some have objected to the proposed renewal on the grounds that Afilias’ choice to adopt the URS, for example, somehow circumvents the ongoing Policy Development Process (PDP) to Review all Rights Protection Mechanisms (RPMs) in all gTLDs.¹⁰ It is difficult to understand this argument. Nobody disputes that Afilias and ICANN bilaterally negotiated the renewal of the .MOBI registry agreement, or that Afilias received at least some form of consideration (including but not limited to monetary consideration in the form of lower fees) in exchange for agreeing to adopt certain relevant provisions from the New RA. It is not clear what the ongoing PDP has to do with such bilateral negotiations. Any argument to the contrary confuses “ceilings” and “floors.” Whatever comes out of the ongoing PDP may or may not move the RPM “floor” from its current level. But that has nothing to do with a registry bilaterally negotiating to go above the current RPM “floor.”

For the foregoing reasons, INTA commends ICANN and Afilias for adopting certain relevant provisions from the New RA as part of their bilateral negotiations for the renewal of the .MOBI registry agreement.

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.

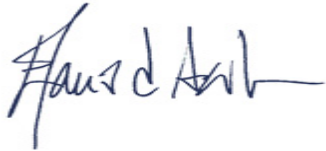
⁸ <https://www.icann.org/resources/board-material/resolutions-2015-09-28-en#1.c>.

⁹ See, e.g., <https://www.icann.org/resources/board-material/resolutions-2015-09-28-en#1.c>.

¹⁰ [https://community.icann.org/display/RARPMRIAGPWG/Review+of+all+Rights+Protection+Mechanisms+\(RPMs\)+in+all+gTLDs+PDP+Working+Group+Home](https://community.icann.org/display/RARPMRIAGPWG/Review+of+all+Rights+Protection+Mechanisms+(RPMs)+in+all+gTLDs+PDP+Working+Group+Home).

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,

A handwritten signature in blue ink, appearing to read "Etienne Sanz de Acedo". The signature is fluid and cursive, with a long horizontal stroke at the end.

Etienne Sanz de Acedo
Chief Executive Officer