**To:** **irtp-draft-report@icann.org**

**BBC Comments on the draft report from the Implementation Recommendation Team (IRT)**

The British Broadcasting Corporation (BBC) is the United Kingdom’s Public Service television and radio broadcaster established by Royal Charter and publicly funded by a licence fee. BBC Worldwide is a wholly owned company within the BBC group, responsible for the commercial exploitation of the BBC’s output in order to generate revenue for the BBC.

The BBC and BBC Worldwide have previously signed up to endorse submissions made by MarkMonitor, Inc on the draft Applicant Handbook in addition to making our own submissions. As previously submitted, we question whether sufficient evidence of demand for new TLDs exists, and, if so, whether now is the time to be launching such a costly and expansive initiative, given the ongoing worldwide recession. Notwithstanding the draft report from the IRT, we remain deeply concerned at the threat to brand integrity and attendant financial implications for brand owners, and the significant risk to the health and safety of consumers.

In common with most of those who have already commented we object to the short timescale which has been allowed for commenting. The 30 day timescale in itself is too short, but to allow only a little over week to comment if one wishes those comments to be taken into account by the IRT in producing their final report is disgraceful. Our comments here are made without the opportunity for a full and detailed consideration of the draft report with internal stakeholders, in order to meet the 6 May deadline and we reserve the right to comment further.

The proposals from the IRT set out in their draft report do provide brand holders with some comfort, and we would like to thank the members of the IRT for the substantial efforts that they have clearly put into this proposal. We do however continue to have concerns.

**Globally Protected Marks List (GPML)**

Whilst we understand what the IRT is attempting to do in proposing a GPML, the threshold is set much too high:

* Setting a level of 200 national marks across 90 countries and in all 5 ICANN regions, together with second level domain names in 50 TLDs will limit the protection afforded by the GPML to only a few very large multinationals.
* The increased threshold imposed where there is another party with the same trade mark further narrows down the possible scope of the GPML. It seems arbitrary and unfair that the owner of a global famous brand should be shut out of this form of protection in circumstances where the same mark has been registered on a one off basis in an individual jurisdiction in an entirely different class. It is even more unfair that that a famous brand owner should be shut out of this protection where the third party mark has been registered in conflict with its own rights (and in relation to which the famous brand owner may well be fighting cancellation actions in individual jurisdictions).
* The proposal is prejudicial to those companies whose products or services fall within a single international class, since it will be substantially more difficult for such companies to meet the 200 mark requirement.
* We understand that a Community Trade Mark will count as 27 individual marks. We support this proposal since the alternative would be prejudicial to those companies who make use of multi-territorial registration systems. We assume that other multi-territorial registrations will also be calculated in the same way, and that multi class applications will also be so interpreted.
* The requirement that all trademark registrations must have issued on or before 1 November 2008 appears arbitrary, and is also unclear. Is this a requirement for the application to have been submitted by this date, or for the mark to have actually been registered? In some registries the registration process can take many years.
* We note that all domain name registrations must have issued in the name of the trade mark owner. A number of countries still require a local presence in order for a domain name to be registered. In practice this tends to mean such domain names are held in the name of a local subsidiary, or even by a third party on the brand owner’s behalf. Such registrations should count as belonging to the brand owner.

Consequently, all but a very small minority of brand owners will receive no benefit from the GPML proposals, and the threshold must be lowered.

It is proposed that applications for new gTLDs will be reviewed for string confusion against the GPMs listed on the GPML. We consider that there should be a finding of string confusion and thus a blocking of the gTLD application not only where the gTLD is identical to the GPM, but also where it includes the GPM together with additional matter. Taking for example the mark BBC, if this satisfies the requirements to be a GPM, then it should block applications for gTLDs not only of .bbc but also .bbcworld, .bbcnews, .bbcsport, etc. The same should also be the case at the second level.

We welcome the proposal that the string ‘confusingly similar’ test should be extended to include aural and commercial confusion as well as visual confusion.

**Top Level Watch Notice**

It is proposed that the IP Clearinghouse could provide a watch service to notify Requestors of applications for new gTLDs. Since such Watch Notices would be generated immediately after ICANN posts the information, at which time it is presumably publicly-available in a single place, the Watch Notice system seems of limited value initially, but could have greater value were ICANN to move to a system where applications for new gTLDs occur on a rolling basis rather than within specific windows.

Where notified of an application for a gTLD incorporating a brand which does not qualify as a GPM, the IRT appears to offer no protection to the brand owner, over and above the dispute resolution procedure envisaged in the draft Applicant Handbook.

**IP Clearinghouse**

Where a mark does not qualify as a GPM, we would question the value of the IP Clearinghouse as against the substantial administrative burden and potential cost of registering all relevant brands (which generally will already have been registered in trade mark registries around the World) with the IP Clearinghouse. It is suggested that the IP Clearinghouse will reduce the cost and administrative burden of registering in new gTLD after new gTLD, however this will presumably only be so if all new gTLD registries are required to adopt this as their RPM, and provided that the fees for registration at the IP Clearinghouse are set at a low level.

Yours faithfully

British Broadcasting Corporation