

IRT DRAFT REPORT (24 APRIL 2009)

PUBLIC COMMENTS SUMMARY

Sources:

Draft IRT Report Public Comments Forum (24 April 2009-24 May 2009). The full texts of comments submitted may be found at <http://forum.icann.org/lists/irt-draft-report/>.

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SUMMARY OF COMMENTS

Timeline and IRT Process

Timing too short and IRT Lacks Transparency. We object to the extremely short comment period for the report and the IRT's lack of transparency. *G. Kirikos (25 April 2009)*. See also *M. Neylon, Blacknight Solutions (25 April 2009)*; *P. Vande Walle (27 April 2009)*; *RU-CENTER (30 April 2009)*. See also *ALAC (15 May 2009)*. The proceeding has moved too quickly and the process is incomplete. *K. Kleiman (24 May 2009)*. See also *BBC (7 May 2009)*.

Short timing. The limited time and framework provided for comments on and discussion of the draft IRT report do not do justice to the scope and implications of many of its proposals. WIPO's comments are preliminary and should not be viewed as comprehensive but rather contributions to dialog which will continue. *WIPO Center (10 May 2009)*. The tight timeframes of the IRT process have created serious barriers to development of robust solutions that will take all submissions fully into account. Given the process and timing, ICANN must be open to considering solutions that were neither considered nor embraced by the IRT, and allow sufficient time for the work in these areas to continue. Some of the proposals not considered by the IRT due to time constraints merit further consideration; phased implementation and special status in the application process for brand issues should be given priority consideration. Moreover, trademark protection cannot be considered in a vacuum and is related to the resolution of the other overarching issues (e.g., malicious conduct, security and stability and economic and demand analysis). *AT&T (22 May 2009)*.

Pace risks effective RPM implementation. The compressed time schedule may risk effective implementation of rights protection mechanisms. *MarkMonitor (6 May 2009)*.

Public comments deadline. The comments deadline for inclusion in the report should be extended. *A. Allemann (27 April 2009)*.

Full implementation of IRT's RPMs. No gTLD rollout should occur until the IRT's rights protection mechanisms are fully implemented. *Regions (5 May 2009)*. See also *IHG (8 May 2009)*.

Resolve overarching issues before new gTLD rollout. AT&T reiterates that ICANN should immediately suspend further development of the Applicant Guidebook and avoid creating any expectation that it would be feasible to move forward with a new gTLD application process until the overarching issues are resolved. *AT&T (22 May 2009)*.

IP Clearinghouse, Globally Protected Marks List (GPML) and Watch Service

Funding of the IP clearinghouse. The IRT should provide its view regarding what entity or entities should fund the clearinghouse. *M. Palage (11 May 2009)*.

IP Clearinghouse — rights included. The breadth of rights proposed to be included raises concern, especially given lack of consensus on some of these issues. This will raise issues for the GAC, and GAC review will add additional months to the new gTLD process. Given the narrow mandate of the IRT by the ICANN Board to address trademark protection, would it not be more prudent to exclude these additional rights, thus minimizing potential public policy considerations in other international fora? *M. Palage (11 May 2009)*.

IP Clearinghouse — Electronic communications. All communication between registration authorities and the IP clearinghouse should exclusively be electronic using the EPP protocol; this

will minimize costs for registration authorities. *M. Palage (11 May 2009)*. The IP Clearinghouse should definitely support EPP interfaces with registries and registrars. *VeriSign (7 May 2009)*.

IP Clearinghouse. On page 9 of 48 under “Benefits for New Registry Operators”, it should state “The IP Clearinghouse will not increase risk of legal liability.” On Page 10, under “Principles Governing the Operation of the IP Clearinghouse”, the first bullet talks about a “renewable contract.” The constituency wanted to know whether there was a presumption of renewal or whether it would be competitively rebid. Same Section, 6th bullet, it states that “For example, it should probably support EPP.” The Registries wanted to know why the word “Probably” was in there and would like to delete the word probably. With respect to the Clearinghouse, the constituency is worried about the timing of how long it will take to get this up and running and the potential for significant delay. This coupled with the fact that all GPMs must be published before the RFP seems like it could delay the process by at least a year. They are also worried that the requirements seemed biased in favor of Laga since they believe that Laga is the only one who will be able to stand up this 24X7 database so quickly. *RyC (1 May 2009)*.

IP Clearinghouse – More details. The proposal is encouraging, but IHG would like more details on costs, organizational structure and capabilities of the clearinghouse. *IHG (8 May 2009)*.

IP Clearinghouse – General. The appropriate scope and implications for the type of data in the database should be fully considered, taking into account such factors as scripts, authenticity, relevant authority, privacy implications and political aspects. Ad hoc contractual criteria included in it and adopted in accordance with registry needs or practical convenience may well differ from the legal frameworks for such identifiers (e.g., unregistered trademarks or certain types of geographical terms). Regardless of scope, a central question is how rights to be included in the database are to be validated. The scope of the proposal places a serious demand on the clearinghouse operator, especially if ICANN granted exclusive control in relation to a wide range of identifiers, many of which are sourced in public functions. There may be scope for differentiation of roles in terms of data collection and storage and a separate role for rights validation. Some types of data will be conducive to real-time validation via readily available existing databases while other types may require more substantive analysis by specialized agents by reference to specific norms (jurisdictional or otherwise). Disclosure of data safeguards is critical and due consideration of an opposition or challenge process should be given. *WIPO Center (10 May 2009)*.

IP Clearinghouse — IDN (section 2). If either a watch service or IP claims service is set up and confers any level of rights to preclude another registrant of the same after a sunrise period if any, an entity should be able to register or make use of that service (watch or IP claims) regarding an IDN string if and only if minimally that exact string has already been trademarked or otherwise legally protected in all of the national jurisdictions that collectively include more than a high threshold (e.g. greater than 80%) of the global population of the users of that IDN script/language. *S. Subbiah (24 May 2009)*.

IP Clearinghouse – Costs. Where a mark does not qualify as a GPM, the value of the IP Clearinghouse is questionable given the substantial administrative burden and potential cost of registering all relevant brands with the IP clearinghouse. Reduction of costs and administrative burden will only occur if all new gTLD registries are required to adopt this as their RPM (Clearinghouse), and provided that the fees for registration at the IP Clearinghouse are set at a low level. *BBC (7 May 2009)*. ICANN must ensure that the clearinghouse process, including watch service, is cost effective for trademark owners. *IHG (8 May 2009)*.

IP Clearinghouse – Costs. On page 6 the bullet point list should include costs to the registries or registrars along with other parties. If the clearinghouse has to be used by the registries and registrars to implement the RPMs, there needs to be an acknowledgement that such services will be provided to the registries and registrars for free. *RyC (1 May 2009).*

IP Clearinghouse – Costs. Annual costs to register a record could be prohibitive because of the expense of operating the IP clearinghouse. The IRT should be cognizant of the numerous touch costs that are attendant to the operation and management of this service. These costs include costs to validate the initial record and annual costs of validation thereafter; additional costs to validate each GPM; costs to develop and manage the API's that tie to each registry and registrar; maintenance costs; costs to address potential challenges and complaints to records within the system and general operational and development costs. *MarkMonitor (6 May 2009).*

IP Clearinghouse – Costs. Will registries have to bear operating costs? If so, this will increase costs to consumers and registrants. *P. Vande Walle (27 April 2009).* Applicant registry should bear the cost of abuse prevention and should be included in the application fees. *AIM (5 May 2009).* The cost of including a record in the IP Clearinghouse should not be prohibitive on brand owners. *MARQUES (6 May 2009).* Issues of cost and competition around the IP Clearinghouse need further consideration. *NetNames (6 May 2009).* The clearinghouse should be low cost. *INTA (6 May 2009).* IP clearinghouse should be made available to registry operators at a minimum or no cost. The operating scheme, especially in relation to fees, should be clarified. *NIC Mexico (6 May 2009).* The IP clearinghouse should be designed to minimize costs to right holders participating in it; new gTLD applicants, and ICANN itself, should be primarily responsible for funding this mechanism to mitigate the adverse impact of the new gTLD process on nonapplicants. *COA (6 May 2009)* Fees should be as low as possible so that the system is not cost prohibitive. *INDOM.com (5 May 2009).*

IP Clearinghouse – Annual validation costs. Will a further fee be required by the IP clearinghouse in order to annually validate GPM status? *MarkMonitor (6 May 2009).*

IP Clearinghouse (page 4 – second bullet point). Should this say “reduce liability for sunrise/landrush processes”? How will ICANN create a method for registrars and registries to utilize their existing financial structures within the ICANN contracts and new contracts to facilitate the payment of these processes and the creation of these systems? How will ICANN allocate budget for this purpose? Regarding the third bullet, how would IDN variants be handled? **Regarding page 5:** Who has what rights to the data in the clearinghouse? Is ICANN willing to renegotiate SLAs for query times to accommodate for these processes as they will have impact on end user latency and response time metrics? *VeriSign (7 May 2009).*

IP Clearinghouse – support and recommendations. AT&T supports creation of an IP Clearinghouse. Further discussion is needed to ensure that related fees are cost-based and that any outsourced functions are bid competitively to neutral third parties who must adhere to standards established and overseen by ICANN. ICANN needs to demonstrate neutrality and transparency in development of criteria for the IP clearinghouse and the bidding process and ensure contractual safeguards so that ICANN will be able to enforce the operational criteria. ICANN must ultimately remain responsible and accountable for the provision any IP Clearinghouse services at cost-based rates, notwithstanding any attempts to outsource those services. *AT&T (22 May 2009).*

IP Clearinghouse – support and features. Melbourne IT supports the IP clearinghouse. It should have a web based interface for information review by the community and an automated

interface for access only by accredited registries and registrars at no charge. By contract, the data should only be used by registries and registrars for validating trademark issues. Other organizations may be allowed access but only after their bona fides have been verified by ICANN, they pay a fee and are bound by contract to ICANN. *Melbourne IT (9 May 2009)*. Yahoo! supports an IP clearinghouse which can accommodate a wide range of third party rights so that gTLD registry operators will have more flexibility in providing pre-launch mechanisms for trademarks and other rights that may be recognized in the registry's country of origin. *Yahoo! (9 May 2009)*.

IP Clearinghouse – support. The IP Clearinghouse is conceptually sound and practical to implement. ICANN should competitively select an IP clearinghouse based on price, service and experience. Add an additional principle on page 5: "Data in the Clearinghouse Should be Publicly Available." ICANN should immediately commence work on an RFP to select an IP clearinghouse. *Demand Media (7 May 2009)*.

IP Clearinghouse – support. Creation of a cross-TLD mechanism allowing both exclusion of registrations and automated monitoring of registrations for IP rights holders should be supported. The clearinghouse proposal tries to operationalize this. *A. Abril i Abril, CORE (6 May 2009)*.

IP Clearinghouse – support. The IP Clearinghouse should be adopted and outsourced to a third party. *Minds + Machines (27 April 2009)*. The IP clearinghouse is a good idea because it takes clients a lot of time to provide information to the registry. *RU-Center (30 April 2009)*. *INTA (6 May 2009)*. Verizon supports the idea of the IP clearinghouse but cautions the IRT to focus on solutions rather than proposing a structure that creates a business model. *Verizon (6 May 2009)*.

IP Clearinghouse – data archives, Appendix one: With regard to the IP Clearinghouse database, it will likely be a very good idea that historical archives of the data be maintained and accessible. *VeriSign (7 May 2009)*.

IP Clearinghouse—fees. SIIA supports the efforts on the Clearinghouse and urges ICANN not to adopt a double registration fee system, where a rights holder has to pay once for registering its mark with the clearinghouse and another fee to get notices. *SIIA (7 May 2009)*.

IP Clearinghouse – Registration fee concern. Clarification is requested that an IP or trademark owner would still be required to pay the regular domain registration fee even if the IP clearinghouse takes care of IP and Trademark verification for sunrise period. *NIC Mexico (6 May 2009)*.

IP Clearinghouse – Information management. There must be focus on information and data security and confidentiality and there must be a strong policy on how data can be used. *NIC Mexico (6 May 2009)*.

IP Clearinghouse – Automation. There should automation via EPP. The clearinghouse should run an EPP server with an extension for the watch service. *NIC Mexico (6 May 2009)*.

IP Clearinghouse – Responsibilities. It is unclear who is responsible for the specific IP clearinghouse functions and therefore the concept may be difficult to scope and implement. Where will the data be housed? What API's will be provided? Who will be responsible for transaction processing? *MarkMonitor (6 May 2009)*.

IP Clearinghouse – Phased implementation. Immediate implementation of trademarks, geographical names, company names, trading names, and family names is an enormous endeavor and may not scale. However, execution in stages to mitigate risk may make this easier to implement (i.e., Phase One may include registered and unregistered trademarks, Phase Two may include common law marks, and so on). *MarkMonitor (6 May 2009)*.

IP Clearinghouse – Data ownership and transfer. Does the outsourced agency own the data? Assuming that the outsourced agency loses the contract to warehouse and manage the data after 5 years, how will this data be transferred to another company? Why would a company transfer the information if it has spent thousands of dollars developing proprietary systems to provide this information to registries, registrars and the public? Who will make the determination that the outsourced agency's contract will not be renewed? *MarkMonitor (6 May 2009)*.

IP Clearinghouse – “renewable” contract for provider. Does ICANN envision a preferential renewal term similar to what ICANN accredited registries have? *M. Palage (11 May 2009)*.

IP Clearinghouse – access to information. The clearinghouse should not have unique access to information on which top-level domains are applied for. *INTA (6 May 2009)*.

IP Clearinghouse – shift blocking burden. For both top level and second levels, once a trademark owner uses the IP clearinghouse, the burden of blocking applications for gTLDs is placed on the trademark owner. Perhaps the burden could be shifted to applicant by blocking all gTLDs identical to marks registered with the IP clearinghouse with a higher burden on applicants to overcome for GPMs. *AT&T (6 May 2009)*.

IP Clearinghouse – provider qualifications. IRT should elaborate on what qualifications will be required to run the Clearinghouse other than a lack of affiliation with ICANN. Is it run on a profit or not-for-profit basis? *Verizon (6 May 2009)*.

IP Clearinghouse – registry operators' role. Registry operators should not be involved in arbitrating disputes to determine who is a legitimate right owner. *P. Vande Walle (27 April 2009)*.

IP Clearinghouse – registry liability. The IP clearinghouse should be automated and implementable at a marginal cost by registries and registrars. Registry operators should be exempt from further legal consequences if they demonstrate they queried the database at the time of registration. *P. Vande Walle (27 April 2009)*.

IP Clearinghouse – Third Party Provider. INTA would like to see more information on what kind of entity would be qualified to provide such services and have the necessary expertise. A qualified third party should be able to provide service. Also, would the clearinghouse be a not-for-profit or for profit? If for-profit, recommendation should ensure that the Clearinghouse will be operated on a cost-recovery basis. *INTA (6 May 2009)*.

IP Clearinghouse – WIPO involvement. WIPO should take part in the IP Clearinghouse creation due to their experience. *RU-Center (30 April 2009)*.

IP Clearinghouse – White label solution. The clearinghouse is a 'White label solution' which can be easily implemented at marginal costs. *dotBERLIN (5 May 2009)*.

IP Clearinghouse – Local trademark issues. Local trademark concerns should be considered; otherwise a new global trademark monoculture will be established which stands in contrast to ICANN’s mission to enhance diversity. *dotBERLIN (5 May 2009).*

IP Clearinghouse and URS – relationship to other providers. These proposals should be in alignment with WIPO and other providers. *dotBERLIN (5 May 2009).*

IP clearinghouse – objection to list of “supported applications”. There is opposition to the list of supported applications being anything other than informational in nature (e.g., use as a URS or as a GPML). *G. Kirikos (6 May 2009).*

IP Clearinghouse – similarity analysis flaws. Clearinghouses do not easily account for aural, visual or usage similarities (human involvement will still be necessary). *G. Kirikos (6 May 2009).*

IP Clearinghouse – data validation. Data validation should be free for trademark owners. Validation should be every 3 years, not annually. *AIM (5 May 2009).*

IP Clearinghouse – support. It should be mandatory. *Regions (5 May 2009).*

IP Clearinghouse – additional financial-related data records. Additional data records to held should be ‘.bank’, ‘.fin’, ‘.finance’, ‘.banc’, ‘.ins’, ‘.insurance’, and ‘.broker’. *Regions (5 May 2009).*

IP Clearinghouse – third party provider. An outside service provider should be used. The IRT should suggest a provider of the same caliber as WIPO. It should possibly use a ‘Not-for-profit’ service provider model. *Regions (5 May 2009).*

IP Clearinghouse – data mining and security. There is a concern that registration data could be mined. Data concerning registered and unregistered trademarks should not be accessible in the aggregate. All registrants should be subject to proper authentication and password security. *J.McElwaine (6 May 2009).*

IP Clearinghouse – Objection. Registrants do not want to support a \$100 million+/yr organization. The proposal is too broad. *G. Kirikos (6 May 2009).*

IP Clearinghouse – no ICANN role. ICANN’s involvement is not needed in the IP Clearinghouse; it can be created and funded by trademark holders, national IP offices or even the private sector. ICANN can mandate that the data be provided by registry operators to the public at cost or free to allow the private sector to create the solution. *G. Kirikos (6 May 2009).* Would it not be more appropriate for ICANN as a technical coordinating body to defer authority and control over the IP clearinghouse to a more suitable and qualified international organization? This might also increase the potential that the IP clearinghouse usage would be adopted on a broader international basis. *M. Palage (11 May 2009).*

IP Clearinghouse – ICANN role questioned. Why should the clearinghouse be contracted by ICANN? What potential is there for legal liability on ICANN’s part, and costs associated to defend it? What is the overall impact on ICANN’s resources and budget? Does it really fit within ICANN’s mandate of technical coordination? Does it create another monopoly for ICANN to manage? Why should it not be privatized and subject to competition and market forces (is it truly useful, effective, etc.)? If ICANN initially established clearinghouse via RFP or otherwise, it should only be temporary so that the clearinghouse becomes independent and totally private within no more than two years. *GoDaddy (6 May 2009).*

IP Clearinghouse – who can be the provider. Are DRSPs barred from providing the IP clearinghouse service? *M. Palage (11 May 2009)*. Can technical infrastructure providers be allowed to operate it or does the “contracted party” prohibition apply? This issue is currently being debated in the context of registry/registrars separation. *M. Palage (12 May 2009)*.

IP Clearinghouse – third party provider. CADNA would like to know more about what third party would be considered capable of handling the responsibility of operating the clearinghouse? How would a for-profit organization provide low-cost mechanisms and demonstrate the proper level of expertise? *CADNA (6 May 2009)*.

IP Clearinghouse – provider. There should be a procurement process with the publication of a statement of work or call for expressions of interest. Also, should there be only one provider? Is the Clearinghouse a contracted party and thus able to participate in the contracted party house of the GNSO for policy development? Does the clearinghouse provider need to follow data escrow requirements and should they have to provide a continuity plan to ICANN? *M. Neylon, Blacknight Solutions (6 May 2009)*.

IP Clearinghouse – provider and contrast to URS. The IRT should explain why they appear to favor a for-profit entity realizing a profit with respect to the IP clearinghouse, while they seek to impose a cost recovery model on the URS dispute provider. *M. Palage (11 May 2009)*.

IP Clearinghouse – funding and conflict concerns. We do not need another set of “contracted parties” – IP clearinghouse providers – lobbying for extra money and resources – conflict of interest (more new gTLDs mean more business for them) and as the provider described by the IRT we will have yet another ‘monopoly provider’. *G. Kirikos (6 May 2009)*.

IP Clearinghouse – Consult with PTOs. Consultations with various PTOs should take place to ascertain whether the existence of a clearinghouse and the criteria set for global marks adhere to traditional ones. *NCUC (6 May 2009)*.

IP Clearinghouse – annual validation is onerous. Asking a trademark owner to validate the existence of a mark once every year is expensive, cumbersome and bureaucratic. *NCUC (6 May 2009)*.

IP Clearinghouse – international classification systems and trademark priority. How will the IRT deal with international classification systems in combination with the application received and how it will determine which trademark receives priority? A concern is raised about loose criteria—i.e., that trademarks that are not considered famous under traditional standards will receive international recognition by virtue of their registration. *NCUC (6 May 2009)*.

IP Clearinghouse – impact on trademark owners. The clearinghouse should not have the consequences that trademark owners must register names that are brought to them through the watch system or against which they used the URS system. Complaining should not lead to adding the domain name to the brand owner’s portfolio by default. *MARQUES (6 May 2009)*.

IP Clearinghouse – scope of protection. Protections for destinations of origin should not be excluded. *A. Abril i Abril, CORE (6 May 2009)*.

IP Clearinghouse – More details needed. More detailed information is needed on the criteria for inclusion of information in the IP clearinghouse; costs information for initial inclusion and annual validation; operational details for the Watch Service and IP Claims Service; operational details for the GPML. The proposed criteria for inclusion of a mark on the GPML should be

reviewed; the current proposed guidelines may be too high. *Hearst Communications Inc. (6 May 2009)*.

IP Clearinghouse – impact on sunrise costs. The clearinghouse would not be effective in reducing sunrise registration costs to any significant extent – non GPM owners would still have to make vast numbers of defensive registrations and nothing prevents registrars from continuing to charge premium prices for sunrise registrations. It is Important to remember that in the past sunrise trademark validation data comes from the registrant and is not gathered by registrar, so it is unclear how pre-collection will save money. The clearinghouse will still require registries or registrars to tool up for introduction. It is unfair to pass this cost on to the general registrant in that only IP rights owners will be receiving benefits and it is likely to thus increase costs of sunrise. *Demys (6 May 2009)*.

IP Clearinghouse – a way to avoid sunrise costs. The proposal offers a way to protect rights owners from paying sunrise costs. *INDOM.com (5 May 2009)*.

IP Clearinghouse – notice. Reasonable consequences should be attached to a clearinghouse notice, such as:

1. A letter lodged in advance with the clearinghouse by the trademark owner could be automatically supplied to the registrant;
2. A warning that the notified trademark owner may be entitled to apply for a determination under the URS if the domain name is registered or used in a way that provides clear and convincing evidence of abuse;
3. Period of notice given to the respondent in a URS could be reduced to 7 days for those who have received this notice, provided URS is filed by the rights holder subject to the IP Claim at the point of registration;
4. Answer fee could be introduced which the registrant must pay in any subsequent URS provided the complaint is filed by the rights holder who notified the registrant. *Demys (6 May 2009)*.

IP clearinghouse – technical features and future innovation. The service should be technically state of the art and support existing and future open communication standards. Limitations on the sole use of the data need to be framed in such a way as not to restrict future innovation. *NetNames (6 May 2009)*.

IP Clearinghouse – records and supply chains. It is logical to have both an initial and reduced annual cost to create and maintain a record. Existing supply chains should be supported– i.e., submission of information by registrars or other agents selected by rights owners. *NetNames (6 May 2009)*.

IP Clearinghouse, GPML and other rights protection mechanisms. They need more input from interested and affected stakeholders. *Euralo (6 May 2009)*.

IP Clearinghouse – Registry role in unregistered rights cases (page 3, paragraph 1, and footnote 1). All unregistered rights, more specifically local unregistered rights related cases, could be handled directly by the registry instead of the IP Clearinghouse, as there could be some policy and requirements related with the nature of the TLD. *NIC Mexico (6 May 2009)*.

IP Clearinghouse – Watch service. On Page 8 of 48, it should read: “A *Watch Service* that will notify rights owners of applications for a term corresponding to their marks at the top level *and of registrations for a term corresponding to their marks at the second level.*” The current wording seems to imply that there is a time gap between an application and a second-level domain name registration during which a watch notice would be sent out. *RyC (1 May 2009).*

IP Clearinghouse – Watch notice. As it will be posted immediately after ICANN posts the information, and publicly available, the 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. Notification offers no protection to the brand owner, over and above dispute resolution procedures envisioned in the DAG. *BBC (7 May 2009).*

IP Clearinghouse – Watch notice, Page 11. How will third level registrations be governed? Who is responsible for checking registrations against the Watch List? Is this a registry or registrar function or a clearinghouse function? Will registries have access to requestor information? The relationships between registries, registrars and the clearinghouse need more clarification. *VeriSign (7 May 2009).*

Watch service. It is practical to implement and can be provided by any party with access to the zone file. *Demand Media (7 May 2009).* IHG supports the watch service proposal and it should apply to top and second level. *IHG (8 May 2009).* AT&T supports the watch service proposal; any such services should be reasonable, cost-based, subject to competitive bid or open to competitive provision and subject to provision by ICANN as a provider of last resort. These services are currently available as competitive offerings and should remain as such. *AT&T (22 May 2009).*

Watch Service – existing services. Many already existing companies provide this and other services to the domain name community. Therefore, feature sets may best be left to the open market to satisfy. *MarkMonitor (6 May 2009).* Given that there are already existing services, the IRT should explain any antitrust implications that the proposed watch service might raise and any competition analysis they undertook in making this recommendation—specifically the exclusive contract that a vendor will have in operating the IP clearinghouse will provide that vendor with a competitive advantage to bundle/tie the watch service to IP rights verification/storage. *M. Palage (11 May 2009).*

Watch Notice – timing. The IRT should explain if they envision a waiting period prior to registration of a domain name or would the watch notice go out only after the domain name had been registered. *M. Palage (11 May 2009).*

Watch Service – who provides information. It is unclear whether the registry operator or the IP clearinghouse will be providing this information to the requestor. *MarkMonitor (6 May 2009).*

Watch service – capabilities. Technical expertise for running the watch service may be out of scope of these services. Will the watch service be capable of notifying trademark owners of exact hits only or be able to detect variations? Existing watch service vendors should be allowed to access this information as well. *Verizon (6 May 2009).* Existing commercial watch services should be provided free and timely access to the IP clearinghouse. *AIM (5 May 2009).*

Watch service. The cost and competitive consequences of a watch service should be reviewed, as well as the entity that provides the services; i.e., profit or not-for-profit. *A. Abril i Abril, CORE (6 May 2009).* The watch service needs a lot of work for the second level. *NIC Mexico (6 May 2009).*

Watch Notice. It is good idea but INTA questions whether it is necessarily related to the IP clearinghouse and whether the IP clearinghouse has the expertise to provide the service. Including receipt of watch notices at owner's option for identical matches or matches of the trademark term embedded within multi-word domains is clearly desirable. *INTA (6 May 2009).*

Watch Service – Impact on existing services. The impact of the ICANN service on existing watch services should be considered. *AIM (5 May 2009).* The watch notice will cause competition with already existing watch services. *M. Neylon, Blacknight Solutions (6 May 2009).*

Watch service – unnecessary. 'Watch services already exist.' *G. Kirikos (6 May 2009).*

Watch notices – Objection. Instead, new gTLDs should give public notice of their applications (e.g. major newspapers). Application details can be provided using XML and RSS feeds. *G. Kirikos (6 May 2009).*

Watch service. It may be reasonable to provide free access to the data to such service providers under similar constraints to those applied by certain registries to the provision of zone file data to the same parties. Demys favors the idea of ICANN providing this service however. *Demys (6 May 2009).*

Watch service. MARQUES favors using confusing similarity as a threshold instead of "corresponding term." Are typo errors and variations included? *MARQUES (6 May 2009).*

Post-launch second level protection mechanism – clarify if waiting period envisioned in watch service. If the post launch watch service is based purely on registrations processed by a registry then access to the TLD zone files should be sufficient to provide this service. If the IRT envisions some type of waiting period, then each individual registry will need to make special arrangements to transfer to the IP clearinghouse operator a special set of data to process these pending applications. *M. Palage (11 May 2009).*

GPML. GPM special status is unclear about "string wildcard" protection for the first level. Also, with respect to the second level, it looks only like monitoring. *Chanel (6 May 2009).*

GPML – -global company trademarks. What happens to a global company that may have its trademarks owned by its various subsidiaries around the world? Will it be able to get special GPML status? *Chanel (6 May 2009).*

GPML – second level. Melbourne IT supports the GPML and notes that it is only justified if it applies to second level also. The bar of 200 trademark registrations in 9 countries seems very high. Also, is the extra step necessary that no other party can own a trademark registration in the applied-for GPM without a further higher bar being set. Protection should focus on use of the mark, not necessarily making it exclusive to one party. Any party wishing to register the name would have to show that they would not infringe the legal rights of the GPML holder and evidence of an existing trademark would assist in that process. If a single trademark registration does result in a higher bar, then there needs to be a minimum bar on the single registration— e.g. validated by an examining authority with the applicant showing evidence of use. *Melbourne IT (9 May 2009).*

Globally Protected Marks. It is believed in some cases there will be competing marks that each can meet the qualifications. The Constituency would like for INTA to provide statistics about the top 100 – 200 brands to see exactly how many registrations they own and how we can make sure that the list stays small. Registries are worried that "blocking" puts the registries in the path

of claims between competing rights owners and need strong enforceable indemnities to protect them. Registries would like to see much more definition around the process for a third party to demonstrate it has legitimate rights in a domain name to overcome the block at the second level. In the Section entitled “GPML Requirements”, the registries would like to see a footnote in the third bullet again emphasizing that as the number of TLDs increase, the number of TLDs a mark would need to be registered in would increase. Perhaps restating the number requirement in the form of a percentage may be acceptable. *RyC (1 May 2009)*.

GPML – protection will be limited to a few multinationals. The threshold is set much too high and will limit the protection afforded by the GPML to only a few very large multinationals. Increased threshold where competing rights further narrows the scope. It seems arbitrary and unfair that the owner of a global famous brand should be shut out of this form of protection where the same mark has been registered on a one off basis in an individual jurisdiction in an entirely different class. Proposal is prejudicial to those companies who services or products fall within a single international class. *BBC (7 May 2009)*.

GPML – further consultation. The proposal may benefit from further public consultation especially considering the possibility that it would somehow find application outside its intended boundaries; further background on criteria would be helpful. An opposition or challenge process may also need to be institutionalized. *WIPO Center (10 May 2009)*.

GPML – Community trademark allocation. The BBC supports having a community trade mark count as 27 marks. *BBC (7 May 2009)*.

GPML – Arbitrary registration date. The requirement that all registrations issue on or before Nov. 1, 2008 appears arbitrary and is unclear. *BBC (7 May 2009)*.

GPML – Local requirements. A number of countries still require a local presence for a domain name to be registered so it may not be in the name of the trademark owner. *BBC (7 May 2009)*.

GPML – Broaden beyond identical match. 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. The same should be true at the second level. *BBC (7 May 2009)*.

GPM. On page 9, this would make the system more complicated. Who would be responsible for the consent process? How would it get communicated among registrant, registrar, registry and clearinghouse? Who would provide the notice that a registration matches a clearinghouse entry? What timeframe would be required for this to happen? Minutes, days, weeks? Who determines what is legitimate? *VeriSign (7 May 2009)*.

GPML – a good start. To the extent that in its final report the IRT changes the essential aspects of its preliminary recommendation, such as the extent of the list of words associated with the GPML at the top and second levels, AT&T would have significant concerns. *AT&T (22 May 2009)*.

GPML – not a sound option. The proposal reads as if generic names can get on the list. It will be controversial among mark owners who don’t make the list. Costs and usefulness and accuracy of the list don’t seem to add much in the way of value. *CentralNIC (7 May 2009)*.

GPML – Definition of “identical match”. Both at the top level and at the second level, the draft report defines what constitutes an “identical match” between a trademark and a proposed new gTLD character string or second level registration. (See page 9 of the IP clearinghouse section.)

eBay finds this definition ambiguous and urges that it be reviewed. Any character string that contains the “complete and identical name protected by the trademark” would be treated as an “identical match.” It may be clearer to specify that for an identical match, the domain name must not only contain, but also be limited to, the complete and identical name protected by the trademark, subject to rules regarding non-alphabetic characters. *eBay (7 May 2009)*.

GPML – support with adjustments. SIAA urges ICANN to adopt the GPML. GPML requirements found on page 6 should be evaluated prior to any final action as the first criterion and third criterion, in particular, are likely to be far too restrictive to be practical, even for large, global multinationals. The first one should be adjusted so that the test is registrations in at least 40 countries across 4 of the 5 ICANN regions. The third one should be adjusted to 20 TLDs. *SIAA (7 May 2009)*.

GPML – vastly underinclusive. There are many famous trademarks that would not qualify under the rigid requirements of the proposal. The 50 TLD registration requirement is particularly troubling; it is an arbitrary, self-serving bootstrap for ICANN. It and the other arbitrary standards should be rejected in favor of a broad veto power for any trademark registration. *Ford et al. (21 May 2009)*.

GPML – burdensome and unnecessary. GPML is conceptually flawed, likely to create unreasonable burdens on legitimate domain registrants and unnecessary given the implementation of other RPMs. Costs and problems will greatly exceed benefits. It should not include generic marks like Apple and Time. The threshold is too high and favors Western rights holders. GPML for second levels does not seem useful and is very limited. It causes problems with generic terms and defeats intent behind new gTLDs – competition. It will also create conflicts between rights holders. The current definition of “exact match” is misleading if intended to be only for exact matches. It should be changed by replacing “contains” with “is”. *Demand Media (7 May 2009)*.

Top Level GPML – Loser pays concerns. There is already a loser-pays objection process in the RFP for top level rights. An applicant should not have to bear all costs of arguing a generic TLD will not infringe a mark. *Demand Media (7 May 2009)*.

GPML – Second level protections. The GPML can and should serve as an effective backstop to prevent third party registration of infringing or confusingly similar strings at the second-level. A name should not be release for registration at the second level by anyone other than the legitimate rights holder. All new gTLD registries must be required by contractual terms to proactively prohibit all reserved names and if the list is extended to geographical names of countries such names should also be proactively prohibited at registration. There also should be reasonable procedures for an applicant to overcome a blocked application under certain defined circumstances. *AT&T (22 May 2009)*.

GPML – Registrar Concerns. RC Members are particularly concerned about the concept of a GPML. Although some RC Members see how a GPML may be useful, many RC Members are concerned about the possibility of non-fanciful marks (such as arbitrary marks with generic meanings like “apple” or “delta”) receiving heightened IP protection without merit. *RC (7 May 2009)*.

GPML – requirements too stringent. The requirements for being listed as a GPML appear to be too stringent. Perhaps the criteria should be based on actual use cases of 100 globally recognized marks. There are a number of marks that are licensed, or are systematically being gamed in certain jurisdictions, that are clearly GPMs but would not fit these criteria because of

these circumstances. *MarkMonitor* (6 May 2009). See also *BBC* (7 May 2009). It is critical to ensure that the criteria for inclusion on the GPML are appropriate but not excessively strict; the particular criteria suggested by the IRT should be reviewed. *COA* (6 May 2009).

GPML – Support and features. Yahoo! supports the proposal; plural forms of the mark should be included in the list of variations that would be considered an exact match of the mark. The IRT should clarify if registrations for the trademarks combining a textual element with a design or stylized wording will be considered in reaching the number of qualifying registrations needed by a trademark owner to have its mark included on the GPML. The IRT should rethink its position on licensees on page 7 of the proposal to ensure it does not have any unintended consequences. Ownership of trademark registration can take many forms due to tax or other reasons. *Yahoo!* (9 May 2009).

GPML – Challenge process and impact. A challenge process should be reconsidered by the IRT given that it will allow third parties to dispute a GPM status. If a GPM owner is successfully challenged (or fails the validation process in subsequent years) post-TLD delegation or post second level registration, then what happens to a TLD or the secondary domain name registrations? *MarkMonitor* (6 May 2009).

GPML – economic disadvantages. The GPML could be deemed a “famous” marks list and a company that is rejected from this list may be faced with unintended legal consequences as a result. Companies that cannot achieve this stringent status may be put at a severe economic disadvantage since they will once again be required to defensively register their names. *MarkMonitor* (6 May 2009).

GPML – flaw in identical match approach. Exact string matches make the system uninteresting to most brand owners. Much of the abuse is inexact. *MarkMonitor* (6 May 2009).

GPML – variations not protected. It does not protect against variations which simply add onto the GPM, e.g. AT&T and AT&T Telephone. This diminishes the value of the GPML. *AT&T* (6 May 2009).

GPML—variations not protected. The proposal only protects exact variation of a mark when vast majority of infringements deal with combinations with other words or typo variations. *Verizon* (6 May 2009). Inclusion of additional typo-squatting and similar safeguards is needed. *AIM* (5 May 2009).

GPML – clarify narrow purposes. The list should not be viewed as or called a “famous marks list”. It should not have any effect outside the narrow purpose of what it is created for; this point needs to be clarified. *Verizon* (6 May 2009).

GPML—requirements too stringent. Many brands that should be on the list would not qualify. It is necessary to lower the number of registrations required to qualify. The list is not a long term solution given the deadline on obtaining a registration. The process should allow for future global marks to be added to the list. *Verizon* (6 May 2009). The number of national trademark registrations required for a mark to be eligible for the GPML is too high. Also, it should be considered that multiple parties may have registrations for the same mark that could fit the criteria without additional requirements. *Eli Lilly* (6 May 2009).

GPML – requirements. It is necessary to lower criteria to an adequate level. The eligible trademark registrations should be limited to word marks only. Smaller marks which do not meet the criteria of being both globally protected and well-known should be included. Applications for

smaller or not so well-known trademarks should be handled similar to the applications filed by marks from the GPML if the application is done with good faith; this could include legal evidence of being a well-known trademark in at least one country. *DotZon GmbH (6 May 2009)*.

GPML – recommendations. It is necessary to distinguish the criteria and purpose of a GPML from a list of well known or famous marks. The IRT should make clear to all parties that the GPML is in no way intended to be a list of famous marks and the list exists for very limited purposes. Focusing on existing trademark registrations in numerous countries appears to be the best approach. The list needs to be more inclusive and global. The requirement on the number of registrations needed is out of proportion to the number of registrations required to protect a mark globally; lower numbers should be considered lower numbers (ex: 150 registrations across 70 countries in 5 regions). Setting a threshold for how many TLDs a trademark must be registered in may not be central to concept of a globally recognized mark; this should be reduced to significantly less than 50. Inclusion on the GPML only blocks exact variations. GPML is less important for second-level if registries provide a low-cost and easy expedited suspension and transfer mechanism. The role of GPML in string review analysis could be replaced by including marks in previous successful TLD dispute resolution proceedings. It is necessary to emphasize and ensure that inclusion or exclusion on the GPML will not have a negative precedent for trademark owners not on the list when it comes to enforcing their mark. A different, less sweeping title should be adopted. *INTA (6 May 2009)*.

GPM List – challenge in creating it. The GPM list must be made very carefully as it poses a great challenge. *RU-Center (30 April 2009)*.

GPML – registry role. The GPML should be supported, but registries should not have to police “confusingly similar” matches or conduct any inspection that requires intervention by a person with trademark expertise. *Minds + Machines (27 April 2009)*.

GPML – equal protection levels regardless of company size. Any company that holds trademarks should be eligible for the same level of protection; why should big corporations get a benefit over smaller corporations? *M. Neylon, Blacknight Solutions (1 May 2009)*.

GPML – support and recommendations. GPM should be supported, as it is enabling other abuse and fraud prevention mechanisms. The IRT should drop the provision regarding a trademark owner statement that no other party owns trademark registration for GPM. There should be use criteria or at least a challenge mechanism for non-use. There should be a simpler test of 100 registrations of the identical word mark. All current registrations should be accepted (eliminate the qualifying date cutoff. Because famous trademarks co-exist in different categories, the arbitrary increased 300 registration threshold and impossibly high standard of 3 different court decisions should be scrapped. There should be an ability to link the company names under the corporate name; some companies do not hold all their registrations in the name of a single legal entity but hold the trademarks in the names of their national companies. *AIM (5 May 2009)*.

GPML – some rights owners may be excluded. The system may exclude right owners in need of protection. The system should be open to a wider range of right owners. *INDOM.com (5 May 2009)*.

GPML – additional criteria. Criteria in addition to the objective criteria proposed should be included, going to the widespread and systematic abuse of the mark within the DNS. These combined factors would then enable a trademark expert to make a determination. It would also be better to frame objective criteria based on percentage of all TLDs, given the future expansion

of the DNS, instead of the fixed number approach (i.e., use a percentage instead of a fixed number like 50 TLDs). *M. Palage (11 May 2009)*.

GPML – compile and validate it prior to RFP. The GPML should be compiled and validated before the RFP to allow potential applicants to take it into consideration if they so choose. The issue of bias to existing infrastructure providers should also be considered in light of program timing. *M. Palage (11 May 2009)*.

GPML – Objection. This proposal favors one rights holder to another, and it is not really one set of rules for all. GPML is an attempt to create new law through arbitrary criteria of a small secret group. Smaller companies and individuals would be at a disadvantage. *G. Kirikos (6 May 2009)*.

GPMLs – Trademark law reversal. The notion that for GPMLs there should be a process permitting applicants to register an initially-blocked name, is a reversal of trademark law, and reverses the presumption of innocence (e.g. one is presumed guilty and must prove innocence of one wants to register polo.sport). *G. Kirikos (6 May 2009)*.

GPML – good idea but hard to execute. If too hard to implement and find agreement on criteria, then there should be the protection to all those trademarks willing to be protected (globally or locally famous or not) by a rebuttable presumption that exact matches cannot be registered. Exact matches would be excluded from automated registrations. Applications for such second level strings could individually overcome that presumption either by simple agreement of the trademark owner or by determination of an independent third party. *A. Abril i Abril, CORE (6 May 2009)*.

GPML – support with changes. IHG comments the GPML idea, but changes are needed; the thresholds are too high. The required number of registrations of national effect should be lowered from 200 to 50 to include certain international brands that have numerous trademarks throughout various countries. *IHG (8 May 2009)*.

GPML – administration. It may be easier to administer the GPML at the top level versus second level. *M. Neylon, Blacknight Solutions (6 May 2009)*.

GPML – support in top and second levels. MARQUES supports GPML application in both top and second levels. Specific concerns:

- **Section 1.3.1** – does this include marks combined with device, colors, and other words?
- **Section 1.3.2** – does the 50 registrations include trademark plus other terms as a domain? What about the domains registered under several second level extensions like .co.uk, .me.uk, etc. – are these one or two domains?
- **Section 1.3.3 is a difficult requirement.** There are few trademarks that benefit from a reputation covering any kind of products. What is meant by three different courts? Is this in 3 different countries? Decisions from the highest instance?
- **Section 1.4** – there is an issue with matching of trademark records to IDN domains because in many languages one sound can represent a concept or a word. *MARQUES (6 May 2009)*.

GPML bar is set too high. IRT may have adopted an overly prescriptive approach in attempting to find a workable objective test. Any trademark owner could apply to validate their rights in a name or term at a higher level than the basic IP clearinghouse registration. This would follow a

process similar to the UDRIP in that the matter could be referred to an independent expert for a carefully scrutinized, reasoned and public decision. *Demys (6 May 2009)*.

GPML – arbitrary number thresholds. An expert should not be restricted to addressing arbitrary questions as a threshold of numbers of global trademark registrations in force. Use should be considered, and an approach should be adopted along the lines of it is not the number of marks but what the proprietor does with them that is important. *Demys (6 May 2009)*.

GPML – Past enforcement success—criteria for higher protected mark status. The notion of successful past enforcement actions as a criteria for consideration of a higher protected mark status should be reinstated. *Demys (6 May 2009)*.

GPML – famous marks with enhanced legal protection. It is vital that famous marks which enjoy an enhanced legal protection be accepted for inclusion. IOC and other non-profit international organizations may not meet the arbitrary quantitative trademark or domain name registration levels currently proposed. Organizations that enjoy enhanced protection of their marks by law through specific national legislation should also be included on the list. “Catch-all” evidence of fame should be included – e.g., worldwide news releases, articles in international journals, website hits, international surveys, etc. *International Olympic Committee (6 May 2009)*.

GPML – Famous marks. The number of successful UDRP and cybersquatting actions initiated should also be considered where fame of a mark is found and discussed. *International Olympic Committee (6 May 2009)*.

GPML poses a substantial challenge to execute. It may provide fertile ground for legal challenges. There is a need to carefully consider whether it is necessary. *NetNames (6 May 2009)*.

GPML – global mark causing end user confusion in local communities. In some cases a community specific mark may be better known to local communities, in which case it is the global mark that is the cause of end-user confusion. *Euralo (6 May 2009)*; *ALAC (15 May 2009)*.

GPML – Local trademarks. The GMPL could extinguish strong local trademarks. *dotBERLIN (5 May 2009)*.

GPML effectiveness questioned. CADNA questions the GPML’s ability to provide protection of the Reserve list. Criteria is too high and thus may not be of help to most trademark owners. GPML would protect only against infringements of exact marks whereas majority of infringements combine a trademark and other words or misspellings. *CADNA (6 May 2009)*.

Non-GPM Mark (“Regional Protected Mark”) Protection. Melbourne IT recommends an additional category of protection for non-GPM marks that meet minimum criteria (e.g., pay additional fee, have trademark examined by an authority, and trademark is protected in at least 10 countries). Registrant would first have to be authenticated at a level similar to an extended validation website digital certificate. A registrant would need to be authenticated once through an authenticating body and could still register multiple names. *Melbourne IT (9 May 2009)*.

Standard sunrise process. ICANN should at the second level mandate a standard sunrise process which should apply to all registries. The central reserve list of global brands established by ICANN at the top level should also be used to establish eligibility for such second level domain sunrise priority rights; but sunrise protection cannot be limited to such names for trademark holders. The IRT’s proposal on the standard sunrise process is a floor, not a ceiling, and the

proposed eligibility requirements do not preclude registries from adopting more stringent criteria. A standard sunrise process across multiple registries will help to reduce costs, confusion, uncertainty and error and make it easier for ICANN to hold registries accountable to a standard set of practices. *AT&T (22 May 2009)*.

Standard sunrise process. What is the purpose of the restriction limiting the recognition of legal rights to the laws of a country in which the registry is organized? *M. Palage (11 May 2009)*.

Sunrise costs. What if a company only wants to participate in the Sunrise period of 1 TLD only (i.e., it will be obligated to pay the IP Clearinghouse fee that could be higher than the registry sunrise fee)? *NIC Mexico (6 May 2009)*.

Sunrise – costs. The IRT fails to address the high cost charged by registries during this process. *Verizon (6 May 2009)*.

Standard Sunrise Registration Process (SSRP) and role with IP Clearinghouse. This idea is largely well-formed, practical and useful. Synchronizing the SSRP with the IPCH could create efficiencies and reduce costs. If more data is required than what is available in the IP clearinghouse then additional fees would need to be charged which would essentially make the IP clearinghouse ineffective. The IP clearinghouse should be required to collect all the data required to support all the registries offering an SSRP or other service. *MarkMonitor (6 May 2009)*.

The IP claims service has merit. NetNames offers something similar. *NetNames (6 May 2009)*.

IP Claims Service. For GPMs protection to second level domain it does not cover other probable detrimental user confusion caused by variations like typo squatting or adding generic terms. Perhaps the “identical match” can be expanded. *AT&T (6 May 2009)*.

IP Claims Service. The ability to block a registration is a good concept, but allowing a third party to then proceed with registration after a showing that no infringement will occur upon registration, may be a concern. Should a registrant of an infringing name be notified at registration that they will not have standing in a URS or UDRP? This concern also affects non-GPMs. *MarkMonitor (6 May 2009)*.

IP Claims Service – notice. If it becomes impossible to agree to objective or broader subjective criteria, the IP claims service notice could be brought to bear on the issue. Upon triggering a notice, the domain name could be placed into quarantine with a neutral Whois and inactive delegation. The matter would then be referred for expert determination where both parties pay for a decision. Where possible, this should be effective for typosquatting or string comparison criteria. *Demys (6 May 2009)*.

IP Claims Service – Registrant representations. The requirement that registrants represent and warrant that registrants have a right in the domain name and will not use it in bad faith has no authentication component, and would add little protection beyond what is already in the registrar-registrant agreement. *Melbourne IT (9 May 2009)*.

IP Claims Service. First-come, first served approach should be used. *G. Kirikos (6 May 2009)*.

IP Claims Service for non-GPM marks – identical match extensions. The ‘identical match’ definition should be extended to include ‘singular’ and ‘plural’ form of all trademarks held. *Regions (5 May 2009)*. Identical match needs to be expanded since many abusive registrations

are misspellings of the brand name or place additional words before or after the brand name in the domain. *IHG (8 May 2009)*.

IP Claims Service – flaw in identical match approach. It is a deficiency that it would only be triggered by identical matches. Marks embedded in multi-word domains should be included. *INTA (6 May 2009)*.

Sunrise/IP Claims. The proposal seems sound and practical. It assumed that the word “contains” is used in error and that the IRT means “is the complete and identical mark (minus special characters).” Misspellings or substrings should not be addressed. *Demand Media (7 May 2009)*.

IP Claims service. It should not be restricted to those registries that are not otherwise providing for a RPM such as sunrise; it should apply across the board. The notice lacks teeth as it is a notice and nothing else. *Demys (6 May 2009)*.

IP Claims – related notice and fee issues. Clarification is needed regarding whether a combined trademark falls under the definition of identical mark (logo or additional words). Also, what type of notice must be sent to registrants and brand owners? What is foreseen, a fee paid upon notice? Will this service be included in the fee paid to add the trademark to the list or will there be a “common” fee to be paid to ICANN before the gTLD round? *MARQUES (6 May 2009)*.

IP Claims Service—clarifications requested. Yahoo! seeks clarification as to whether the IP claims service for GPMs will only exist if the registry operator chooses to offer such a service for non-GPM marks. It appears from current text that registry operators that offer a standard sunrise registration process will not be required to provide an IP Claims Service for GPMs. Clarification is also requested as to whether registry operators providing a standard sunrise registration process will have to block the registration of second-level domains that are identical to marks on the GPML. *Yahoo! (9 May 2009)*.

Registry and registrar impact. In the last bullet, we would add “registries and registrars” to “trademark owners, legitimate users and consumers” and encourage the IRT to more thoroughly consider the impact of the proposals on registries and registrars. *VeriSign (7 May 2009)*.

No expansion of existing legal rights. On page 6, the phrase “but not create additional legal rights” should be reworded to reflect that IRT does not want to expand existing legal rights. *NCUC (6 May 2009)*.

Not expanding existing legal rights; fair use defense concern. The IRT must be true to its mandate not to create new rights for trademark owners through this process (e.g. through the GPML). The need to hard code a legitimate fair use defense provision in the DAG is of heightened concern when one considers a number of globally well known and famous marks which are also subject to systematic and widespread cybersquatting, but which also involve marks that are commonly used words and phrases such as Apple, Sun and Time. Trademark law does not grant a monopoly over a mark but merely a right to exclude others from using it in connection with specific goods and services in a manner that is likely to cause confusion within the marketplace. *M. Palage (11 May 2009)*.

IDN and “national effect” registrations (Section 6). In the case of IDNs, national effect means all of the nation or nations which collectively include a high threshold (e.g. more than 80%) of the global population that uses the IDN script/language. *S. Subbiah (24 May 2009)*.

Consider past experiences. The IRT should consider past experiences in which IP claim systems, watch systems and registration policies interfered with one another as to make the protective intent meaningless. *A. Abril i Abril, CORE (6 May 2009).*

Second level string – clarification. Clarification is needed regarding Section 5, page 8—the “second-level string” language seems to be an unnecessary classification of the watched string and is confusing. *Yahoo! (9 May 2009).*

IRT position on namespace expansion. The IRT members should state their position if they are in support of the namespace expansion, as their solution is to diminish that expansion and simply re-duplicate dot-com for brands. *G. Kirikos (6 May 2009).*

String confusion – Reconsideration of failed evaluation (page 8, paragraph 2). All applicants that fail initial evaluation based on a finding of string confusion should have the opportunity to request reconsideration for a reasonable fee or an opportunity to use an alternate string. *NIC Mexico (6 May 2009).*

Post-launch second level mechanisms. The proposals may be non-equitable for non-trademark registrants as they would pay more for services conceived solely for trademark holders. Post-launch mechanisms should be applied to all TLDs for equitable treatment. *NIC Mexico (6 May 2009).*

Gaming concerns. Trademark application systems will be gamed. Also, how can reverse-hijacking of domain names be prevented through this process? *G. Kirikos (6 May 2009).*

Defensive TLDs. ICANN should consider stating explicitly that trademark owners should not be obligated to apply for a TLD for defensive purposes. *M. Neylon, Blacknight Solutions (6 May 2009).*

Trademark tools administration. In the IDN roll out, the centralization of scripts and how to handle them was not uniformly applied. Registries were left to their own implementation assumptions, creating variations of the implementation approach until new standards were created. How will the IP community ensure that they have a common method and use of the trademark tools at each registry? How will ICANN oversee this implementation while dealing with various country laws regarding privacy rights of registrants, IP law and various laws regarding freedom of speech? Under what global body of law will this be administered and overseen? How will ICANN vary this oversight versus the current legal administration of the registry contracts? *VeriSign (7 May 2009).*

Uniform Rapid Response System (URS)

Pursuing rights in any available forum not precluded. No ICANN-sponsored dispute resolution process should operate to preclude resort to legal processes provided under applicable law; all operative documents must provide that participation in any ICANN registration or dispute resolution process at any DNS level does not foreclose any avenues for rights holders to vindicate their rights in any available forum. *AT&T (22 May 2009).*

Make mandatory and ensure quality. The URS should be mandatory. The quality and reliability of the provider is essential. WIPO should be used as a model. *Regions (5 May 2009).*

URS Support. MARQUES supports this tool. *MARQUES (6 May 2009).* See also *CADNA (6 May 2009).* dotBERLIN supports URS but it should be in alignment with WIPO and other providers. *dotBERLIN (5 May 2009).* CORE supports the URS’s purpose. URS should apply to other

behaviors – spam, phishing, etc. *A. Abril i Abril, CORE (6 May 2009)*. It would be convenient to use URS to give IP Claims Service some teeth. *Demys (6 May 2009)*. URS is one of the best mechanisms for rights protections and can be applied to existing TLDs. *Demand Media (7 May 2009)*. SIIA welcomes the URS proposal put forward. *SIIA (7 May 2009)*. eBay commends the URS proposal in principle and urges ICANN to consider incorporating it into its registry agreements with new gTLDs. *eBay (7 May 2009)*. The proposed URS outlines the essential underpinnings of a reasonably priced, standardized dispute resolution mechanism. *AT&T (22 May 2009)*.

URS Support. IHG supports a mandatory URS system for all new gTLDs to fill in gaps that past remedies have missed. The 14 day process is a useful addition to the UDRP process. ICANN must ensure that the entire process is low cost and not just with respect to the initial dispute. *IHG (8 May 2009)*. Melbourne IT supports the URS proposal; criteria for it should exactly match the existing UDRP process. *Melbourne IT (9 May 2009)*.

URS. The single most important mechanism, Uniform Rapid Suspension system, may be poised to inherit some of the same limitations that UDRP suffers including lack of scalability and high expense to rights holders. *MarkMonitor (6 May 2009)*.

URS – further consideration. The relationship of URS to UDRP must be considered. In all respects the design of the URS should aim to achieve seamless integration with the UDRP especially in terms of practical facilities and procedural safeguards (e.g., party submissions, domain name lock, communications, fee management and panel appointment). The draft IRT report signals a move away from the conjunctive bad faith requirement in the UDRP, and also deviates from UDRP in that it limits consideration to registered trademarks issued in jurisdictions conducting substantive examination. The mechanism proposed in the draft IRT report—prima facie determination on the merits by an appointed neutral—raises issues, such as its relationship with any substantive review under the UDRP and the time and cost implications. The proposed fees and efficiency premises of the proposal need to be examined more closely taking into consideration particular scenarios whether or not gamed that may be invoked and procedural incidents. Even if fees are limited as envisaged, trademark owners may find them a high price to pay for addressing obvious abuses on a repeated basis. URS may offer financial advantages over the UDRP but it is still a financial burden in itself. Modalities of submitting a response should therefore be designed so as to limit pro forma responses moving a case into further procedure requiring determination by a neutral. Further thought should be given to whether a single fee should apply regardless of whether an external examiner is appointed. *WIPO Center (10 May 2009)*.

Objection to URS. The URS proposal violates due process; in addition, the number of UDRPs filed is very small. There is a need to recognize that domain names are used for non-Web site activity. A more appropriate method should be through Whois verification. *G. Kirikos (6 May 2009)*. See also *G. Kirikos (13 May 2009)*. This proposal raises the concern that it seeks to create a tier system of judiciary under the ICANN regime. *NCUC (6 May 2009)*. URS goes against years of history by not allowing identically named, non-competing companies to have their own unique address. *C. Christopher (6 May 2009)*. The proposed URS oversteps bounds and does what the UDRP is supposed to do. The UDRP should not be scrapped but should be refined. *NAF (6 May 2009)*. See also *M. Palage (11 May 2009)*.

Footnote 15. Regions disagrees with Footnote 15's suggestion of a conflict of interest where UDRP and URS providers are not the same. *Regions (5 May 2009)*.

URS – extend response time. The response time should be extended from 14 days to 30 days with, perhaps, a decreased time for habitual respondents who lose. *A. Allemann (27 April 2009)*. A 14-day notice is insufficient to allow individual domain name registrants to react to complaints. *ALAC (15 May 2009)*.

Penalties for complaint abuses. Penalties for complainants who abuse should start at two losses and last at least two years. *A. Allemann (27 April 2009)*. The penalty for bad complaints must be much higher. *G. Kirikos (6 May 2009)*. URS must include substantive penalties or other disincentives to minimize groundless or punitive threats. *Euralo (6 May 2009)*. Why or how did the IRT settle on 3 as the number of abusive complaints meriting a bar to use of URS? *AT&T (6 May 2009)*. Trademark owners who abuse process should be barred from using the procedure in the future. *Verizon (6 May 2009)*. Using bonds and/or strong punitive measures for abusive complaints could allow the burden of proof to be shifted from complainant to registrant, making the process truly efficient, less costly and safe from abuse. *MarkMonitor (6 May 2009)*. The threshold for claimant abuse should be set at 10 domains not resulting in suspension. *Demand Media (7 May 2009)*. What constitutes an abusive complaint by a trademark holder should be clarified; at a minimum if there are three findings against the trademark holder within a 30 day period they should be blocked for one year. *Melbourne IT (9 May 2009)*. Great care needs to be taken to ensure the URS is not abused by overly aggressive brand owners or professional cybersquatters. To this end, the URS should be revised to empower the Examiner to award the full cost of the proceeding to the prevailing party in any URS action that proceeds to full blown examination. *Yahoo! (9 May 2009)*. The procedure must include substantive penalties and other disincentives to minimize groundless or punitive threats. *ALAC (15 May 2009)*.

Safeguards Against Repeat Offenders and other Abuses. Safeguards are needed to ensure that same offenders don't resubmit under a different entity name while on suspension. *A. Allemann (27 April 2009)*. Registrants who abuse are subject to more expedited processes in the future. *Verizon (6 May 2009)*. Registrant abuse of process could cause cases to be resolved even more slowly. *MarkMonitor (6 May 2009)*. More details would be helpful on how to balance methods to discourage both frivolous claims and unsupported answers. *COA (6 May 2009)*.

More details on difference between URS and UDRP. More details are needed to explain the difference between URS and UDRP. *AIM (5 May 2009)*. How can a trademark owner gain the domain name back for his own use? Would they have to file a UDRP in order to do so? How would the outcome of the UDRP be affected by the URS? *CADNA (6 May 2009)*. Why is there a higher standard for URS decision than a UDRP since this has no precedential or binding effect and only suspends the gTLD? *AT&T (6 May 2009)*. RC Members wish to further clarify the proposal that URS evaluators must review complaints under the same standard as the UDRP, but with a much higher burden of proof. *RC (7 May 2009)*. It seems that the standard is lower for a URS than a UDRP. The UDRP has the higher standard of "preponderance of evidence" while instead the URS has the standard of "clear and convincing" evidence. *Chanel (6 May 2009)*. Although UDRP is not the entire solution it should not be abandoned; whatever new processes ICANN implements to address trademark issues should be in addition to the UDRP, not in lieu of it. *IHG (8 May 2009)*.

URS Process Recommendations. Copies of the Whois record and website submitted as part of the complaint must be date-stamped at time copy was made; there should be automated mechanisms in addition to email for registries and registrars to query the third party DRSP to receive details of a URS complaint (similar to domain name transfer request notification to registrars). Email is not effective enough for high volume operations. Also, a registrant subject to

a URS complaint that submits an answer should be subject to an authentication process to verify registrant's identity at the time of submission of the answer. *Melbourne IT (9 May 2009)*.

Examiner process – more details needed. More detail is needed on operational matters including (1) how examiner panels will be constituted; (2) qualifications for the individual examiners; and (3) mechanism for enforcement by registrars of the panels' decisions. *Hearst Communications, Inc. (6 May 2009)*. More detail is needed regarding examiner process, including the qualifications of examiner (should use those who currently provide service) and the examination factors; the standard should not be clear and convincing but rather a preponderance of the evidence. *INTA (6 May 2009)*. Recommendations are needed regarding the qualifications of examiners. *Verizon (6 May 2009)*.

Notice Method. Email is unreliable for important notices, given the proliferation of spam. Any notification needs to be done by registered or certified paper mail. Email can serve as back-up notice, and must implement the highest security standards. *ALAC (15 May 2009)*.

Pre-Registration Concerns. What are the real benefits of pre-registration? Where should tm owners pre-register? Who receives the fee? *MARQUES (6 May 2009)*; *Melbourne IT (9 May 2009)*. The IP Clearinghouse should manage preregistrations. *INTA (6 May 2009)*. During the pre-registration process, isn't the trademark information the same as what is given to the IP clearinghouse, GPML and watch service? If so, why not synchronize pre-existing information? *AT&T (6 May 2009)*.

Costs. The cost of filing should not be prohibitive; the cost could be subsidized by registries, registrars, or ICANN. A fee of USD\$100 – 300 would be acceptable. *MARQUES (6 May 2009)*. It is not necessarily unfair to ask registrants to contribute to the cost of a URS proceeding provided it is proportionate. It might be reasonable to consider applying a standard charge for responding to a URS proceeding while applying a portion of the proceeds of the charge to a hardship fund for those registrants who can show they need assistance in the filing of a response. ICANN could also consider introducing a specific IP rights levy on registrations in the new gTLDs of, e.g., \$5, which could contribute to the hardship fund or be used to reduce the cost of the URS for complainants who cannot reach the GPM standard with all the benefits this brings. *Demys (6 May 2009)*.

Costs – Loser pays. The loser should bear costs. *AIM (5 May 2009)*. The burden of payment for the dispute process should be shifted to the infringer. The party that loses pays. *CADNA (6 May 2009)*. See also *IHG (8 May 2009)*. Verizon supports a loser pays model; there must be corresponding indemnities offered by a registrant who chooses to institute a proceeding to challenge the URS as part of a loser pays process. *Verizon (6 May 2009)*. Merely requiring the unsuccessful trademark complainant to pay administrative proceeding costs is not enough to prevent gaming of the system by overzealous attorneys. *M. Palage (11 May 2009)*.

Waiver for second rights owner. What if a second rights owner wants to get the domain? Waiver of the lock should be allowed. *INDOM.com (5 May 2009)*.

Private registrations. URS notices should include procedures for private registrations. *J. McElwaine (6 May 2009)*.

Answer fee issues. The URS system requires 10-25 domain names to submit an answer fee – this should be lowered under 4-5. The answer fee submission should be tied to the number of times they have been named as a respondent. *J. McElwaine (6 May 2009)*. 15-20 domain names should be sufficient. *MARQUES (6 May 2009)*. For the answer fee, it would be proper to apply a

charge across the board with suitable safeguards in place. The threshold for answer if fees are separated out should be much lower – i.e., 5 domain names – because a large number of UDRP cases do not involve multiple domain name registrations. *Demys (6 May 2009)*. There should be a fee (refundable if respondent prevails) to contest or respond. *MarkMonitor (6 May 2009)*. Melbourne IT supports answer fee where registrant is the subject of multiple URS complaints. *Melbourne IT (9 May 2009)*. Where the draft IRT report contemplates URS answer fees for multiple numbers of domain names, practical clarification is required in the event of privacy services possibly acting for multiple underlying registrants. *WIPO Center (10 May 2009)*.

Name lock, blacklisting options. The draft IRT report proposes the remedy of locking a domain name for the “duration of the registration period.” This may raise the possibility that trademark owners will be faced with filing repetitive URS cases for the same domain name(s) after a registration lapse. A domain name might rather be “blacklisted” for a longer, fixed duration, in a manner that does not impose any undue burden on registry operators and registrable on a showing of a legitimate intended use. Under the URS there does not appear to be the possibility for a bona fide third party to obtain registration of a locked domain name. It may be appropriate to reconsider this. Also, depending on the final design of the URS, it may be useful to consider applying any “suspension” remedy under the URS to the UDRP by interpreting its existing cancellation option in a similar manner. *WIPO Center (10 May 2009)*.

Basis of proposing a single provider system is unclear. Should ICANN mandate the URS the potential global demand for this instrument likely calls for a multiple provider system analogous to the UDRP. In particular, explanation is needed regarding the IRT footnote statement about the risk of conflict of interest if the URS provider is also a UDRP provider. That statement reflects a baseless presumption which has no place especially in the draft IRT report. *WIPO Center (10 May 2009)*. See also *M. Palage (11 May 2009)*.

URS Remedy. If a domain name is locked, the successful complainant should be given notice of pending deletion during the redemption period and provided the first right of refusal to register the domain name. *J. McElwaine (6 May 2009)*.

Pricing. Prices of domain names recovered through enforcement should be lowered so that portfolios are not too expensive. *G. Kirikos (6 May 2009)*.

Age of Domain Name. Need to take into account the age of a domain name. URS should not be for domains owned for 10 years. *G. Kirikos (6 May 2009)*.

Bond posting. A bond should be posted by complainants. *G. Kirikos (6 May 2009)*.

Indemnification concerns. Indemnification will not be enough for registrars. *G. Kirikos (6 May 2009)*. How is the complainant’s financial ability to stand behind its indemnification determined? Will registries and registrars have access to confirm that indemnification and supporting information has been provided? *GoDaddy (6 May 2009)*.

Notice Requirements. Whois should be supplemented with the name of someone for legal notice. Notice by email is insufficient. *G. Kirikos (6 May 2009)*. Notice by email and certified letter are enough. *MARQUES (6 May 2009)*. 14 day notice is insufficient. Notification must be done by certified paper mail. *EURALO (6 May 2009)*. The provider should not be obliged to send the complaint to the respondent by registered mail if actual notice is achieved by other means such as the respondent accessing the complaint on an online platform (evidenced by a data log of the provider). *Z. Loeb (6 May 2009)*. Notification could be simplified. Currently, five notices

are required to be sent within hours or days of the filing of a complaint, and certified paper mail will cause the hard costs of this measure to be high. *MarkMonitor (6 May 2009)*.

Suspension Notices. Suspension notices may be ignored or misunderstood in good faith by recipients who do not understand the language. Such notices must be sent in the official language of the country of delivery, and include text in local language detailing their rights under the process. *Euralo (6 May 2009)*. *ALAC (15 May 2009)*.

Opt-out. Registrants should be able to opt-out of the URS. *G. Kirikos (6 May 2009)*.

Fees. \$35 or \$40 per complaint is too low and will lead to inappropriate examiners. *G. Kirikos (6 May 2009)*.

Default procedure concerns. The default procedures are one sided. *G. Kirikos (6 May 2009)*. CORE does not support automatic takedown of the domain name where registrant fails to answer; this situation should be reviewed. *A. Abril i Abril, CORE (6 May 2009)*. Regardless of whether the registrant files a response, why would the process not proceed? Why is a lack of response sufficient to find against the registrant? The process should continue to the examiner phase regardless of whether there is an answer or not, or regardless of whether the answer provided meets some arbitrary set of guidelines. There should be no default action. *GoDaddy (6 May 2009)*. Please explain the rationale for allowing a Default Answer which expires when the gTLD expires. *AT&T (6 May 2009)*.

Examiners and Site-finding. The proposal raises an issue regarding examiners having to go and find the site ("based on the status and use of the domain at the time"). *G. Kirikos (6 May 2009)*.

Bad Faith – change in standard. It has been pointed out that the IRT Draft Report actually changes the UDRP standard in the following way: IRT Proposal: ". . . whether the domain name has been registered OR used in bad faith." (emphasis added). UDRP Standard: ". . . your domain name has been registered AND is being used in bad faith" (emphasis added). RC Members do not believe that the IRT should change the UDRP standard, and suggest that the IRT consider the potential ramifications of this subtle change. *RC (7 May 2009)*. The wording should say use and registration not use or registration in bad faith. *G. Kirikos (6 May 2009)*; *M. Neylon, Blacknight Solutions (6 May 2009)*.

Bad Faith – definition. With no specific definition of "bad faith" or a definitive and clear case, complaints will be hard to adjudicate and the system therefore will be more expensive. A specific definition of "bad faith" would increase efficiencies. *MarkMonitor (6 May 2009)*.

Deactivation. Deactivation should only occur after appeal to court (or after timing to do so lapses) as with the UDRP. *G. Kirikos (6 May 2009)*.

Examiner Decision Factors. The Examiner's decision should take into account policies of a specific gTLD. *A. Abril i Abril, CORE (6 May 2009)*.

Status of Domain Name – default; registration expiration. When a decision is in favor of the complainant the name is held in "default" state until it expires. What happens to the domain name at expiration? Who provides the "default" state web page and how are those costs covered? *GoDaddy (6 May 2009)*. The URS results in a lock of the domain name for the life of the registration only. There is no discussion as to what happens after the registration expires. As a result, this could become a repetitive task and require additional fees. *MarkMonitor* recommends a preference be given to the party that prevails in a URS for registration of the

name at its expiration. *MarkMonitor* (6 May 2009). What happens when name is up for registration? Will anyone be able to register? Blocked perpetually? *Chanel* (6 May 2009).

URS Scope. Must remain applicable to trademarks only and not to content beyond that. If used for illegal activities no further action should be taken and complainant should refer the site to law enforcement. *GoDaddy* (6 May 2009). URS should be used as a tool for cleaning up unlawful registrations at launch, not for routine trademark enforcement. If URS is more than this, then this issue must go through the GNSO policy development process. *Euralo* (6 May 2009); *ALAC* (15 May 2009).

Timing issues. Depending on the nature of the problem, different time scales may be required. Work of the IRT should be coordinated with the other groups dealing with malicious conduct. The timescales appear to be a reasonable balance. *NetNames* (6 May 2009).

Number of Providers. The use of a single provider of URS services should not be a permanent requirement. *NetNames* (6 May 2009).

Take down – fixed expiration date. The right to take down must have a fixed expiration date after registration – 90 or 120 days. *Euralo* (6 May 2009); *ALAC* (15 May 2009).

URS Impact on Other Areas, such as UDRP. The way a URS decision could impact the outcomes of other avenues (such as a UDRP) should be taken under consideration during the further development of the URS. *CADNA* (6 May 2009).

Electronic filing. Filing should be electronic only provided such filing fulfils the same functions in relation to the electronic filing as handwritten signature fulfils in relation to hardcopy documents (identity of party and strong evidence that the integrity of the communication or documents sent has been preserved). *Z. Loeb* (6 May 2009).

Additional streamlining needed. When all days are added up it is clear that additional streamlining is necessary to provide a rapid suspension. *INTA* (6 May 2009).

Features of URS Deemed Positive. Low cost pre-registration system; ability to initiate the URS by simple form; applied to multiple registrants if related; fees can be lower for batches of domain names owned by the entity; names are locked as soon as the URS is initiated; provision of notice to registry operator within 24 hours; and third party provider works on a cost recovery basis. *INTA* (6 May 2009).

Reconsider Scope of Remedy. There should be the option of transferring the domain name or placing it on indefinite ServerHold with no expiration. *INTA* (6 May 2009).

The current URS timeframes not rapid enough. URS must be rapid; 14 days for notice then time for examination is not rapid. Notice should be 1 week instead of 2 weeks and should be electronic only. Where a transfer is requested and there is a default, a time period should be specified where domain can be appealed (15-30 days) before transfer. *INTA* (6 May 2009). As drafted the process is not rapid nor permanent. For example certified letter is slow and does not make sense in the international context; it could allow gaming and continued monetization until the domain name is placed on hold. *Verizon* (6 May 2009).

Clarify fees. Fees \$100–200 per complaint with increases as more domain names are added; seems reasonable but needs clarification. *INTA* (6 May 2009). Any fee below \$200 per domain could result in a poor decision by the evaluator and encourage abuse. *Demand Media* (7 May 2009).

Lower fees. Fees should be lower since the purpose is to provide quicker resolution of abusive situations and the result is a suspension and not transfer of the gTLD. *AT&T (6 May 2009).*

Fee is reasonable. The fee approach is reasonable assuming the trademark owner can transfer valuable domain names back into its portfolio. *Verizon (6 May 2009).*

Registrar concern about fee payments. Some RC Members are concerned with the possibility that registrants may at times be responsible for paying fees to defend against complaints brought under the URS system. *RC (7 May 2009).*

URS Needs to address gaming potential. There should be penalties for infringer who files abusive answers. *INTA (6 May 2009).* The ability to appeal throughout life of registrations leads to gaming and constant monitoring. *Verizon (6 May 2009).* It is vital that the proper mechanisms are in place to reduce, if not altogether preclude, gaming of the system through either false claims or frivolous answers. *SIIA (7 May 2009).*

Answer Fee may be too low. INTA suggests that (a) complainant pays appropriate filing fee and indemnifies all parties; (b) registrant pays an answer fee equivalent to the filing fee (in all cases); (c) fee of the winning party is refunded. Post default answers should require a higher standard. In the alternative, the burden to file proceeding could be shifted to registrant upon receiving complaint. *INTA (6 May 2009).*

URS Model. What was the model for URS? *AT&T (6 May 2009).*

Infringement or Abuse Judgment; Infringement Determination. How does IRT, or will IRT, define “no genuine question” of infringement or abuse? *AT&T (6 May 2009).* Who has final determination that a domain name is infringing and to take it down? *VeriSign (7 May 2009).*

Conflict of interest concern – UDRP panelists. Is there any concern about a legal or business conflict of interest of using the same neutrals who are UDRP panelists? Perhaps prevent a neutral from serving both roles at the same time. *AT&T (6 May 2009).*

URS Ombudsman. Please explain further the URS ombudsman which appears to draw upon the ICANN version which apparently isn’t effective or utilized well. *AT&T (6 May 2009).* Who will fund the URS ombudsman? *M. Palage (11 May 2009).*

Ways to Expedite URS. A written opinion should be eliminated, as well as need for sending a certified letter to the registrant. Bifurcating the registrants’ notice period should be considered, based on duration of the registration (e.g. 10 days for registration greater than one year and 5 days for registration of less than one day). *M. Palage (11 May 2009).*

URS Flow Chart. The flow chart is missing the Complainant Appeal of an Abusive decision. Does the box labelled “Appeal (takedown removed)” include a Default Answer? If not, this is missing from the chart. *AT&T (6 May 2009).* Update the chart to illustrate the URS process flow. *M. Neylon, Blacknight Solutions (6 May 2009).*

Concern About Private URS Process. AT&T is skeptical about public acceptance of the URS being done by a private entity. Can it be done under ICANN which can outsource but keep within the organization? *AT&T (6 May 2009).*

Exhibits missing. Parties will eventually need to see the missing exhibits containing forms. *AT&T (6 May 2009).*

URS may be most important proposal; benefits seen in proposal. It is positive that the proposal uses (a) low cost pre-registration system; (b) simple form; (c) can file multiple related entity complaints; (d) lowers fees for batches of domain names; (e) initiates a freeze or lock when URS is filed; (f) provides notice to registry operator within 24 hours; and (g) third party provider works on a cost recovery basis. *Verizon (6 May 2009).*

Allow transfer of domain name. URS must allow for transfer of the domain name; otherwise the trademark owner is left to spend money to suspend less valuable domains or continuously refile. There should be a choice to either transfer or hold, and the burden then shifts back to registrant to bring a proceeding to challenge the URS finding. *Verizon (6 May 2009).*

“Registry Lock” may not prevent domain name sale and transfer. Note that a ‘registry lock’ of a domain name registration as defined on page 5 of 16 may not prevent selling a domain name and a domain name could still be transferred between registrants. It also does not prevent deletion. *VeriSign (7 May 2009).*

Concerns about efficiencies of the process. Registration qualification for URS should leverage the IPCH to increase efficiencies. If there is difficulty identifying registrants (the two “p’s” – proxy and privacy), the system is less efficient and more costly. Identifying recidivist infringers is very difficult. (See potential new RPM proposal.) There are unrealistic operating requirements – i.e. running system on a cost recovery basis. URS should be more automated with online forms and supporting systems. *MarkMonitor (6 May 2009).*

URS Proposal Needs More Work. URS requires more work and involvement of a wider range of participants. *NIC Mexico (6 May 2009).* Creating a dispute mechanism that is predictable and reliable – even for what is intended to be egregious cases on the extreme margins of the registration spectrum – is complex and requires consideration of the issues from all involved. *B. Fausett (7 May 2009).*

URS should be proposed within the current GNSO structure. If “Rapid Suspension” has merit, it should be proposed by the IPC within the current GNSO structure, where it could be more thoroughly considered by the broadest segment of affected parties and considered in conjunction with a review and revision of the current UDRP, with which it overlaps. *B. Fausett (7 May 2009).*

Do not apply URS to web content issues. Should URS be implemented, it should not apply to issues relating web content issues (Complaint form suggests sending proof of content of web site). *NIC Mexico (6 May 2009).*

Clear and actual infringement and actual use. URS must focus on clear and actual infringement of a mark holder’s rights, as opposed to more subjective and complex judgments about “good faith” or intent of registrant. It should be based on actual use of the domain. As stated by the report, the URS should only address clear and convincing cases of actual infringing use. *Demand Media (7 May 2009).* Some RC Members seek clarification that in order for registrants to be subject to a URS proceeding, the registrant must have an active website that allegedly infringes a trademark owner's rights; the mere registration of a trademarked name should not be sufficient to trigger URS proceedings. In the view of these RC Members, the proposed URS process has relatively low barriers for its use, and additional safeguards should be considered to ensure that the URS is not used for abusive purposes. *RC (7 May 2009).*

Conditions for URS. The language should be amended to make clear there must be:

1. Confusing similarity or an identical match between the domain and the Claimant's mark; and
2. A website or some other form of actual use where actual infringement of the Claimant's mark is clearly occurring. *Demand Media* (7 May 2009).

Lack of consensus on URS in Registrar Constituency and Registrars concerns. Some RC Members generally support introduction of a URS System, while other RC members object to it in its entirety. *RC* (7 May 2009).

Clearinghouse registration revocation. Will there also be a process to revoke a clearinghouse registration? *VeriSign* (7 May 2009).

Meaning of “takedown”. ‘Taking down’ implies removing from the DNS. Is that what is meant? A common process is to preserve status quo - lock the domain name, but don’t remove it from DNS. *VeriSign* (7 May 2009).

Responsible entities and actions. Should clearly state the actions taken and who is responsible – registry, registrar or registrant. *VeriSign* (7 May 2009).

Confusion in “lock” terminology. The ‘locked state’ referred to in the first line of page 2 appears to have a different definition than what is used by gTLD registries. To avoid confusion, it is recommended that a different term be used. On page 4, is the definition of ‘lock’ used here the same as used earlier in the document? Usage of ‘lock’ should be consistent and clear. *VeriSign* (7 May 2009).

Registry Lock timing. Is the plan here for the registry operator to lock the registration before notification of the registrar and registrant? *VeriSign* (7 May 2009).

Standard page posting responsibility. Who is responsible for posting the ‘standard page’? The registrant, the hosting provider, the registrar, the trademark holder? *VeriSign* (7 May 2009).

Whois Updating. Where and how does this information get added to Whois that reflects the name is on hold and unable to be transferred or used for the life of the registration? This approach preserves the Whois information for the domain, potentially with updated statuses; is that what is desired? The Whois may require a modification to the Whois system for both registries and registrars and hence would have cost implications. *VeriSign* (7 May 2009).

Website content concerns. Only the web hosting provider has control over the content on a registrant’s website – not necessarily anyone who is a party to an ICANN agreement. Content associated with a domain frequently changes. Who will be asked to police the content associated with the trademark? How will this be managed on a global basis? *VeriSign* (7 May 2009). URS should address content (such as counterfeiting) and not just the name. *Chanel* (6 May 2009).

Post-Delegation Dispute Resolution Mechanism

Proposal is problematic. This entire section should be stricken. The proposal would undercut ICANN’s authority and impose impossible duties on registries. It will invite abuse despite the safeguards proposed. When applied to second level, it will require registries to police the TLD namespace for infringements but provide no enforcement mechanism. It will invite punitive administrative actions by ICANN. *Minds + Machines* (27 April 2009). At this stage entities should simply go to court as ICANN has failed. *G. Kirikos* (6 May 2009). The proposal puts a huge burden

on a registry to police registrations in a way that may be cost prohibitive. *M. Neylon, Blacknight Solutions (6 May 2009)*. The proposal should not be necessary. *NetNames (6 May 2009)*.

Post-delegation dispute mechanism – burdens and roles. The proposal puts registries in the position of policing registration of domain names, a function they are neither designed nor equipped to do. It seems to take responsibility from ICANN for policing its contracts and place the burden on trademark holders who have the case or knowledge to complain. *NAF (6 May 2009)*.

Clarification of intent. The proposal is hard to follow. If its intent is to address the scenario where a registry operator contributes to second level infringements (versus where a TLD is identical or confusingly similar to a mark), then the proposed solution is acceptable. *Demand Media (7 May 2009)*.

Concerns about IRT – drafted proposal role for ICANN and its impact on trademark owners. The proposal’s “exclusive” role for ICANN in the initiation and participation in a post-delegation dispute is problematic. It is unclear on what basis the draft IRT report appears to presume that resolution of ICANN’s “dispute” with the registry—based on violation of third party rights—would offer conditions which an aggrieved trademark owner would consider an adequate response to an infringement of its rights. It seems unrealistic to expect ICANN, as the registry accrediting agency, to exercise its contractual enforcement responsibilities in a manner that would begin to approach the options which trademark owners have at their disposal to address abuses of their rights under law. As an alternative to court litigation a robust post-delegation tool not only for ICANN but also for trademark owners can assist ICANN’s compliance efforts to the benefit of all stakeholders. Moreover, the post delegation substantive criteria set an exceedingly high bar; section 2.1.1.2 would require that the registry’s operation or use of the TLD is both inconsistent with RPMs enumerated in its contract with ICANN and that it has caused or materially contributed to abusive domain name registrations. It seems that where a registry implements or does not act inconsistently with) an RPMs it may have itself administered this alone would prevent a finding of accountability. This would do little to incentivize registry operators to offer effective RPMs and signals a damaging shift from the approach WIPO has taken in its proposed post-delegation procedure. *WIPO Center (10 May 2009)*.

Compliance. ICANN must rapidly and effectively enforce compliance by reference to a range of remedies, including ultimately revoking the license to operate the TLD. *NetNames (6 May 2009)*.

Support for proposal. The post-delegation DRM proposal should be supported. *AIM (5 May 2009)*; *Regions (5 May 2009)*; *A. Abril i Abril, CORE (6 May 2009)*; *MARQUES (6 May 2009)*; *Verizon (6 May 2009)*. Melbourne supports the proposal as there does need to be a clear process for a rights holder to request ICANN to investigate a breach of the registry agreement related to the rights holder’s rights—i.e., there needs to be follow-up mechanisms if conditions are not complied with. *Melbourne IT (9 May 2009)*. Yahoo! supports it and agrees that ICANN must implement a solution to effectively deal with brand abuse on the top and second level. Having a mechanism with a more defined process will help ensure that past abuses in the registrar space will not be as easily repeated in the registry space. *Yahoo! (9 May 2009)*. AT&T supports any type of feasible post-delegation dispute mechanism that will operate to hold abusive registrar or registry actions accountable, and opposes any standards governing the separation of registries and registrars. *AT&T (22 May 2009)*.

Reserve judgment on proposal. eBay reserves judgment on post-delegation dispute policy recommendation because it is not convinced that an additional procedure is needed as an overlay to vigorous and transparent contract enforcement. *eBay (7 May 2009)*.

Contradiction – Section 2.4.3 and 2.6. There appears to be a contradiction between section 2.4.3 (contract termination for repeat offenders) and 2.6 (findings shall not influence resolution of subsequent disputes). *eBay (7 May 2009)*.

Trademark registration date. With respect to complaints, a date of registration of a trademark must be specified. The ten point test is not assured enough. *Minds + Machines (27 April 2009)*.

Applicant questions on registration compliance and dispute resolution. ICANN should make more explicit in the questions to be answered by an applicant that they have to provide specific registration compliance and dispute resolution mechanisms in their application and should incorporate such policies into the TLD registry agreements. *A. Abril i Abril, CORE (6 May 2009)*.

Enforcement. The panel should be able to make recommendations regarding enforcement to ICANN. ICANN should not be involved in selection of enforcement sanctions. *Regions (5 May 2009)*. COA strongly supports the inclusion of graduated enforcement sanctions into the ICANN Registry Agreements. *COA (6 May 2009)*. eBay supports concept of graduated enforcement tools as laid out in section 2.4. *eBay (7 May 2009)*.

Allow third party participation. INTA disagrees with IRT's proposal to ban a third party from participating in the proceeding and believe the third party and ICANN should be able to press forward with action against a registry. *INTA (6 May 2009)*. A third party should be able to allege trademark abuse or registry and registrar misconduct. *Verizon (6 May 2009)*. There must be a reliable and user-friendly means for affected third parties to bring apparent contractual shortfalls to the attention of ICANN. *COA (6 May 2009)*.

Third party complainant participation. The third party complainant should be entitled to participate in all phases of the post delegation dispute mechanism if it chooses. *Regions (5 May 2009)*.

Unregistered marks (section 2.1.1.1). The post-delegation procedure should be able to accommodate complaints based on unregistered marks. *INTA (6 May 2009)*.

Confusingly similar domain name plus TLD (section 2.1.1.2). The standard should be expanded to refer more specifically to issues where there is, as the result of combining a domain name registration with the TLD, the creation of a name that is confusingly similar (example: ya.hoo). *INTA (6 May 2009)*.

Mandatory Administrative Procedure – Additional Grounds. INTA recommends including failure to recognize rights in the IP Clearinghouse as a ground that requires a registry to submit to a mandatory admin procedure. *INTA (6 May 2009)*.

Liability Factors (section 2.2.1.1). The factors the Panels takes into account in determining liability should be more specific. *INTA (6 May 2009)*.

Vertical Separation (section 2.2.1.4), Footnote. The vertical separation requirement continues to play a valuable role and should not be significantly relaxed. *INTA (6 May 2009)*.

Caveat About Reliance on Court Proceedings (section 2.6). The availability of court proceedings should not be relied upon too heavily because the effectiveness of such measures varies depending upon jurisdiction. *INTA (6 May 2009).*

Proposal Lacks Sufficient Details. Many details seem to be missing including, but not limited to the time constraint on how long the ICANN complaint investigation should take and who would be the proposed DRP provider. This RPM needs much more detail to be useful. *MarkMonitor (6 May 2009).* More detail is needed. *COA (6 May 2009).*

Stronger Oversight. The PDRP appears to be process similar to the complaint process through the Internic Whois site, but with fees attached. There should be stronger oversight of this system. *MarkMonitor (6 May 2009).*

Registry Misconduct. There is no discussion of malicious activity by the registry itself. *MarkMonitor (6 May 2009).*

Adherence to Application Representations – Open and Community. Open and Community applicants should both be required to abide by representations made in the application process, not only Community as set forth in the Draft Report. *MarkMonitor (6 May 2009).*

Concern about whether there should be a dispute mechanism. There was significant heartburn expressed by the members of the constituency. There was a strong belief that a procedure like this should not be required and that ICANN should just be required to do its job. If ICANN does not have enough facts to find an actual breach of the Registry Agreement, the registries felt like there should not be any dispute mechanism. *RyC (1 May 2009).*

Disputes too broad. The registries believed that the applicable disputes were way too broad. *RyC (1 May 2009).*

Registries' Section 2.1.1.1 Concerns. The section should not have an a, b and c because it not only includes concepts of infringement, but also dilution. Trademark counsel for the registries have recommended that 2.1.1.1 (a) should only be limited to cases where (c) can be established or infringement, but (a) and (b) should not be factors at all. *RyC (1 May 2009).*

Registries' Section 2.2 Concerns. The registries had concerns that some of the Consideration Factors listed in Section 2.2 should not be considered at all if they are completely irrelevant to the case at hand. For example, if the dispute is unrelated to whether the "Registry Operator has effectively implemented" the UDRP or URS, then the panelist should be forbidden from considering that as evidence. This same concern applies to affiliation. *RyC (1 May 2009).*

Whois

Privacy Concerns. Thick Whois ignores right to privacy. ICANN should use how .tel has implemented Whois as an example. *M. Neylon, Blacknight Solutions (25 April 2009).* Whois could be adopted as per .biz and .info, but there is a need to recognize variations may exist to meet privacy laws. The IRT has not raised issues around internationalization of registration data or use of other protocols such as IRIS or CRISP. Thick Whois may not work with IDNs as stated in Appendix A. If there is a centralized, universal Whois, how would issues of local law be addressed? *M. Neylon, Blacknight Solutions (6 May 2009).*

The Whois model contemplated would violate rights of privacy in many places, and would cause favoritism among registries in countries with weak privacy laws. *P. Vande Walle (27 April 2009).* The thick Whois requirement should be implemented provided that privacy concerns are taken

into consideration. *A. Allemann (27 April 2009); Minds + Machines (27 April 2009); NetNames (6 May 2009)*. Thick Whois should be adopted but with opt-out for personal contact data being published. *A. Abril i Abril, CORE (6 May 2009)*. Thick Whois raises privacy of personal data concerns; should have stakeholders with expertise in EU directives on data protection. Compliance by registrars and registries with local and international data protection laws would prevent public Whois from being effective. *EURALO (6 May 2009); ALAC (15 May 2009)*.

Thick Whois should be provided with respect to all registries with the possible exception of jurisdictions where there is specific privacy case law. (See registrant research service for how to find recidivists in light of proxy and jurisdictions where there are privacy concerns.) There should be a universal and centralized repository for domain name registrant data such that information available (may be restricted due to jurisdictional privacy issues) must be provided and accessed in a consistent way. *MarkMonitor (6 May 2009)*.

Thick Whois Should Be Adopted. Thick Whois requirement should be adopted. *AIM (5 May 2009); INDOM.com (5 May 2009); INTA (6 May 2009); DotZon (6 May 2009); Verizon (6 May 2009); COA (6 May 2009); SIIA (7 May 2009); eBay (7 May 2009)*. It should be adopted subject to adequate safeguards to comply with applicant data protection laws and regulations. *M. Palage (11 May 2009)*. Thick Whois should be mandatory. *Regions (5 May 2009)*. Thick Whois should apply to new gTLDs and its success would rely on its implementation in the .com namespace. *dotBERLIN (5 May 2009)*.

Thick Whois and address verification via PIN codes should be adopted; universal Whois should be a precondition to ICANN getting JPA renewal. Money for this should come from VeriSign and other gTLD operators. *G. Kirikos (6 May 2009)*. IHG strongly supports requiring new gTLDs to operate under a thick Whois model and agree that ICANN should explore a centralized, universal database to be maintained by ICANN. *IHG (8 May 2009)*. See also *Yahoo! (9 May 2009)*. AT&T endorses the IRT recommendations regarding thick Whois and establishment of a centralized, universal Whois database to be maintained by ICANN. *AT&T (22 May 2009)*. See also *IACC (22 May 2009)*.

Thick Whois should be adopted at the registry level and it should be the policy of the registry to show a full Whois; registrars should also be under obligation. Any personal information not shown should be available through a legitimate means in a reasonable length of time to legitimate enquirers. A universal Whois database maintained by ICANN for all gTLDs is an appealing idea. *MARQUES (6 May 2009)*.

Whois recommendations. Melbourne IT supports the thick Whois service operated at the registry. It should provide free web-based access to the information with mechanisms to prevent computer based data mining. Automated access to the thick Whois service should be restricted to accredited registrars and other parties accredited by ICANN that meet other restrictions (e.g., only used for domain name operations, not for marketing purposes). *Melbourne IT (9 May 2009)*.

No need for centralized database maintained by ICANN. This raises risks associated with all data held in one place that may be used for purposes other than domain name operations. ICANN should instead focus on improving standards around data formats for queries and for managing non-Latin language scripts. *Melbourne IT (9 May 2009)*.

Compliance Incentives. ICANN should take the opportunity to provide incentives for the new registries to take on some of the responsibility for ensuring that the ICANN-accredited registrars which they employ to sponsor registrations live up to their Whois obligations. Registries should

be encouraged to require that their registrars take proactive steps to improve Whois data accuracy and should consistently cancel the registrations of those supplying false Whois data. If they provide proxy or private registration services, they should include and implement a process enabling copyright or trademark owners who present reasonable evidence of actionable harm to obtain access to the actual contact data of registrants. *COA (6 May 2009)*.

Accuracy of Registrant Information. New gTLD applicants should be asked what they intend to do to ensure that the registrant contact information collected by registrars is accurate, complete and up to date, and how they plan to deal with proxy or private registrations. These answers should be made public and evaluated as part of the evaluation process. *eBay (7 May 2009)*.

Whois-security. Whois requires strong security measures and could increase operations costs. *NIC Mexico (6 May 2009)*.

Thick Whois is unnecessary and may increase abuse. All data is readily available from registrars and thus would be superfluous at registry level. Service already exist which aggregate and display thick data from all registrars. Thick Whois will incent registrars to more aggressively market proxy services to customers. There will be the risk of data becoming available to spammers, phishers and other abusive parties. Thick Whois was not mandated in other rounds. However, efforts to create a cross-TLD universal thick registry database should be supported. *Demand Media (7 May 2009)*.

Thick registries are not essential today. Thick whois is okay but not essential; a Whois Task Force set up by ICANN did not conclude that thick registries should be mandatory and it was never required for previous applications. *CentralNic (7 May 2009)*

Escrowing data. If registrars are escrow ing data why should the registries also do so? *CentralNic (7 May 2009)*.

Algorithm

Support for algorithm. AIM supports the algorithm proposal, but requests further analysis regarding the visual, aural and concept tests. *AIM (5 May 2009)*; *MARQUES (6 May 2009)*. Extending the analysis is logical and easy to support. *NetNames (6 May 2009)*. Yahoo! endorses the IRT recommendation that the ICANN-developed algorithm should only be used as a filter to identify those applied-for gTLD strings that will require further analysis whereby the evaluators consider the aural and commercial impression (meaning) of the string before making a final determination as to confusing similarity. *Yahoo! (9 May 2009)*.

Criticism of algorithm. Algorithm was a waste of money. Applications should be widely advertised in newspapers and magazines for notice. *G. Kirikos (6 May 2009)*. Confusion cannot be settled by an algorithm but requires human intercession. *A. Abril i Abril, CORE (6 May 2009)*.

Clarification needed. The IRT needs to look at Section 4 language (last line of first paragraph) and clarify what looks like a conflict with the paragraph that follows where the IRT recommends that the string similarity algorithm only be used to identify those strings that require further analysis to determine confusing similarity. *Yahoo! (9 May 2009)*.

More Details. More examples are needed regarding how the algorithm might be applied. What the IRT is requesting may not be practically accomplished. *M.Neylon, Blacknight Solutions (6 May 2009)*.

Restrict evaluation to Visual Similarity. Evaluation must be restricted to visual similarity, and not inappropriately enhanced to include “aural or meaning”. *EURALO (6 May 2009); ALAC (15 May 2009).*

Aural and commercial impression. Melbourne IT supports consideration of aural and commercial impression on strings that are previously identified as visually similar by the string check algorithm, but does not support them without the visual similarity check being done first. (e.g., .voyage and .travel can mean the same but there is no visual confusion; .com and .kom are visually similar and sound similar; .mate and .make may look similar but sound and mean something different). *Melbourne IT (9 May 2009).*

Concerns About Aural Analysis. If aural similarity is added it would exceed the usual trademark verification practices thus affecting the rights of other participants. Panel needs to consider many aspects and use common sense. Aural impression would be difficult as it involves different languages and accents from different regions that could make the analysis very complex. *NIC Mexico (6 May 2009).*

IDN perspective (section 4, protection of GPMs). If string confusion is to be expanded to include aural and meaning similarity then it should be done with the caveat that two compared strings should be deemed similar if and only if they are found similar on all three counts. If similarity is found only on one of the 3 tests then the applied-for string should go through to the next step. To the extent a similar right is given to varying levels of protected strings in the general IRT document, this same condition should apply analogously if the criterion is expanded to 3 tests. *S. Subbiah (24 May 2009).*

Other/General

IRT proposals are problematic. They are outside the scope of trademark law and outside scope of ICANN. They do not meet the guidelines and consideration criteria established by the IRT itself. *K. Kleiman (24 May 2009).*

Trademarks – threshold question not addressed. The IRT draft report fails to address the fundamental question of whether .trademark gTLDs should be rejected at the threshold. A rejection of the .trademark gTLD is a far superior response than the granular solutions presented by the IRT. The IRT should adopt a standard that forecloses registration of any domain that incorporates a registered trademark or confusing variation thereof. The costs of .trademark domains outweigh any benefits. *Ford et al. (21 May 2009).*

Costs. If ICANN decides to proceed with the registration of gTLDs incorporating registered trademarks it should be required to bear the monitoring and enforcement costs imposed by that approach (such as the costs associated with the IP Clearinghouse.) *Ford et al. (21 May 2009).*

Opposition to new gTLD rollout. Opposed to any recommendations that will impact existing gTLDs through the ‘equitable treatment’ clauses in current contracts. *G. Kirikos (6 May 2009).*

Economic justification lacking. The report made no attempt to perform a cost-benefit analysis. *G. Kirikos (6 May 2009).* ICANN has failed to demonstrate a plausible economic analysis supporting a wholesale expansion of the DNS and any such expansion should be in a controlled fashion and only for specific and justifiable reasons. *Yahoo! (9 May 2009).*

Trademark/brand names gTLD category. Instead of a IP Clearinghouse and GPML list being maintained as a separate process outside of the proposed v2 of the gTLD Applicant Guidebook,

there could be a category of gTLD which trademark holders can apply for, where they pay to ensure that the gTLD is not introduced. *D. A. Teelucksingh (7 May 2009)*.

Corporate/single registrant TLDs. Melbourne IT supports separately identifying corporate brand/single registrant TLDs and identifying the requirements for selecting one or more registrars. *Melbourne IT (9 May 2009)*.

Evaluation of RPMs. It is not clear from the draft report just how the proposed mechanisms will be evaluated by ICANN. Consider a new gTLD application that fails to offer at least one of the following:

1. An IP claims system, relying on data in the IP clearinghouse;
2. A standard sunrise registration process, also relying on such data; or
3. Some rigorous form of pre-registration verification.

Could such an application meet the standard set out in the draft report for rights protection mechanisms? *eBay (7 May 2009)*.

Not all solutions need to be adopted. Does not agree that all solutions should be adopted. No evidence new TLDs will cause rights problems to spiral out of control. *Demand Media (7 May 2009)*.

Sunrise periods and domain name prices. Under the current proposals the new gTLD registries are likely to be quite happy for as many names as possible to be registered during sunrise periods, simply because the prices are often higher than during the open (normal) registration period. If the sunrise periods are truly to protect third party organization products then perhaps it may be worth considering creating a new class of domain name registration with restricted rights purely for names registered during sunrise periods. It may also be worth giving consideration to an alternative allocation to part of any money received by registries from domain name sales during sunrise periods to avoid some new gTLDs registries being created primarily to benefit from payments from organizations looking to defend their marks and products. One solution may be for any excess revenue over and above the domain name price in the open registration period to be allocated to a central ICANN fund. *P. Tattersfield (7 May 2009)*.

IDN (clause 2, appendix A relating to WIPO). Such accommodation should only be deemed true if and only if the limits and territorial character of trademark and related rights regarding the IDN script of the particular IDN gTLD and registry fall overwhelmingly within the boundaries of the principal country or countries that collectively include a high threshold (e.g., more than 80%) of the global population that uses that IDN script/language (e.g., a complainant with an exact IDN match that is not already trademarked within all of said countries should have no case against someone or the registry operator who has already previously registered that string on a first come, first served basis). *S. Subbiah (24 May 2009)*.

IDN issue (appendix one table). IDN variations must be allowed for placement in the IP Clearinghouse if and only if the right-owning registrant already has that said right in that script and in the country or countries where that language/script is primarily spoken (e.g., a high threshold-trademarks filed in the country or countries that collectively involve more than 80% of the global population that uses that script). *S. Subbiah (24 May 2009)*.

IDNs. How will competing trademark registrations involving IDNs be taken into consideration? *RU-CENTER (30 April 2009).*

IDN Variants – no additional fees. Strongly support applicants applying for more than one string in an application, without additional application fees, providing strings represent IDN variants of the same .BRAND in different alphabets. *Minds + Machines (27 April 2009).* Melbourne IT supports fee structure recognizing IDN/ASCII equivalents of same string provided that each second level name is managed by the same registrant and maps to the same Internet location. *Melbourne IT (9 May 2009).*

Fees. Applicants should be able to apply for more than one string in an application and if equivalents only pay a nominal fee per string. *NetNames (6 May 2009).*

Evaluation of Pre-Launch RPMs. The IRT should strive for greater clarity in its final report about how the proposed pre-launch RPMs of new gTLD applicants should be evaluated by ICANN, applying the criterion that the applicant must “demonstrate that its selected RPM meets or exceeds the minimum protections described herein.” *COA (6 May 2009).*

Registries ensuring registrar compliance. ICANN should require the new gTLD registries to ensure that registrars that qualify to sponsor registrations within the new registries also fulfill relevant obligations with regard to issues such as registrant verification and proxy/private registration services. *COA (6 May 2009).*

Effect on existing gTLDs. How these rights protection mechanisms affect the broader universe of gTLDs should be explored. Would the IRT recommend they be applied to existing gTLDs? *NetChoice (6 May 2009).*

Cost impacts. It is important to be realistic about cost implications of the proposed RPMs. They will likely increase the price that registrants pay for second levels. *NetChoice (6 May 2009).*

Sufficiency of fees to cover costs. IRT needs to be clearer about whether fees would be best for covering all costs of operating services such as the IP clearinghouse, IP claims, sunrise restrictions, and thick Whois. If fees are not enough, then it is necessary to be clear that costs will be passed through to registrants. *NetChoice (6 May 2009).*

New gTLD business plans impact – higher costs and lower revenues. New TLD applicants should know that they may need to revise their business plans by raising operating costs and lowering revenue from defensive registrations. *NetChoice (6 May 2009).*

RPM concerns. The complexity and “high-touch” nature of the proposed RPMs may make them expensive and difficult to scale. Consistent application of the RPMs across all new TLDs may make them easier to implement, understand and use. Adding features to RPMs to make it easier to detect and pursue recidivist infringers could streamline the process of protecting rights. *MarkMonitor (6 May 2009).*

Participation of all registries and registrars. In the face of proxy and privacy concerns, all registries and registrars should be required to participate. *MarkMonitor (6 May 2009).*

URL lists. A brand owner or another third party could submit a list of URLs to a registry or registrar. *MarkMonitor (6 May 2009).*

Independent review regarding international treaties and conventions. The report requires an in-depth legal analysis of the recommendations by an independent third party to see if it

complies with relevant international conventions and treaties. *Euralo (6 May 2009)*; *ALAC (15 May 2009)*.

Apply to existing gTLDs. Existing gTLDs should sign up, applying the same RPMs. *dotBERLIN (5 May 2009)*. Policies should be applied to existing gTLDs as well. Otherwise it would put new gTLDs at a competitive disadvantage. *Euralo (6 May 2009)*; *ALAC (15 May 2009)*.

Relationship to Existing TLDs. These recommendations will likely affect existing TLDs, so the issues should be pulled out of the new gTLD process and opened to formal debate. *A. Allemann (27 April 2009)*. These policies should be applied to existing gTLDs; otherwise new gTLDs will be put at a competitive disadvantage. *Euralo (6 May 2009)*. Consistent application of the RPMs across all new TLDs may make them easier to implement, understand and use. *MarkMonitor (6 May 2009)*. Existing TLDs should sign up, applying the same RPMs. *dotBERLIN (5 May 2009)*. How these RPMs affect the broader universe of gTLDs needs to be explored; would the IRT recommend that they be applied to existing gTLD? *NetChoice (6 May 2009)*.

National trademark owners. IRT to open the space to bona-fide applications of national trademark owners. *dotBERLIN (5 May 2009)*.

IRT report is not a new gTLD program endorsement. IRT should clearly state that the report is not intended as an express or implied endorsement by members in favor of ICANN's program. *Regions (5 May 2009)*.

RPMs' Beneficial Effect. RPMs should eliminate any incentive to engage in defensive applications and second-level registrations. *Regions supports all RPMs. Regions (5 May 2009)*.

Phased implementation. Page 5 'phased implementation' should be expanded in the final report. *Regions (5 May 2009)*.

Phased new gTLD implementation. Phased new gTLD rollout merits further consideration. *NetNames (6 May 2009)*.

Consider Dutch auction. ICANN should consider Dutch auction processes. (i.e., auctioneer begins with high bid, then lowered until price accepted). *Regions (5 May 2009)*.

General support but third party cost concerns. AIM supports the IRT proposals in general, but disagrees with 'externalities' of costs forced on neutral third parties. *AIM (5 May 2009)*.

Registry costs. Generally, registries should be able to charge a nominal fee to cover costs associated with implementing all the solutions noted. *Minds + Machines (27 April 2009)*.

Effect on consumers. Consumers are not in the list of benefactors of the IRT proposals. *NCUC (6 May 2009)*.

Proxy Registration Standards. Development of universal standards and practices for proxy domain name registration services is highly desirable. *NetNames (6 May 2009)*. See also *M. Palage (11 May 2009)*.

Don't Adopt Piecemeal Approach. The proposal should be adopted as a whole. *Verizon (6 May 2009)*.

Better definition of community needed. ICANN needs to define a community better so that existing communities of interest can create and manage their own TLDs. The scoring in ICANN's

DAG should be modified to make it easier to qualify as a community. (Explanatory paper attached.) *Minds + Machines* (22 May 2009).

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