

We are one of the dozens of parties that have been waiting for some years now for the opening of a new top-level domain (TLD) application window at ICANN. Therefore we appreciate the fast and straightforward creation and comprehensive work the IRT team has accomplished in a very short timeframe. We think the IRT work will lead to a solid framework for protecting IP-rights. The only point we would like to notice is the missing transparency of the IRT team members regarding their and their client's interests in the new gTLD round. However, the report seems to be adequately balanced in this respect.

Before coming to our comments we would like to mention that dotBERLIN has always supported the implementation of rights protection mechanisms (RPMs), in particular in cityTLDs. We think that the proper protection of intellectual property will not only benefit and satisfy the rights holders, it will also contribute to the overall success of a TLD. We have issued and circulated a paper on cityTLD RPMs in the IP and ICANN community in September 2008. The paper is available at <http://www.dotberlin.de/files/dotBERLIN-cityTLDs-IP-Rights.pdf>

### **Comment 1 - It would help if existing gTLDs sign up!**

Many articles by WIPO and others have been published stating that the overwhelming burden (> 90%) in cybersquatting cases originates from .com/.net/.org gTLDs. The 12 new gTLDs introduced since 2000 have had only marginal impact on the predominance of .com/.net/.org in this respect. We, like other experts, believe that no single new gTLD or even the top 100 of the new gTLDs together will reach the 80 million domains in the .com namespace. Therefore it might be helpful to heighten trust in existing TLDs by applying the same RPMs introduced for the new gTLDs also to the existing gTLDs. This is a „conditio sine qua non“!

### **Comment 2 - A white label IP clearing solution is needed.**

Trademarks offices worldwide rarely offer notice and takedown service for trademarks, it is mostly up to the private sector (lawyers and IP service providers) to run watch services and identify infringements. Therefore we propose that the IP Clearinghouse offers a white label solution that can easily be implemented at marginal costs by registries, registrars and other IP service providers.

### **Comment 3 - Protect local trademark diversity and avoid global trademark monoculture.**

A short prelude: Having a look into the Dow Jones index components from 1979 and 2009 clearly shows how GPML compatible trademarks disappear just in a generation's time span. The 2009 DJIA

lists only 10 out of 30 companies that were listed in 1979. Additionally, during the current crisis we have seen at least a dozen GPML compatible trademarks disappear over night.

Our point is that the GMPL is likely to extinguish even strong local trademarks. Let's have an example: There might be a Chinese car manufacturer named SUN and with trademarks for cars and there might be a Finnish sauna wholesaler with the name SUN, both along with the US-based SUN Microsystems. SUN Microsystems seems the only out of the three which is eligible for the GPM list. The question now is whether SUN Microsystems should have superior rights or treatment options over the Chinese or Finnish SUN companies in the new gTLD round. We know that this is a challenge to incorporate all rights from different trademark owners. Nevertheless we question the GMPL and ask the IRT team to open the space for bona-fide applications of national trademark owners in good standing. We also think that any IP Clearinghouse should respect and incorporate local trademark concerns. Otherwise a new global trademark monoculture will be established which stands in contrast to ICANN's mission to enhance diversity.

### **Comment 4 – URS yes, but cooperation with WIPO.**

We propose that the creation and operation of the "Uniform Rapid Suspension System ("URS") and the IP Clearinghouse should be a) aligned with the vast experience of WIPO and other dispute resolution providers and b) personal and on-site with WIPO.

### **Comment 5 – We fully support the thick WHOIS model.**

Undoubtedly, the thick WHOIS model has been a great success among gTLDs and therefore we think it should be standard for the new gTLDs as well. But as said in comment 1, the allover success for protecting IP also relies on its implementation in the .com namespace.

Author is Dirk Krischenowski, Founder and CEO of the .berlin top-level domain initiative, Berlin, May 04, 2009