May 9, 2009

Ms. Caroline Chicoine
c/o ICANN
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601

RE: Comments of Yahoo! Inc. to the April 24, 2009 IRT Draft Report

Dear Ms. Chicoine:

Yahoo! Inc. ("Yahoo!") is pleased to submit these comments in response to the April 24, 2009 draft report (the "Draft Report") prepared by the Implementation Recommendation Team (the "IRT"). Yahoo! is a leading global Internet brand and one of the most trafficked Internet destinations worldwide. With more than 500 million users around the globe, Yahoo! is focused on powering its communities of users, advertisers, publishers and developers by creating indispensible experiences built on trust. Our company is headquartered in Sunnyvale, California and has a presence in more than 20 markets and regions worldwide. In addition, Yahoo! has demonstrated its commitment to private sector management of the DNS by actively participating within the ICANN process for many years including, but not limited to, having a member of its in-house legal team serve on the IRT.

We appreciate the opportunity to provide ICANN and the broader stakeholder community with our comments on the rights protection mechanisms proposed by the IRT in the Draft Report. Yahoo! fully supports the efforts of the IRT in proposing an interwoven set of practical, scalable and reasonable solutions to the vexing issue of trademark protection. In addition, Yahoo! applauds the ICANN Board for establishing the IRT to tackle the threshold issue of trademark protection as it considers that broader question of gTLD expansion.   While Yahoo! generally supports the IRT and the proposed rights protection mechanisms set forth in the Draft Report, Yahoo! reiterates its position that ICANN has failed to demonstrate a plausible economic analysis supporting a wholesale expansion of the DNS[1] and that any expansion of the DNS should be in a controlled fashion and only for specific and justifiable reasons.[2]

We turn now to the specific proposals set out in the Draft Report:

IP CLEARING HOUSE, GLOBALLY PROTECTED MARKS LIST AND OTHER SECOND-LEVEL RIGHTS PROTECTION MECHANISMS.

Yahoo! is very supportive of the IP Clearinghouse proposed by the IRT in the Draft Report. It is tremendously frustrating for trademark owners to have to administer numerous pre-launch rights protection mechanisms simultaneously.   The establishment and maintenance of a centralized

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[1] See, Yahoo! comments on Economic Analysis dated April 17, 2009.
[2] See, Yahoo! comments on second version of DAG dated April 13, 2009.

database containing pre-validated data should lessen the financial and administrative burden on trademark owners, registrars and new gTLD registry operators. Yahoo! supports the concept of having an IP Clearinghouse that 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 as well as other rights that may be recognized in the registry operator's country of origin.

Yahoo! also supports the establishment of a Globally Protected Marks List ("GPML") whereby trademarks that meet certain pre-established criteria are entitled to an increased level of protection as Globally Protected Marks ("GPMs"). In this regard, Yahoo! believes that plural forms of the mark should also be included in the list of variations that would be considered an "exact match" of the mark. With regard to the criterion set out in the Draft Report, Yahoo! believes the IRT needs to 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 in order to have its mark included on the GPML. Additionally, Yahoo! believes that the IRT should rethink its position on licensees found on page 7 of the proposal. The ownership of trademark registrations within a large multinational company may take many forms due to tax or other considerations. For this reason, Yahoo! requests that the IRT re-evaluate its position on licensees to ensure that the current prohibition will not have any unintended consequences.

Yahoo! also requests that the IRT clarify one point under Section 4 "Protection for GPMS at the Top Level.'' Specifically, the last line of the first paragraph in this section reads, "String confusion will be found to exist where an applied-for gTLD string so nearly resembles a GPM *visually* that, as a matter of probability and not mere possibility, it is likely to deceive or cause confusion." (Emphasis added.) This statement seems to be in direct conflict with the paragraph that follows wherein the IRT recommends that the String Similarity Algorithm only be used to identify those strings that require further analysis to determine confusing similarity.

Further clarification is also need in Section 5 on page 8. This section seems to outline a process whereby any party can submit a request to the IP Clearinghouse to receive a Top Level Watch Request and that ICANN or the IP Clearinghouse purveyor would check all applied-for gTLD strings against the list of strings on the Top Level Watch list and that the requestor would then receive notice of any application matching the string identified in the Top Level Watch Request as well as the contact information for the applicant. However, we are confused by the highlighted phrase found in the following quote from this section: "when a third-party seeks registration of a new gTLD that matches a specifically identified *second-level string* . . . ." (Emphasis added.) There seems to be no need to classify the watched string into any particular category. Such classification is superfluous and may lead to confusion absent further clarification.

Lastly, it appears that GPM will receive additional protection through a blocking mechanism as well as notification thorough an IP Claims service. 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. In other words, it appears from the current text that registry operators that

offer a Standard Sunrise Registration Process will not be required to provide an IP Claim Service for GPMs. Likewise, Yahoo! seeks clarification 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.

UNIFORM RAPID SUSPENSION SYSTEM (URS)

Yahoo! is supportive of a system whereby trademark owners are not required to initiate a full-blown UDRP or court action in order to police obvious cases of brand abuse. However, Yahoo! agrees that great care needs to be taken to ensure that the URS is not abused by overly aggressive brand owners or professional cybersquatters. To this end, we suggest that the URS 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 a full-blown examination.

POST-DELEGATION DISPUTE MECHANISM

Yahoo! considers the need for a post-delegation dispute mechanism to be of utmost importance for ensuring confidence in an expanded DNS world. Given ICANN's questionable record on contract enforcement and the proposal to relax the separation between registrar and registry ownership and/or affiliation, Yahoo! agrees that ICANN must implement a solution to effectively deal with brand abuse on both the top level and second–level. Having a mechanism with a more defined process will greatly assist in ensuring that current abuses in the registrar space will not be as easily repeated in the registry space.

THICK WHOIS MODEL

Yahoo! strongly endorses the IRT recommendation that all new TLDs under contract with ICANN be required to offer WHOIS information under the Thick WHOIS model currently employed by .biz and .info. Additionally, Yahoo! strongly urges ICANN to begin immediate exploration into the establishment of a centralized, universal, cross-TLD WHOIS database.

USE OF ICANN DEVELOPED ALGORITHM IN THE STRING CONFUSION REVIEW DURING INTIAL EVALUTATION

Yahoo! also 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.

In closing, Yahoo! would like to express its thanks to the ICANN Board for the acknowledgement of trademark protection as a threshold issue in considering expansion of the DNS. Yahoo! is pleased with the omnibus package of interrelated solutions that the IRT has proposed in the Draft Report and looks forward to reviewing the final report which is due on May 24, 2009. However, Yahoo! remains cognizant that trademark//brand protection is only one of four overarching issues identified by ICANN Staff in its report to the Board in Mexico City. Accordingly, Yahoo! strongly urges ICANN to fully explore and resolve all four of these threshold issues before moving forward with any wholesale expansion of the DNS or its planned implementation therefor.

Kind regards.

Yahoo! Inc.

/s/

Laura H Covington
Associate General Counsel