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ICANN
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Dear Sirs

Com Laude Comments on IRT Final Report

Com Laude is a niche registrar that works only with intellectual property professionals and the law firms that support them. Our clients are companies of the caliber of the UK's largest news group, the world's largest food company, three of the Top Five Luxury goods companies and the most successful global motor racing organisation in the world. Their trade marks are trusted by consumers across the world as signposts to authentic goods and services and reliable information. Their prominence also means that they are frequently targeted by the unscrupulous. They estimate that every day of every year they face at least one new domain name infringement. In the first week of July 2009, three of our clients discovered five new domain infringements every day.

Tackling domain infringement on this scale takes an enormous commitment of resources. Domain infringement cannot be ignored. It is not acceptable to leave consumers to face the consequences of fraud. Our comments below are based on discussions with our clients but

should be taken as the views of a registrar. They have been compiled independently of Nick Wood, MD of Com Laude, who served as a member of the IRT.

We broadly support all of the recommendations of the IRT. We believe that they will make the job of registrars easier and will only negatively impact on "bad actor" registrars. Points that we would like to emphasise are:

The IP Clearinghouse: since 2005 we have submitted substantially the same trade mark data five or more times for many clients under the .eu, .mobi, .asia, .me, and .tel Sunrises. As we are a registrar that specializes in working with IP owners, we have ensured a 100% accuracy record for our clients. However, we are aware that many other registrars have achieved less than a 50% accuracy rating. The IP Clearinghouse will provide consistency of evaluation and minimise such risk on registrars. It will reduce the financial burden on IP owners and enable registries to concentrate on establishing operations that are secure rather than running one-time projects in IP validation.

We support the idea of a single IP Clearinghouse with the flexibility of handling all the types of data that a registry wishes to have validated (registered trade mark rights, company names, trading names etc.), as was allowed during the .eu Sunrise in 2005. We do not believe the IP Clearinghouse should be allowed to operate Watch services or to compete with the providers of other services. We suggest that the IP Clearinghouse operator should be liable for the accuracy of the data it holds and that all records should be revalidated every year because of the frequency with which trade marks are assigned or abandoned.

We are aware that the Globally Protected Marks List is controversial. However, we think that there is a very small number of trade mark owners that are already globally protected by virtue of having a very high number of trade mark registrations and we believe that they deserve such a special measure of protection at the Top and Second Level. Consumers expect no less. We recommend that the bar is set very high – perhaps at registration at over 140 of the 185 trade mark registries. We do not expect that more than 250 trade mark owners would qualify if this is the case so the GPML is in reality not much more burdensome than the Reserved Lists that registries already operate. Therefore, we support the GPML.

It has been said that the Uniform Rapid Suspension system is what the UDRP should have been. Nominet operates a very successful Dispute Resolution System that offers a fast-track Summary Decision costing

£200 if there is no response from the registrant within 15 days and a neutral panelist is satisfied that the registration is abusive. The URS builds on this, offering trade mark owners a solution for \$200 within 14 days. Because the URS only applies to names that are in use e.g. carrying websites and because there are strict penalties to deter abuse of the system, we believe the URS is fairer than the Nominet system, offering greater protections to small, non-commercial domain owners. We therefore support the URS – though we would like to see competing panelists. If competition in the gTLD space is a good thing, then competition between panel providers is also to be supported.

With the very welcome strengthening of the ICANN Compliance team which we and many other registrars hope will tackle abuse by any contracted party, we not sure if the Post-Delegation Dispute Resolution Mechanism will be used. However, as we are certain that systematic abusive behavior by a registry must be tackled, we support the Post-Delegation Dispute Resolution Mechanism because it allows a third party to make a complaint having paid a very high fee that is guaranteed to deter frivolous complaints. The ICANN community knows that there bad actor registrars who condone or support abusive behaviours. It is possible that there could be bad actor registry operators in the future.

Accessible information on registrants is vital to the smooth running of the domain name system. We therefore support Thick Whois but we urge ICANN to request the IRT to make a recommendation on the standardization of proxy registration services to minimise abusive behaviour. Currently bad actors hide their real identities behind privacy curtains. Although these privacy curtains can serve a useful purpose, it is important that mechanisms are developed to assist trade mark owners and law enforcement agencies to protect consumers from fraud. It is telling that the results of the current Whois accuracy survey appear to show that up to 40% of Whois records are either inaccurate or are masked by a privacy curtain. We would like ICANN to request the IRT to develop a solution that makes it easier and faster for legitimate enquirers to obtain accurate Whois information, taking into account the legitimate data protection concerns of governments.

We thank the ICANN Board for the opportunity of making these comments. We are aware that as many as two thirds of the ICANN Board do not come from a commercial background and that they are under pressure from “the family of ICANN” to rush ahead with new gTLDs, ignoring the concerns of the IP and business communities. This commitment to investigate trade mark concerns in depth, as well as the other three over-arching issues, does ICANN a great deal of credit.

Good RPM will enable the new gTLDs to flourish. Inadequate RPM will expose future registry operators as well as registrants to legal challenge.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'L Gradden', written in a cursive style.

Lorna Gradden
Director of Operations and Co-Founder
Com Laude