



Comments on the Implementation Recommendation Team (IRT) Report

The Coalition Against Domain Name Abuse (CADNA) is pleased to have the opportunity to offer its comments on the IRT Report. As a coalition of brand owners, CADNA is particularly invested in the domain name space and the proposed process for releasing the TLDs.

CADNA would first like to acknowledge the importance of the IRT's work. If the TLDs do move forward, they should do so in a way that does not compromise the safety and stability of the Internet, and the IRT has demonstrated its dedication to developing mechanisms that will foster a secure space. The Coalition would like to recognize and applaud the efforts of all those who participated in the IRT, and acknowledges that it was no easy task addressing all of the concerns raised by various stakeholders and doing so in such a short period of time. CADNA is happy to provide constructive comments regarding which of the proposed mechanisms hold the most promise, how mechanisms can be improved and potential pitfalls that should be avoided.

If the launch of new TLDs does move forward, the IRT's work is a productive first step in addressing the numerous issues that surround the potential launch of an unlimited number of new TLDs. However, there is more work to do. Today, there are 21 gTLDs; after the launch, the number of existing TLDs could be many times that number. The domain name landscape will be very different, and rules and regulations should be tailored to reflect the new challenges that such a landscape will present.

The Coalition maintains that the move towards an onslaught of new TLDs should be reevaluated. There is no reason or demand for introducing an avalanche of new TLDs. In order to continue with the progress begun with the IRT, CADNA would like to offer the following considerations and comments on sections of the IRT's report:

IP CLEARINGHOUSE

It seems beneficial to have an organization that operates to reduce the money and time necessary for brand owners to register in and police the new TLD space. However, CADNA would like to know more about what third-party would be considered capable of handling the responsibility of "operating cost-effective RPMs [rights protection mechanisms] of all kinds that do not place a heavy financial or administrative burden on trademark owners." The IP Clearinghouse would be tasked with supporting applications such as the Watch Service, IP Claims Service, Uniform Rapid Suspension System (URS) and Globally Protected Marks List; as a result, the IP Clearinghouse would not only require certain types and certain levels of expertise, but would also probably be a for-profit organization. The Coalition would like to know how such a for-profit organization would be able to provide low-cost mechanisms and demonstrate the proper level of



expertise that will be necessary to successfully execute the sophisticated operations that will be required of the Clearinghouse.

CADNA would also like to comment on Clearinghouse costs. The Final Report recommends that Clearinghouse services be offered at low prices to trademark owners, but free to registrars and registries. This unequal treatment of ICANN constituencies furthers the unequal distribution of the burden of enforcement costs. All constituencies using the Clearinghouse should be required to pay the same amount for its services.

THE GLOBALLY PROTECTED MARKS LIST (“GPML”)

CADNA’s submitted comments for both drafts of the Applicant Guidebook touched upon the development of a Reserved Names list, where trademarks that are able to meet a pre-determined set of criteria could be added. Possible criteria were listed as the following:

- The trademark owner must prove ownership of a national trademark registration in at least the majority of the five ICANN geographic regions.
- The trademark owner must demonstrate that their mark has been the subject of widespread cybersquatting. Acceptable documentation to prove this would include successful UDRP proceedings or other proceedings brought in national courts of competent jurisdiction.

Any prospective applicant who wishes to register an extension or domain found on the Reserved Name list can approach the owner of that Reserved Name to negotiate and reach an agreement. If no agreement can be reached, a proceeding could be administered by the arbitration and mediation center of the World Intellectual Property Organization, which has already been identified by ICANN as a potential dispute resolution service provider (DRSP) and has established expertise in resolving trademark and domain name disputes.

The GPML attempts to provide protection of the Reserve list, but the Coalition is skeptical about its ability to do so. CADNA appreciates that the IRT acknowledged the concerns voiced in the initial comment period and refrained from establishing registration criteria and thresholds for the time being. Moving forward though, the Coalition recommends that the GPML should be expanded from its original form to cover a greater number of trademark owners and to offer broader protection. The GPML originally required trademark owners to prove “200 trademark registrations of national effect” (which can increase to 300 registrations) or that 3 courts determined its mark was “famous” (which most courts do not weigh in on during infringement hearings); with such high thresholds, the GPML may not be of help to most trademark owners.



Also, it appears that the GPML would protect against infringements on a trademark owner's exact mark, whereas the vast majority of infringements combine a trademark with other words. Only allowing GPML trademark registrations to protect an exact match of the mark will force brand owners to preemptively register many variations of their mark.

Lastly, the Coalition is concerned that the current GPML may not provide long term solutions to trademark protection, as it only accepts trademarks that exist or qualify on or before November 1, 2008. The GPML should be clear as to how new trademarks—those that crop up because of acquisitions, mergers, rebranding efforts or newly formed companies—can be incorporated into the list.

DRAFT UNIFORM RAPID SUSPENSION SYSTEM (URS)

The development of a low-cost and rapid takedown of an infringing domain is a top concern for brand owners (and, by proxy, consumers). As a result, the URS is the most important proposal in the IRT's preliminary report.

CADNA is pleased to see that the URS is based on a low cost pre-registration system, where trademarks can be placed on file for potential future disputes, and that the system makes it easy to file against multiple registrants and multiple domain names.

The IRT maintains that the URS would preserve a registrant's right to a hearing and/or appeal and would not replace other current options available, such as the UDRP or other litigation options. For example, according to the report, the URS does not result in the transfer or cancellation of a domain name registration; instead, "domain name registrations found to be violating a brand owner's rights will be placed in a locked state, for the life of the registration, and will not resolve to an active website."

The URS should offer an option beyond just the suspension of the domain name for the remainder of the registration period. One option is to have the domain name put on hold indefinitely (which would remove the need for brand owners to monitor the domain), but allowing the transfer of the domain name in question would provide the trademark with greater relief. The URS should also include provisions that shift the burden of payment for the dispute process to the infringer, since a system in which the party that loses the dispute is responsible for the cost of the dispute will have a deterrent against future abuse.

THICK WHOIS

CADNA supports the IRT's recommendations to require "thick" WHOIS availability—requiring such information will provide more accountability in the domain name space.