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Internet Corporation for Assigned Names and Numbers (ICANN)  
4676 Admiralty Way, Suite 330  
Marina del Rey, CA 90292-6601

**Re: IRT's Final Report on Trademark Protection**

Dear Sir/Madam:

Adobe Systems Incorporated ("Adobe") respectfully submits the following comments on the Final Report on Trademark Protection in New gTLDs, published by the Implementation Recommendation Team (IRT) on May 29, 2009.

Adobe commends the IRT's efforts to develop possible solutions in order to remedy and minimize the potential risks and costs to trademark holders in the implementation of new gTLDs. We recognize that the IRT has endeavored to address the overarching issue of trademark protection by developing a range of proposals designed to protect trademark owners.

While the recommendations contained in the IRT's May 29th Report are an important first step, regretfully, Adobe feels they do not go far enough. Even if all of the IRT's recommendations were adopted by ICANN, they would not do enough to alleviate the considerable burden on trademark owners. Moreover, Adobe believes that areas of the IRT Report still merit further clarification and development as outlined below.

First, regarding the proposed IP Clearinghouse, the onus is placed on trademark owners — as opposed to ICANN or new gTLD registrars — to provide trademark data and validate it annually. Trademark owners are further required to monitor and correct errors in the IP Clearinghouse database, regardless of the origin of the mistake. While the IP Clearinghouse takes on no liability and makes no warranties for the quality of its work, trademark owners are subject to sanction for errors. Adobe believes that it should be the responsibility of the IP Clearinghouse to compile and maintain an accurate database utilizing the trademark information available from existing public sources. If trademark owners wish voluntarily to provide data to the IP Clearinghouse, that should be permitted but not required.

The IRT Final Report also envisions that trademark owners will pay undefined but "reasonable" periodic fees to the IP Clearinghouse. Adobe believes that costs associated with an IP Clearinghouse should be borne by ICANN and/or applicants for the new gTLDs. At the very least, a mechanism for sharing costs associated with an IP

Clearinghouse should be discussed, so that the total costs do not fall disproportionately on trademark owners.

Adobe does not believe that trademarks need to be licensed to ICANN to enable the creation of an IP Clearinghouse database, particularly under the sweeping terms, such as non-exclusive, royalty-free, sub-licensable licenses, outlined in the IRT Report. Adobe reiterates that the IP Clearinghouse can make use of data available from existing public sources. We also encourage the IRT to provide more information on what kind of entity would be qualified, and have the necessary expertise to operate as the IP Clearinghouse and what level of oversight would be exercised on this entity by ICANN.

Next, while the proposal for a Globally Protected Marks List (GPML) is promising, the IRT has failed to provide specific criteria for inclusion on this list. However, Adobe is pleased that the IRT recognized that the initial threshold, a minimum of 200 registrations in 90 countries across five regions, was indeed too restrictive. Since the GPML provides the strongest protection for trademark owners, how trademarks will qualify for the list remains a central question. In addition, while global brands could ultimately qualify for the proposed GPML, this proposal currently only allows the registration of one's exact brand, e.g. Adobe, but would not permit the inclusion of the other common extensions of that brand, such as Adobe Software or Adobe Labs.

It also does not appear possible for new trademarks to become GPMs, since applications for inclusion on the GPML must be based on trademark registration applications filed on or before November 1, 2008. Since important new trademarks, deserving of the strongest protection, continue to be registered, this criteria should be dropped so that the GPML can be a dynamic and growing list and provide brand owners with the kind of protection necessary for the enforcement of their entire trademark portfolio.

Adobe supports the idea of having a low cost mechanism to obtain a rapid suspension of infringing domain names such as the proposed Draft Uniform Rapid Suspension System (URS). However, as part of any rapid suspension mechanism, trademark owners should be offered the ability to have transfers from suspended domain names to their legitimate websites.

Adobe continues to believe that trademark protection is an issue of primary importance that must be fully and satisfactorily addressed before the new gTLD launch can proceed. While the IRT Report constitutes an important step, we contend that there is still much work that needs to be done by ICANN to address the concerns of trademark owners regarding the new gTLD proposal.

Finally, Adobe continues to believe that ICANN is moving forward with the creation of new gTLDs without having adequately addressed the issue of whether there is a genuine commercial need for them. Most brand owners continue to conduct their business under the current .com regime, and very few companies welcome ICANN's new proposal given the significant administrative, legal and financial costs and resources it will require. At a

minimum, ICANN should continue to examine seriously the gating question of whether this current proposal is either warranted or necessary.

Adobe thanks you for your time and attention to this matter. We look forward to working with ICANN and the IRT members to further identify solutions that would better address the concerns of Adobe and other trademark owners. Please feel free to contact the undersigned if you have any questions about this submission.

Sincerely,

A handwritten signature in blue ink, appearing to read "Daniel C. Poliak", with a stylized flourish at the end.

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