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VIA ELECTRONIC MAIL
(irt-final-report@icann.org)

Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way
Suite 330
Marina Del Ray, CA 90292-6601

Re: Comments on Final IRT Report

Dear Sir or Madam:

We are submitting the following comments on the Final Report on Trademark Protection in New gTLDs published by the Implementation Recommendation Team (IRT) on May 29, 2009.

Who We Are

Pattishall McAuliffe Newbury Hilliard & Geraldson LLP is one of the leading intellectual property firms in the United States. From its establishment in 1883 and continuing today, our lawyers have been leaders in all aspects of intellectual property law-as trial lawyers, mediators, counselors, leaders of professional associations, teachers and drafters of ground-breaking legislation. Members of the firm have appeared in trial and appellate courts on behalf of our clients in nearly every federal jurisdiction, including the U.S. Supreme Court, and with local counsel in many foreign jurisdictions. As a result, we have been recognized by our peers in the profession as one of the top ten firms in the country, and the leading firm in Chicago, for trademark litigation.

Our Firm has also been at the forefront of domain name issues, having litigated numerous cases under ICANN's Uniform Dispute Resolution Policy (UDRP), under the Anti-Cybersquatting Consumer Protection Act, and managed international domain name enforcement programs for our clients. Mark V.B. Partridge, one of our partners, was an expert advisor to WIPO on the first Domain Name Process, serves as an arbitrator of UDRP disputes for WIPO, and was appointed by ICANN to serve on the IRT.



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Comments

Pattishall McAuliffe thanks the IRT for its hard work. We believe that the IRT's recommendations strike the proper balance between the legitimate interests of intellectual property owners with the need to foster innovation in the new domain name system. While we have specific observations on certain discrete issues, as set forth below, Pattishall McAuliffe supports the IRT's recommendations overall and recommends that ICANN adopt them as it moves forward with the expansion of the domain name system.

With respect to the Globally Protected Marks list that has been proposed as part of the IP Clearinghouse, the idea is a sound one, if properly implemented. The key issue is the criteria used to determine whether a mark qualifies as a GPM. While we recognize that few marks will qualify as GPMs, we also believe that a substantial disparity between the GPM list and other widely circulated studies of brand recognition and value could undermine brand owners' faith in the entire project.

The Uniform Rapid Suspension system is a welcome addition for brand owners facing greater potential exposure to cybersquatting. ICANN may also wish to consider allowing prevailing complainants a means to either automatically receive the domain name at the expiration of the registered term or the first option to purchase it. These could be optional services to be offered for an additional fee.

Finally, Pattishall McAuliffe strongly agrees with the requirement of a "thick" WHOIS database in all new gTLDs, and applauds the ICANN staff for recommending the same. Access to accurate WHOIS data is necessary to take effective action against fraudulent conduct online.

Because the new gTLD program is an evolving process, we believe that further comments about the IRT report and recommendations are premature until ICANN considers the IRT recommendations and fills in numerous details that the IRT deliberately and understandably left open. We thank both ICANN for demonstrating its willingness to take intellectual property protection seriously, and the IRT for its hard work.

Very truly yours,

/Joseph N. Welch II/
Managing Partner