



March 20, 2012

VIA EMAIL

Dr. Stephen D. Crocker
Chairman of the Board of Directors
Internet Corporation for Assigned
Names and Numbers (ICANN)
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Re: Response to Comments on Defensive Applications for New gTLDs

Dear Dr. Crocker:

General Electric Company (GE) appreciates the opportunity to submit a response to comments regarding defensive applications for new gTLDs. We fully share the concerns of many brand owners about the impact of the new gTLD initiative on intellectual property rights and the pressure it has created to file expensive gTLD applications for defensive purposes. We are in agreement that the current rights protection mechanisms do not provide sufficient safeguards to brand holders and do not give adequate remedies to fight domain name abuse. At the top level, the String Confusion Objection and String Similarity Review are available only to applicants, and the Legal Rights Objection does not provide sufficient protection to trademark owners. At the second level, the existing rights protection mechanisms are weak, they lack a transfer remedy and place an unnecessarily high standard of proof on complainants. Moreover, because it is uncertain when the next round of applications for new gTLDs will occur, most brand owners feel compelled to apply now so they are not kept out of what may prove to be a valuable market in the future. In this current atmosphere of uncertainty, many brand owners see defensive registration as the only solution.

Many comments submitted by members of the trademark community offer constructive solutions to this problem. We support a number of these proposals, which are discussed in further detail below, and we urge ICANN to adopt if not all, then at least some of them, in order to lessen the need for brand owners to file defensive applications and to prevent trademark abuse both at the top level and the second level.

GE endorses a proposal to create a procedure which would allow any entity, for a nominal fee, to enter a name to which that entity has a lawful entitlement on a "Do Not Sell" list and thus exclude it from being registrable as a gTLD. Based on the comments submitted by stakeholders, this proposal appears to be widely supported in the trademark community. We believe that implementation of this proposal would significantly reduce the need for defensive gTLD registrations, which some brand owners neither want nor need.

GE also supports a proposal submitted by many commenters to provide applicants with an opportunity for a full refund of \$180,000 (\$185,000 application fee, less the \$5,000 registration fee). We believe that if the opt-out decision is made shortly after the list of all new gTLD applicants is published, this would not interfere with ICANN's Initial Evaluation and ICANN would not have expended any significant resources on evaluating an application. Applicants that originally felt compelled to file defensively would then receive most of their investment back once they are assured that the need for a defensive application is no longer necessary.

GE also urges ICANN to adopt a suggestion to process gTLD applications in batches in order to allow applications for strings with the most serious concerns, such as .brands and .generics, to be batched later in the process, after applications for IDNs and geopolitical names. This would allow ICANN to test the rights protection mechanisms before registering the gTLDs that have the highest incidence of abuse.

GE concurs with many commenters that defensive registrations at the second level is also a big concern. The risk of defensive behavior at the second level is very high and we encourage ICANN to adopt measures to minimize the risk of defensive second-level registrations – not doing so will create a great financial hardship for brand owners. For example, we strongly support the ANA and CRIDO's suggestion to extend the "Do Not Sell" list concept to the second level. This mechanism would help minimize the volume of infringement and cybersquatting at the second level that will inevitably come with the new gTLDs. We also request that ICANN strengthens the existing rights protection mechanisms such as Uniform Rapid Suspension proceedings and Post-Delegation Dispute Process proceedings. These should provide for a transfer remedy and a "loser pays" remedy (for all URS proceedings, regardless of the number of domain names involved) as well as a lower standard of proof. In addition, we agree that the Trademark Claims service should be expanded to domains that not only consist of an identical trademark in the Clearinghouse but also contain a trademark or are misspellings, supersets or phonetic variations of a trademark.

Finally, GE supports recommendations for ICANN to announce when the next round of applications for new gTLDs will occur. GE believes that the pressure to apply defensively for new gTLDs is partially caused by the uncertainty of when the second round of gTLD applications will occur, which forces some brand owners to apply for new gTLDs sooner than they would like. Having a set date for a second round of gTLD applications would alleviate some of the concerns surrounding the new gTLD initiative and would allow for greater flexibility and strategic planning.

Respectfully submitted,

A handwritten signature in blue ink that reads "Kathy Bowyer Park". The signature is written in a cursive, flowing style.