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April 1, 2010

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

Re: Trademark Post-Delegation Dispute Resolution Procedure (Trademark PDDRP)

Dear Sir/Madam:

Adobe Systems Incorporated ("Adobe") respectfully submits the following comments regarding the Revised Trademark Post-Delegation Dispute Resolution Procedure ("Trademark PDDRP"), published on February 15, 2010.

A prior version of the Trademark PDDRP was originally proposed in the Implementation Recommendation Team's Final Report on Trademark Protection ("IRT Report"), and it was previously revised and included in Version 3 of the Draft Applicant Guidebook. Adobe supports the idea of a procedure that aids in protecting trademark rights and affords brand owners the ability to seek action against new gTLD registry operators who act in bad faith.

Currently, however, the Trademark PDDRP places a severe burden on complainants by requiring that they establish a registry's bad faith "by clear and convincing evidence." Adobe contends that such stringent requirements would limit the effectiveness of the PDDRP to address gTLDs being used for improper purposes and/or the systemic registration of infringing domain names. Adobe believes that a "preponderance of the evidence" standard would be sufficient for the purposes of the Trademark PDDRP, and we note that this is the standard proof requirement in the proposed Registry Restrictions Dispute Resolution Procedure (RRDRP) as well.

There is also a high burden placed on complainants in requiring that they establish a registry is guilty of "affirmative conduct in its operation or use of its gTLD string" in order to prove bad faith. This requirement is severely limiting. For the PDDRP to be an effective tool against registries, all forms of bad faith conduct detrimental to a rights holder need be addressed, rather than those that are arguably "affirmative" or "willful." For example, no provision is made for such "passive" conduct as a registry failing to take action against infringements after sufficient notification. Adobe believes that this criteria needs to be expanded to cover all manners of detrimental conduct in order not to limit the scope and effectiveness of the Trademark PDDRP.

Adobe feels strongly that these proposed rights protection mechanisms as currently constituted fall far short of successfully resolving the overarching issue of trademark protection. 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. 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.

Please feel free to contact the undersigned if you have any questions about this submission.

Sincerely,



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