

Report of Public Comments

Title: Trademark Clearinghouse “Strawman Solution”			
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Section I: General Overview and Next Steps			
<p>The Trademark Clearinghouse Strawman Solution was developed by community stakeholders in November 2012, and published for comment in December 2012.</p> <p>Among other subjects, the implementation meetings held in November addressed the recent IPC/BC proposal for Improvements and Enhancements to the RPMs for new gTLDs, and prioritizing and balancing was done by the participating stakeholders to reach a “Strawman Solution” to be published for comment.</p> <p>The four points within the Strawman model were briefly discussed with regard to whether each would be considered a “policy” or an “implementation” issue, with a view toward ensuring that an appropriate path was followed for consideration.</p> <p>One element of the IPC/BC proposal that was not included in the Strawman Solution concerned a proposal for a "Limited Preventative Registration" mechanism, aimed at addressing concerns related to the second level defensive registration issue. Although this proposal was not included in the Strawman, the proposal was also posted for public comment to help determine whether it should also be considered along with the Strawman solution.</p> <p>The GNSO Council was also requested to provide policy guidance on these proposals, and that feedback was provided on 28 February 2013 (see http://gnsso.icann.org/en/correspondence/robinson-to-chehade-28feb13-en.pdf).</p> <p>This feedback has been reviewed, both on the individual elements of the Strawman proposal, and on the proposal as a whole, as described below.</p>			

ANALYSIS OF COMMENTS

This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.

A. GENERAL COMMENTS

Comments were received expressing general support and opposition for the Strawman Proposal and/or Limited Preventive Registration mechanism. These comments incorporated a variety of points concerning the potential benefits and potential drawbacks to the proposals.

In ICANN's preliminary analysis of the Strawman model (see <http://blog.icann.org/2012/11/a-follow-up-to-our-trademark-clearinghouse-meetings>), it was noted that all of the elements of the Strawman were consistent with the policy advice from the GNSO to protect existing rights (see http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm#_Toc43798015). In the same way that the Special Trademark Issues (STI) working group made recommendations on the Sunrise and Trademark Claims services to ensure that they would be consistent with the policy guidance, the discussions and feedback on the Strawman model can be viewed as a similar type of activity.

Although no aspect of the model was contrary to the policy guidance for the New gTLD Program, ICANN considered that the elements of the strawman model should be subject to a broader discussion. This took the form of posting the proposal for public comment, and submitting the matter to the GNSO Council for guidance (notwithstanding the GNSO's ability to pursue policy work through its processes at any time).

B. COMMENTS ON 30-DAY NOTICE REQUIREMENT FOR SUNRISE

Generally, comments received were in favor of a requirement for each new gTLD registry to provide information on its sunrise period timeframe and policies at least 30 days in advance of the sunrise. Comments expressed that the notice period would be useful to rights holders in planning for how to effectively manage their marks as many new TLDs are launching, and that provision of this information in a timely manner would be a reasonable expectation of a new registry operator.

Some comments requested that ICANN should perform a central coordination function for posting of this information, and this is foreseen.

A few comments were not in support of the 30-day notice requirement, expressing a preference for either a longer notice period or a longer sunrise period rather than a 30-day sunrise with 30 days' notice.

The majority of comments viewed this aspect of the Strawman model as a clear implementation detail. Guidance provided from the GNSO Council noted support for this update to the Sunrise process as a matter of implementation.

C. COMMENTS ON 90-DAY TRADEMARK CLAIMS PERIOD

This element of the Strawman model proposed extending the required Trademark Claims period from a minimum of 60 days, as provided for in the current Applicant Guidebook, to a minimum of 90 days.

Comments in support of this proposal stated that the Claims notices are beneficial because they help inform potential registrants and raise awareness of infringement issues, as well as providing timely notice of registrations to rights holders to support enforcement efforts. Comments also suggested that an extended Claims period would strengthen the protections for rights holders, and would additionally encourage registrars to participate in the Claims period rather than waiting to support new TLDs until after the startup periods have concluded. Comments in support of the extended Claims period viewed the proposal as an implementation decision, as it continues the Claims process already foreseen for an additional period.

Comments opposing the extended claims period took the position that any changes to the Trademark Claims process should originate from work in the GNSO. These comments expressed concern that extending the Claims period would go against the balance that was carefully achieved in community discussions during the development of the New gTLD Program. Comments also suggested that an extended claims period could burden registries or registrars who have configured their technical systems with a 60-day period in view. Some comments suggested that the proposal would have a disparate impact on community-based applicants by delaying their launch steps and impacting their financial planning. Comments in opposition to the extended Claims period generally viewed the extended period as a significant change that would require a policy development process.

A set of comments noted that the proposal could create a chilling effect on speech or domain registration, with the concern expressed that the acknowledgement step in the Claims process may create liability on unwitting infringers. Other comments stated that the Trademark Claims service is informational and does not prevent any domain name registration from occurring.

Another set of comments stated that 90 days is an arbitrary cutoff time and suggested that the Claims service should continue indefinitely, as the risk of cybersquatting is not eliminated after the initial periods of registration in a TLD. It should be noted that the Claims service is intended to

cover activity during the startup periods of new gTLDs, and additional mechanisms such as the URS are intended to provide a timely and cost-effective means for addressing cases of cybersquatting that may occur any time after these periods.

Many of the comments related not to the extended Claims period specifically, but to the aspects of the Trademark Claims service itself. Guidance provided from the GNSO Council noted that there would not be an objection to making this extension to the Claims period as an implementation decision.

D. COMMENTS ON “CLAIMS 2” PROCESS

This element of the Strawman model proposed to institute a “Claims 2” process, a modified version of the existing Claims process which would continue to provide notifications to rights holders for an additional fee, and would feature a general Claims notice to prospective registrants of names subject to this service, for an additional year.

The comments received generally expressed a lack of support for the “Claims 2” process. Some expressed concern that it would disadvantage registries entering the market as it would not be required of existing gTLD or ccTLD registries. Some comments noted that there could be technical or financial burdens on registrars to implement the Claims 2 process, while other comments suggested that these costs should not be significant since the systems supporting the required Trademark Claims service would already be in place.

A number of comments suggested that the Claims 2 service would be of limited utility to either rights holders or to registrants, based on the lack of specific rights data in the Claims notice. These comments indicated that the general Claims notice would not provide significant assistance in enforcement or in education to registrants since the notice would include less information than in the required Claims service. Comments suggested that uptake of this option by rights holders would probably be low, as the advantages were not apparent to justify the cost. Other comments expressed concern that the general Claims notice would still carry the risk of legal liability for domain name registrants, and urged consideration of these risks.

Those comments that did express a measure of support for the Claims 2 process conditioned it on inclusion of the full claims data, a more detailed examination of the cost/benefit analysis, or the continued existence of the service beyond a limited time period.

Several comments viewed this element of the proposal as either a material change to the Trademark Clearinghouse implementation, a new rights protection mechanism or a policy issue. Guidance provided from the GNSO Council noted that the Claims 2 proposal is a longer-term rights protection mechanism and should correctly be the subject of a policy development process, in

order to explore the complex issues therein.

E. COMMENTS ON PROTECTIONS FOR PREVIOUSLY ABUSED NAMES

This element of the Strawman model proposed to extend the level of protection associated with a Clearinghouse record to up to 50 additional domain name labels that could be shown to have been previously abusively registered or used.

Comments in support of this proposal noted that it would help meet rights protection goals by incorporating the domain name labels considered most likely to be registered abusively, resulting in a beneficial effect on the reliability of e-commerce in the new gTLD space.

Comments noted that, as this protection would incorporate the relevant names into the existing Trademark Claims process, notices would be provided but no domain name registrations would be prevented from occurring. Given that the domain name labels in question have already been found to be within the scope of trademark rights by a UDRP panel or by a court proceeding, no additional analysis on the scope of rights is required to incorporate such domain names into an existing Clearinghouse record.

Comments in opposition to this proposal considered the scope of the Claims protection to be a matter of policy, as well as expressing concern about possible negative impacts on registrants. A comment suggested that the proposal would alter the existing standard used by the UDRP. Given that the domain names would only be accepted in connection with a Clearinghouse record after having met the three parts of the UDRP test, this does not appear to be the case.

Other comments suggested that the proposal would constitute creation of new rights rather than protection of existing rights, ignoring the principle of territoriality which provides that trademarks are only issued according to a certain jurisdiction.

Other comments expressed concern that the proposal would impose new obligations on registrars. The impact foreseen in these comments is unclear, as the determination of which names can be admitted based on having previously been found to be abused would fall to the verification service provider for the Clearinghouse. It could be anticipated that registrars might field some additional questions relating to these, but the customer support mechanisms relating to Trademark Claims should already be in place.

A comment expressed the view that the UDRP would not necessarily be an appropriate basis for determining previous abuse as UDRP decisions may be flawed. Absent second-guessing the outcomes of established adjudication processes, however, this judgment cannot be applied to the standard. In the context of the proposal, protection is to be extended to domain names including

the large number of cases where the outcomes have been well-accepted.

Some comments noted that the limit of 50 names is an arbitrary ceiling, and recommended that rights holders should have the ability to add as many names as could be established as previously abused. Some comments considered the extension of the Claims service to these names to still be too limited as a form of protection, while others supported the proposal including the 50-name threshold. Some suggested that names should not be required to have already been found subject to cybersquatting, but rather that the protection should encompass other valuable names, such as those associated with new products, as well.

Other comments considered that the scope of protection for names in the Trademark Claims process had already been agreed upon in community discussion, and modifications to this should also come from the same type of community discussion process.

In its early analysis on this element of the Strawman model, ICANN indicated that this was considered a policy matter, and that given the previous intensive discussions on the scope of protections associated with a Clearinghouse record, involving the IRT/STI, this required guidance from the GNSO Council.

Guidance provided from the GNSO Council stated that this proposal deserves further examination, and that the proposal is best addressed as a policy matter. The GNSO Council communication also made reference to the stated principle that the Trademark Clearinghouse is intended to be a repository for existing legal rights, and not an adjudicator of such rights or a creator of new rights.

F. COMMENTS ON LIMITED PREVENTIVE REGISTRATION (LPR) PROPOSAL

One element of the IPC/BC proposal that was not included in the Strawman solution concerned a proposal for a "Limited Preventative Registration" (LPR) mechanism, which attempts to address concerns related to second-level defensive registrations. This proposal did not achieve consensus among those who participated in the implementation meetings and accordingly was not included in the Strawman solution; however, the proposal was posted for public comment to determine whether it should also be considered along with the Strawman solution. The LPR proposal can be found at <http://newgtlds.icann.org/en/about/trademark-clearinghouse/ipc-bc-proposal-lpr-30nov12-en.pdf>.

Some comments expressed strong support for the LPR as a requirement before any new gTLDs should be launched. Comments in support of the LPR indicated that it would offer a more cost-efficient form of rights protection than other mechanisms being discussed, as it directly impacts the practice of defensive registrations and would have a longer-term impact. These comments supported the LPR as necessary to address potential costs associated with the introduction of new

gTLDs, and as a proactive mechanism was seen as complementary to the URS, which offers a responsive mechanism.

Comments opposing the LPR proposal argued that it would create a form of “super trademark” rights in excess of those rights based in existing law or policy. Comments also expressed concern that the proposal did not consider the legitimate rights of potential registrants.

A number of comments took the view that the LPR proposal is an initiative for a new rights protection mechanism, and should therefore be subject to a policy development process. Comments were particularly concerned that, despite a means to challenge and bypass the “preventive” registration, the mechanism presumes infringement before it exists.

Some comments expressed concern that the LPR could expand trademark rights outside the class of goods or services in which a trademark was issued. Other comments considered that this was addressed by proposal, such that an LPR would not apply in any TLD where the registration would not meet the TLD’s eligibility requirements. In addition, comments noted that the LPR would only be available after the sunrise period, so would not put anyone at a disadvantage in regard to the ability to obtain domain names. Other comments noted that there would be no incentive for rights holders to overreach in obtaining LPRs since they would be paying for each one.

The GNSO Council was requested to provide input on the LPR proposal as it is relevant to a resolution from the New gTLD Program Committee requesting the GNSO to consider whether additional work on defensive registrations at the second level should be undertaken. Guidance received from the GNSO Council noted that the LPR represented a change in policy and therefore should be a matter of Council-managed policy work if it is to be considered.

G. COMMENTS ON PROCESS

A number of comments were received concerning the process used for development of the Strawman proposal. For example, comments expressed that there should have been additional openness and transparency in the discussions, that proper policy development processes were not followed, that the bottom-up process should not be bypassed even in the interest of finding quick solutions.

Commenters also considered the timing of the discussions problematic, in that the proposals were brought up after issues had been broadly discussed and resolved. In particular, impacted stakeholders such as gTLD applicants considered that they lacked visibility into discussions that would significantly affect them.

Comments also spoke to the interpretation of policy and implementation elements in the

proposals. Comments supported expedited work in this area to help provide clarity for numerous ICANN processes. ICANN has developed a paper outlining a draft framework for community discussion that identifies a number of steps and criteria that might facilitate dealing with questions relating to policy vs. implementation in the future. A public comment forum is open on this topic currently (see <http://www.icann.org/en/news/public-comment/policy-implementation-31jan13-en.htm>).

Some comments disagreed with the preliminary staff analysis that the Strawman elements are matters of implementation, while others noted that requiring a policy development process for each potential change was not in line with the nature of the changes, and that the posted change review process for the Applicant Guidebook (see <http://archive.icann.org/en/topics/new-gtlds/change-review-applicant-guidebook-19sep11-en.pdf>) anticipated changes over time.

It should be clarified that the intention of the small collaborative meetings on the Strawman was to create a useful tool to inform policy and implementation discussions. There was no intention to circumvent the bottom-up process. Rather, the stakeholder groups of the GNSO were represented, and the Council was requested to provide guidance on how the discussion should move forward. However, the concerns about the process are understood and have been taken to heart.

ICANN agrees with the importance of establishing guidelines for identifying whether issues should be pursued on a policy or an implementation track. This discussion has been initiated with the community as noted above.

H. OTHER COMMENTS

A set of comments suggested changes to the Uniform Rapid Suspension (URS) system, such as a modified standard of proof, or a “loser pays” system.

Other comments noted support for the other points in the BC/IPC list of issues and urged that these discussions continue.

CONTRIBUTORS

At the time this report was prepared, a total of 97 community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the narrative, such citations will reference the contributor’s initials.

Name	Submitted by	Initials
COMMENTS		

Association of National Advertisers	Dan Jaffe	DJ
Bristol-Myers Squibb	Elizabeth Stewart Bradley	ESB
Daimler AG	Gerhard Bauer	GB
Jack Daniel's Properties, Inc. & Brown-Forman Brands	Christy Susman	CS
Investor's Business Daily, Inc.	Dayna L. Grund	DLG
NCS Pearson	Paul W. Mussell	PWM
Wm. WRIGLEY Jr. Company	Stacy P. Chronopoulos	SPC
United Air Lines, Inc.	Theresa Conduah	TC
Eli Lilly and Company	Bruce Longbottom	BL
Internet Service Providers and Connectivity Providers (ISPCP) Constituency	Mikey O'Connor	MO
Goodville Mutual Casualty Company	Phil Nolt	PN
Property Casualty Insurers Association of America (PCIAA)	Rita Nowak	RN
New TLD Applicant Group (NTAG)	Krista Papac	KP
DotGreen Community (DotGreen)	Tim Switzer	TS
Coalition for Online Accountability (COA)	Steven J. Metalitz	SJM
DOTZON GmbH (DOTZON)	Katrin Ohlmer	KO
Turtle Wax, Inc.	Tony Vella	TV
Agilent Technologies, Inc. (Agilent)	Jon Cervino	JC
LEGO Juris A/S (LEGO)	Mette M. Andersen	MMA
International Anti-Counterfeiting Coalition (IACC)	Andy Coombs	AC
General Electric Company (GE)	Kathryn Barrett Park	KBP
World Federation of Advertisers et al. (WFA et al.)	Stephan Loerke	SL
Com Laude	Nick Wood	NW
Valideus	Brian Beckham	BB
MARQUES	Caroline Perriard	CP
Public Interest Registry (PIR)	Paul Diaz	PD
Nestle	Caroline Perriard	CP
Dot Kiwi Limited (Dot Kiwi)	Tim Johnson	TJ
Registrar Stakeholder Group (RrSG)	Michele Neylon	MN
WellPoint, Inc. (WellPoint)	Amy Keenan	AK
Non-Commercial Stakeholders Group (NCSG)	Robin Gross	RG
dotStrategy, Co. (dotStrategy)	Bill Doshier	BD
EverBank	Karen Koster Burr	KKB
Oracle Corporation (Oracle)	Tiki Dare	TD
Western Union Holdings, Inc. (Western Union)	Dianna Lyons	DL
CRONON AG	Michael Shohat	MS

Foundation for Assistance for Internet Technologies and Infrastructure Development (FAITID)	Maxim Alzoba	MA
HSBC HOLDINGS PLC HGHQ (HSBC)	Martin C. Sutton	MCS
Bayer Intellectual Property GmbH (Bayer)	Frank Meixner, Julia Brocher	FM, JB
Internet Commerce Association (ICA)	Philip S. Corwin	PSC
National Retail Federation (NRF)	Mallory Duncan	MD
Rolls-Royce plc (Rolls-Royce)	Pip McLeod	PM
Merck KGaA (Merck)	Jonas Kolle	JK
American Advertising Federation (AAF)	Clark Rector	CR
Key-Systems GmbH (Key-Systems)	Volker A. Greimann	VAG
Coalition Against Domain Name Abuse (CADNA)	Zane Bundy	ZB
Chrysler Group LLC (Chrysler)	Kristen I. Spano	KIS
United States Telecom Association (USTelecom)	Kevin G. Rupy	KGR
Association of National Advertisers (ANA)	Dan Jaffe	DJ
The Coca-Cola Company (Coca-Cola)	Paula Guibault	PG
British Broadcasting Corporation and BBC Worldwide Limited (BBC)	Susan Payne	SP
Verizon	Sarah B. Deutsch	SBD
Donuts Inc. (Donuts)	Jon Nevett	JN
American Intellectual Property Law Association (AIPLA)	Jeffrey I.D. Lewis	JIDL
American Insurance Association (AIA)	Angela Gleason	AG
Time Warner Inc. (Time Warner)	Fabricio Vayra	FV
National Basketball Association, National Football League, NHL Enterprises, L.P. (NBA/NFL/NHL)		
Zippo Manufacturing Company (Zippo)	Charles Jeffrey Duke	CJD
Intellectual Property Owners Association (IPO)	Richard Phillips	RP
United States Postal Service (USPS)	Anne E. Aikman-Scalise	AEA
The Procter & Gamble Company (P & G)	Ken K. Patel	KKP
Name.com	Nic Steinbach	NS
American Apparel & Footwear Association (AAFA)	Kevin M. Burke	KMB
Exelon	Clolita M. Vitale	CMV
E.I. du Pont de Nemours and Company (DuPont)	Earl W. MacFarlane	EWM
National Association of Manufacturers, National Foreign Trade Council, U.S. Chamber of Commerce, U.S. Council for International Business, U.S. Telecom (NAM et al.)	Jake Colvin	JC

Abbott Laboratories	David H. McDonald	DHD
United TLD Holdco Ltd. (United TLD)	Statton Hammock	SH
Adobe Systems Incorporated (Adobe)	Daniel C. Poliak	DCP
Intellectual Property Constituency (IPC)	Kristina Rosette	KR
Vanguard Group, Inc. (Vanguard)	Robyn Y. Ettricks	RYE
Toy Industry Association	Ed Desmond	ED
Global Brand Owner Coalition (GBOC)		
Business Constituency (BC)	Steve DelBianco	SD
General Mills	Joshua J. Burke	JJB
National Cable & Telecommunications Association (NCTA)	Jill Lockett	JL
Microsoft Corporation (Microsoft)	Russell Pangborn	RP
Jones Group Inc. (Jones Group)	Laura J. Gentile	LJG
Momentous Corp. (Momentous)	Rob Hall	RH
At-Large Advisory Committee (ALAC)	Olivier Crepin-Leblong	OC
Demand Media	Jeffrey Eckhaus	JE
Blacknight Internet Solutions (Blacknight)	Michele Neylon	MN
International Trademark Association Internet Committee (INTA Internet Committee)	Claudio DiGangi	CD
Nordreg AB (Nordreg)	Benny Samuelson	BS
Intel Corporation (Intel)	Kelly Smith	KS
Facebook	Susan Kawaguchi	SK
AIM, the European Brands Association (AIM)	Marie Pattullo	MP
Quality Brands Protection Committee (QBPC)		
Pirelli Tyre S.p.A.	Cristina Cazzetta (C. Cazzetta)	CS
REPLY COMMENTS		
Verizon	Sarah B. Deutsch	SBD
General Electric Company (GE)	Kathryn Barrett Park	KBP
Intellectual Property Constituency (IPC)	Kristina Rosette	KR
Business Constituency (BC)	Steve DelBianco	SD
Association of National Advertisers (ANA)	Dan Jaffe	DJ
	Volker Greimann	VG

Summary of Comments

General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

A. GENERAL COMMENTS ON STRAWMAN SOLUTION & LIMITED PREVENTATIVE REGISTRATION (LPR) PROPOSAL

The Strawman Solution and LPR are necessary to protect Internet users and third-party intellectual property rights. *Bristol-Myers Squibb* (22 Dec. 2012); *Daimler AG* (24 Dec. 2012); *Jack Daniel's Properties, Inc. & Brown-Forman Brands* (26 Dec. 2012); *C. Cazzetta* (27 Dec. 2012); *Investor's Business Daily, Inc.* (27 Dec. 2012); *NCS Pearson* (2 Jan. 2013); *Wm. WRIGLEY Jr. Company* (2 Jan. 2013); *United Air Lines, Inc.* (3 Jan. 2013); *Eli Lilly and Company* (3 Jan. 2013); *Goodville Mutual Casualty Company* (8 Jan. 2013); *PCIAA* (8 Jan. 2013); *COA* (10 Jan. 2013); *Turtle Wax, Inc.* (10 Jan. 2013); *Agilent* (11 Jan. 2013); *LEGO* (11 Jan. 2013); *GE* (11 Jan. 2013); *Nestle* (14 Jan. 2013); *HSBC* (15 Jan. 2013); *WellPoint* (14 Jan. 2013); *EverBank* (14 Jan. 2013); *Rolls-Royce* (15 Jan. 2013); *Oracle* (15 Jan. 2013); *Western Union* (15 Jan. 2013); *Bayer* (15 Jan. 2013); *ANA* (15 Jan. 2013); *NRF* (15 Jan. 2013); *Merck* (15 Jan. 2013); *AAF* (15 Jan. 2013); *CADNA* (15 Jan. 2013); *Zippo* (15 Jan. 2013); *Chrysler* (15 Jan. 2013); *USTelecom* (15 Jan. 2013); *BBC* (15 Jan. 2013); *Verizon* (15 Jan. 2013); *AIPLA* (15 Jan. 2013); *AIA* (15 Jan. 2013); *Time Warner* (15 Jan. 2013); *NBA/NFL/NHL* (15 Jan. 2013); *USPS* (15 Jan. 2013); *AAFA* (15 Jan. 2013); *Exelon* (15 Jan. 2013); *DuPont* (15 Jan. 2013); *Abbott Laboratories* (15 Jan. 2013); *IPC* (15 Jan. 2013); *Vanguard* (15 Jan. 2013); *BC* (15 Jan. 2013); *Toy Industry Association* (15 Jan. 2013); *GBOC* (15 Jan. 2013); *NCTA* (15 Jan. 2013); *General Mills* (15 Jan. 2013); *Microsoft* (15 Jan. 2013); *Jones Group* (15 Jan. 2013); *INTA Internet Committee* (16 Jan. 2013); *Intel* (17 Jan. 2013); *Facebook* (18 Jan. 2013); *AIM* (18 Jan. 2013); *QBPC* (24 Jan. 2013)

A strong consensus of the NTAG membership does not support last-minute material changes to the RPMs in the AGB which reflect a community-wide consensus. In addition, NTAG opposes any implementation of new RPMs that would apply only to new gTLDs and not to existing gTLDs. *NTAG* (9 Jan. 2013); *DotGreen* (10 Jan. 2013); *DOTZON* (10 Jan. 2013); *PIR* (14 Jan. 2013); *Dot Kiwi* (14 Jan. 2013); *Donuts* (15 Jan. 2013)

New gTLD registries would be put at a disadvantage to incumbent registries. If these further trademark protections are so crucial, the community should ask that they also apply to incumbents on the medium term, especially since current statistics on trademark infringement show that many disputes occur in .COM. Incumbent registries will continue to have many more registered domain names than in the new gTLDs for some time to come. *DOTZON* (10 Jan. 2013)

The potential harms of the proposals outweigh any perceived benefit, and proper policy development processes have not been followed for their consideration. *RrSG* (14 Jan. 2013); *CRONON* (15 Jan. 2013); *NCSG* (14 Jan. 2013); *Momentous* (16 Jan. 2013); *Blacknight* (16 Jan. 2013); *Nordreg* (16 Jan. 2013)

IACC supports the Strawman Solution as appropriate implementation of policy regarding the proposed new gTLDs. *IACC* (11 Jan. 2013)

The strawman solution is insufficient to protect consumers from online harm. None of the Strawman proposals stop cybersquatters, and none of these proposals operate in the long term. Only LPRs provide long-term solutions that stop problems before they can occur. Unfortunately the LPR does not yet appear to be receiving the serious consideration that it deserves and is being

excluded from the Strawman proposal. *ANA (11 Dec. 2012 & 15 Jan. 2013); WAF et al. (14 Jan. 2013); AAF (15 Jan. 2013); Coca-Cola (15 Jan. 2013); IPO (15 Jan. 2013); P & G (15 Jan. 2013); AAFA (15 Jan. 2013); Adobe (15 Jan. 2013); Toy Industry Association (15 Jan. 2013)*

Strawman is a short-term tool that will only delay cyber squatters that would either take advantage of consumers outright or attempt to sell domains to trademark holders whose businesses and reputations are at stake. *PCIAA (8 Jan. 2013)*

LEGO supports the Strawman Solution in principle but believes it could be further refined to better protect against illegal activities on the Internet. *LEGO (11 Jan. 2013); USPS (15 Jan. 2013); IPC (15 Jan. 2013); GBOC (15 Jan. 2013); Microsoft (15 Jan. 2013); Facebook (18 Jan. 2013)*

GE generally supports the Strawman Solution but believes it is too limited to prevent fraud and abuse and must be strengthened. The Strawman, while better than nothing, is not close to enough to what is necessary for consumer protection. This is why the LPR is absolutely necessary. Most domains registered for the purpose of nefarious conduct become active almost immediately, making the window to track suspicious domain names very small. Once such domains are registered, damage begins immediately, which is why additional notice will likely create a costly, resource-intensive monitoring environment for companies without offering consumers any real protection. *GE (11 Jan. 2013); Vanguard (15 Jan. 2013)*

B. COMMENTS ON 30-DAY NOTICE REQUIREMENT FOR SUNRISE

NTAG does not object to either a 30-day notice to trademark holders regarding sunrise or a 60-day sunrise process, at the applicant's discretion. It is a change to the AGB, but introduction of a mandatory, short notice period to trademark holders about sunrise rules and opportunities should not cause a material hardship to applicants, especially when provided pre-launch. *NTAG (9 Jan. 2013); DotGreen (10 Jan. 2013); PIR (14 Jan. 2013); Dot Kiwi (14 Jan. 2013); ICA (15 Jan. 2013); Donuts (15 Jan. 2013)*

The 30-day advance publication requirement is arguably merely an implementation detail of the previously agreed sunrise policy and therefore not a tremendous burden nor new policy proposal. *NCSG (14 Jan. 2013); Momentous (16 Jan. 2013); United TLD (15 Jan. 2013)*

The RrSG does not object to a 30-day notice to trademark holders regarding sunrise. *RrSG (14 Jan. 2013); ICA (15 Jan. 2013); Key-Systems (15 Jan. 2013); Demand Media (16 Jan. 2013); Blacknight (16 Jan. 2013); Nordreg (16 Jan. 2013)*

GE supports the 30-day required notice period for Sunrise because it has the potential to be helpful to brand owners in preparing for the onslaught of new gTLDs. It will be essential that the published notices are clear, unambiguous and easy to locate, or the potential benefits are unlikely to be realized. *GE (11 Jan. 2013); CADNA (15 Jan. 2013); Chrysler (15 Jan. 2013); BBC (15 Jan. 2013); Verizon (15 Jan. 2013); AIPLA (15 Jan. 2013); AIA (15 Jan. 2013); NBA/NFL/NHL (15 Jan. 2013); AAFA (15 Jan. 2013); IPC (15 Jan. 2013); BC (15 Jan. 2013); General Mills (15 Jan. 2013);*

NCTA (15 Jan. 2013); Microsoft (15 Jan. 2013); ALAC (16 Jan. 2013); INTA Internet Committee (16 Jan. 2013); Facebook (18 Jan. 2013)

IPO supports a 30-day notice period followed by a 60-day sunrise period to allow brand owners to make an informed and calculated decision regarding each new gTLD. *IPO (15 Jan. 2013); P & G (15 Jan. 2013); DuPont (15 Jan. 2013); NAM et al. (15 Jan. 2013)*

For business registrants, a 60-day sunrise period would be significantly more valuable than a 30 day notice followed by a 30 day sunrise. BC has also called for a standardized Sunrise approach to minimize confusion and costs to registrants to participate in Sunrise across multiple new gTLDs. If standardization cannot be implemented now, it should be required in future rounds of new gTLDs. *BC (15 Jan. 2013)*

There is no reason for registries not to provide such advance warning or for ICANN to provide a single point of reference for where notice regarding new Sunrise periods can be found. A longer notice period may serve to increase the demand for registrations in certain new gTLDs. *INTA Internet Committee (16 Jan. 2013)*

DuPont is pleased with the additional 30 day notice period but would much prefer a solution that vitiates the need for defensive registrations from the outset. *DuPont (15 Jan. 2013)*

The Sunrise period notification is a modest assistance to brand owners in managing the multiple Sunrise processes. Not surprisingly, this seems to have the broadest support among registries and registrars since it is essentially mandatory advertising for the new gTLDs. *ANA (15 Jan. 2013)*

Com Laude supports a 30-day Sunrise notice as a minimum but prefers a longer period of 60 days in order to enable rights owners and the ICANN community to more adequately prepare for a series of rolling launches of as many as 20 new gTLDs per week. *Com Laude (14 Jan. 2013)*

It would benefit all involved if ICANN coordinated publication of a 30-day Sunrise notice. *Com Laude (14 Jan. 2013); Valideus (14 Jan. 2013); BBC (15 Jan. 2013)*

In lieu of ICANN's acceptance of an LPR mechanism, MARQUES supports a minimum 30-day sunrise notice period, but believes this to be unreasonably short; a 60 day period is the appropriate grace period to allow for appropriate exchanges. This sunrise notice function should be centrally coordinated. ICANN should begin in earnest to coordinate posting of registry-specific sunrise requirements so that trademark owners are able to assess the relevance for them of specific registration risks and opportunities. Particular care should be taken in monitoring and controlling the trademark use support evidence to be put forward to Deloitte Belgium as the TMC entry validation service provider. *MARQUES (14 Jan. 2013); Nestle (14 Jan. 2013)*

The Sunrise Notice period of 30 days is insufficient when considering the expected high volume of new gTLDs over an extended period of time; 60 days' notice is reasonable. Publication of Sunrise

Notices should be centrally coordinated by ICANN. *HSBC (15 Jan. 2013)*

The Sunrise Notice period of 30 days is insufficient. To take advantage of the sunrise periods offered by new gTLDs a 90-day notice period would be reasonable, given the time needed by Intel for determining whether one or more of its trademarks should be registered in each of the (potentially) hundreds of new extensions open for public registration. *Intel (17 Jan. 2013)*

The proposal to require new gTLD registries to provide at least 30 days advance notice of the opening of the Sunrise period received overwhelming approval in the comments. *IPC (5 Feb. 2013)*

C. COMMENTS ON 90-DAY TRADEMARK CLAIMS PERIOD

Trademark Claims 1: Extension to 90 Days--Opposition

There is no basis to extend Claims 1 from 60 to 90 days. If the community wants to consider an extension, it should be subject to GNSO support. Changes at this late date can come credibly from GNSO Council action only, and must consider any potential material hardship that can arise from changes to the AGB. *NTAG (9 Jan. 2013) DotGreen (10 Jan. 2013); PIR (14 Jan. 2013); Dot Kiwi (14 Jan. 2013); RrSG (14 Jan. 2013); CRONON (15 Jan. 2013); Donuts (15 Jan. 2013); Blacknight (16 Jan. 2013); Nordreg (16 Jan. 2013)*

The Claims 1 period should not be extended further. The proposed extension goes against fully discussed and agreed GNSO policy; the 60-day period is the consensus of many different stakeholders because it balances the needs and interests of rights holders, registrants and the varying business models of different registries. *DOTZON (10 Jan. 2013); RrSG (14 Jan. 2013); CRONON (15 Jan. 2013); United TLD (15 Jan. 2013); Blacknight (16 Jan. 2013); Nordreg (16 Jan. 2013)*

- Community-based TLDs will suffer particularly from a further extension. These TLDs already limit eligibility for registration and expect to receive very few sunrise registrations. Extending the waiting period means delaying for a further month the ability of these TLDs to generate revenue, which may severely disrupt applicants' financial planning at this late stage, long after the required financial and business modeling have been finalized. It is a disproportionate and unbalanced measure that only harms new registries. *DOTZON (10 Jan. 2013)*
- An extension to 90 days would burden registrars who have configured technical systems for 60 days; RrSG reminds the community that engineering schedules are set well in advance. *RrSG (14 Jan. 2013); CRONON (15 Jan. 2013); Blacknight (16 Jan. 2013); Nordreg (16 Jan. 2013)*

The change from 60 to 90 days minimum requirement for a registry's Trademark Claims 1 period is a significant change from what is stated in the Final AGB and what the community negotiated over the multi-year PDP. The change would require domain name registrants to acknowledge receipt of the claim for an extended period of time, thus creating greater opportunity for a finding of legal liability for infringement. The IPC-BC tailored this proposal to match the legal standard for "knowledge of infringement" and "intent to infringe," thus turning what would otherwise be

innocent infringers into willful infringers for which greater penalties and criminal sanctions may be imposed against, just for receiving one of these claims. It creates a chilling effect on speech and domain name registration generally; NCSG objects to and rejects this proposal. *NCSG (14 Jan. 2013); Momentous (16 Jan. 2013)*

The request to extend the Trademark Claims service from 60 to 90 days materially alters the already endorsed RPM as a whole, a proposed action that requires a PDP. *Demand Media (16 Jan. 2013)*

Nothing in the Trademark Claims service, either in its current form, or as slightly enhanced by the Strawman Solution, prevents anyone from registering any second level domain in any new gTLD. It simply makes it easier for well-intentioned putative registrants to be aware of existing trademark rights in the string they wish to register, and thus facilitates a more informed decision about whether or not to register. It also vitiates spurious claims that could be made by cyber squatters that they were unaware that the domain name they wish to obtain affects the pre-existing rights of a trademark owner. *COA (10 Jan. 2013)*

TM claim notices create no new rights for trademark holders, but help ICANN fulfill its obligation to inform registrants when their selection or use of a domain name might infringe the existing legal rights of others. *BC (15 Jan. 2013)*

The fee for use of the TMC and the Trademark Claims Service should be reasonable and not prohibitively expensive. *LEGO (11 Jan. 2013)*

Trademark Claims 1: Extension to 90 Days--Support

- GE supports extending duration of the Trademark Claims Period (“Claims 1”) to 90 days: it provides greater protection to brand owners that will (hopefully) spend fewer scarce enforcement resources against inadvertent infringers who are deterred by the Claims notice; it helps those who may inadvertently seek to register and use domain names that match trademarks that are the subject of validated TMC records; and it seems likely that extending the Claims 1 period to 90 days will encourage registrars to participate in Trademark Claims, since it will be difficult for them to otherwise not offer registrations in a TLD for 90 days. *GE (11 Jan. 2013); Com Laude (14 Jan. 2013); MARQUES (14 Jan. 2013); Nestle (14 Jan. 2013); AIA (15 Jan. 2013); NBA/NFL/NHL (15 Jan. 2013); IPC (15 Jan. 2013); General Mills (15 Jan. 2013); NCTA (15 Jan. 2013); Microsoft (15 Jan. 2013); ALAC (16 Jan. 2013); Intel (17 Jan. 2013); Facebook (18 Jan. 2013)*
- GE sees no reason why Claims 1 should stop at 90 days, which is arbitrary; nothing suggests that those who seek to piggyback on the goodwill of brands to defraud the public somehow stop their malicious activities 60 or 90 days after a gTLD launches. *GE (11 Jan. 2013); Verizon (15 Jan. 2013); AIA (15 Jan. 2013); IPO (15 Jan. 2013); P & G (15 Jan. 2013); USPS (15 Jan. 2013); IPC (15 Jan. 2013); General Mills (15 Jan. 2013)*
- It is not appropriate to rely on statements in ICANN’s Sept. 2012 letter to Congress as the reason why Claims 1 should not be extended: it is incorrect that “the 60 day period was

reached through a multi-year, extensive process with the ICANN community;” the 60-day period was decided by the ICANN Board on the advice of the GAC. It is also incorrect that “there are existing IP Watch services” that address the need; there are no existing IP watch services that notify a potential domain name registrant that the name sought to be registered is a match to an existing trademark registration. That is a unique feature of the Claims service. *GE (11 Jan. 2013); Microsoft (15 Jan. 2013)*

INTA Internet Committee supports the modest extension to 90 days, which does not require any new systems by registries or impose any burdens on the TMC. *INTA Internet Committee (16 Jan. 2013)*

Valideus supports requiring Trademark Claim to operate for 90 days or longer. *Valideus (14 Jan. 2013); Chrysler (15 Jan. 2013)*

The Trademark Claims service should continue indefinitely as it will benefit both trademark owners and registrants. A 90-day Trademark Claims period (with an option for extension) is insufficient; nothing suggests that it is only relevant to inform registrants of a possible conflict between the domain name and a registered trademark for a limited period of time. The 90-day period (or any other indiscriminately calculated period) is arbitrary. *LEGO (11 Jan. 2013); CADNA (15 Jan. 2013); IPO (15 Jan. 2013); P & G (15 Jan. 2013); AAFA (15 Jan. 2013); DuPont (15 Jan. 2013); NAM et al. (15 Jan. 2013); Vanguard (15 Jan. 2013); GBOC (15 Jan. 2013); AIM (18 Jan. 2013); QBPC (24 Jan. 2013); BC (15 Jan. 2013); AIPLA (15 Jan. 2013); BBC (15 Jan. 2013)*

The 90 day extension remains ineffective. Trademark Claims should be extended indefinitely, or at least until ICANN has undertaken its independent evaluation of RPMs post-launch of new gTLDs to properly assess their effectiveness. *HSBC (15 Jan. 2013); BC (15 Jan. 2013)*

Since cybersquatting goes on forever, the TMC should be perpetual, with the full (“Claims 1”) notice period in place at all times. *ANA (15 Jan. 2013); Coca-Cola (15 Jan. 2013); Toy Industry Association (15 Jan. 2013)*

Notices sent during this 90 day period might deter some cybersquatting, fraud and abuse, but improvement is needed in the current wording to ensure that the notice is both informational and can deter bad actors (e.g., this begins with improving existing registrar sales practices such as misleading uses of “domain name spinners”). *Verizon (15 Jan. 2013)*

BC agrees with the Strawman conclusion that the duration of the TM Claims notice period is a matter of implementation and does not require new policy development. *BC (15 Jan. 2013); ALAC (16 Jan. 2013)*

Trademark Claims 1: Extension--No Objection

ICA has no strong objection to a 30-day extension of the Claims 1 period but cannot support its adoption unless and until ICANN explains why it now believes it has the power to extend this

period when it advised the U.S. Congress just four months ago that it lacked such authority. *ICA (15 Jan. 2013)*

TM Claims 1 Extension to 90 Days

Many commenters support, along with IPC, the modest extension of the period for issuing Trademark Claims notices from 60 to 90 days. *IPC (5 Feb. 2013)*

D. COMMENTS ON “CLAIMS 2” PROCESS

Trademark Claims 2: Opposition

Claims 2 is clearly a change to policy as well as a material change to the AGB. Claims 2 requires community review, input and approval before it could be implemented. If adopted, it should apply to all gTLDs. By trying to implement Claims 2 without a fair community review, ICANN would be circumventing the bottom-up multi-stakeholder process. There are many unanswered questions about Claims 2. The PDP process is to be the forum for the community to collaboratively answer questions such as these before recommending policy. If Claims 2 is not removed from the strawman, it would apply only to new gTLDs, presenting an untenable outcome, causing material harm to new registries working to compete with incumbent registries. Registrars could also be impacted if they elect not to build complicated Claims 2 systems and sell only incumbent gTLDs, unfairly disenfranchising their customers (registrants entitled to registration of non-infringing names) and negatively impacting new registries at the most vulnerable period of their existence. *NTAG (9 Jan. 2013) DotGreen (10 Jan. 2013); PIR (14 Jan. 2013); Dot Kiwi (14 Jan. 2013); Donuts (15 Jan. 2013)*

Claims 2 can be categorized only as a new RPM; as such, it would require community review and approval. The purpose of the Council is to be the forum for the community to collaboratively answer questions before recommending policy. *RrSG (14 Jan. 2013); CRONON (15 Jan. 2013); United TLD (15 Jan. 2013); Demand Media (16 Jan. 2013); Blacknight (16 Jan. 2013); Nordreg (16 Jan. 2013)*

- RrSG has many concerns about Claim 2; for example: Would the service impact use of common names? Would registrants entitled to non-infringing names be disenfranchised? How would our customers be impacted in the registration process? What are the implementation burdens on registrars? What are technical systems requirements? What technical commands will need to be created and implemented? How are payments to be distributed and accounted for? *RrSG (14 Jan. 2013); CRONON (15 Jan. 2013) Blacknight (16 Jan. 2013); Nordreg (16 Jan. 2013)*
- Registrars would be subject to implementation risk and be financially burdened in building the Claims 2 system at their own cost in order to alleviate the theoretical need to protect against infringing registrations via a service that ultimately may be little used. Referring to Claims 2 as voluntary is a misstatement--rights holder participation would be voluntary (reducing the likelihood of cost recovery), but other parties' burdens would be mandatory. Engineering development times should also be taken into account. *RrSG (14 Jan. 2013); CRONON (15 Jan. 2013); Key-Systems (15 Jan. 2013); Demand Media (16 Jan. 2013); Blacknight (16 Jan. 2013); Nordreg (16 Jan. 2013)*

- Claims 2 is only proposed for new gTLDs and not existing gTLDs and ccTLDs. This harms registrars by artificially restricting the commercial availability of services offered to registrars' customers. Registrars intend to make new gTLD registrations available to their customers; however, some could elect not to assume the risk inherent in Claim 2 and sell only existing gTLDs and ccTLDs, a contravention of ICANN's goal to increase competition and consumer choice. *RrSG (14 Jan. 2013); CRONON (15 Jan. 2013); Blacknight (16 Jan. 2013); Nordreg (16 Jan. 2013)*

Any "educational" value of additional notices may not match the increased legal liability risked by innocent registrants--the danger of turning innocent infringers into knowingly and willful infringers. The proposed Claims 2 policy extends the risk of legal liability for Internet users who will be deemed to have received "notice of infringement" upon sending of such additional notice. This proposal needs and deserves a full-blown PDP by the entire community. The question of "willful infringement" is a shadow that will be created even by a broadly worded notice. Intellectual property attorneys will claim willful infringement from all who clicked past this notice--and thereby shift to domain name registrants the obligation, cost and difficulty of proving that she/he/it did not see or understand the notice--the burden of showing she/he/it should not be considered a willful infringer. These risks to Internet users are not trivial and warrant proper consideration ("knowing and willful infringement" faces increased damages and serious legal penalties). *NCSG (14 Jan. 2013); Momentous (16 Jan. 2013)*

ICA opposes adoption of the Claim 2 element of the Strawman Model until much greater consideration is given to all the issues it raises--including the impact on registrant rights. *ICA (15 Jan. 2013)*

- It would be in effect for a substantially longer period than the existing Claims 1 service, and would not likely provide the same degree of information to a potential registrant as the Claims 1 service, leaving the registrant in a far less informed position regarding the degree to which proceeding with their registration might infringe claimed trademark rights. *ICA (15 Jan. 2013)*
- It is unclear what evidentiary weight would be given to receipt of such a cursory notice in a later brought UDRP or URS action in regard to the required element of whether the domain registration was made in "bad faith." *(15 Jan. 2013)*
- If ICANN believed that it lacked authority to extend the existing Claims 1 period by a mere 30 days because it deviated from a community consensus position, then it almost surely lacks authority to impose an entirely new Claims 2 notice for another 6-12 months. *(15 Jan. 2013)*
- While ICA is not ready at this time to declare that the proposed Claims 2 service is an entirely new RPM requiring full policy review, ICA agrees with the NTAG's observation that the proposal raises numerous issues that have not received adequate consideration by the broad ICANN community (registrant impact, technical system configuration, risk assumption, payment and compensation methods, cost recovery, registry and registrar technical commands). *ICA (15 Jan. 2013)*

A registry-provided monitoring tool like Nominet's subscription-based Public Register Search Service (PRSS) would be more useful. Additionally, in the event that the Claims 2 service is implemented by ICANN, then trademark owners should not bear any costs. *Com Laude (14 Jan. 2013); Valideus (14 Jan. 2013)*

The Claims 2 service has limited utility in its current form. It is not clear why a Claims 2 service would not display the AGB-agreed claims data; it should display it. *MARQUES (14 Jan. 2013); Nestle (14 Jan. 2013); DuPont (15 Jan. 2013)*

Potential registrants should be able to assess all the relevant Trademark data free of charge in order to make a fully informed decision on registration. (Note that by virtue of agreeing to UDRP paragraph 2, a registrant already undertakes not to infringe third party rights.) Brand owners among MARQUES membership feel that take-up for the extra-fee Claims 2 service would probably be very low; such a watered-down measure has little support. *MARQUES (14 Jan. 2013); Nestle (14 Jan. 2013)*

The Claims 2 service in its current form offers no utility for HSBC. *HSBC (15 Jan. 2013)*

The Claims 2 service is too diluted to be of real value. Brand owners should not be asked to pay for a process where they receive no notice of the third party registration, and the third party receives no notice of the details of their claim. Instead the TMC should continue in perpetuity without diminishing the protection it offers. *AAF (15 Jan. 2013); Toy Industry Association (15 Jan. 2013)*

The Claims 2 notice is unsupportable; it will provide zero enforcement value to brand owners and zero deterrent value to potential registrants, other than those who unwittingly seek to register a domain name that triggers a notice. *ANA (15 Jan. 2013); Coca-Cola (15 Jan. 2013)*

Trademark Claims 2: Support

GE is not opposed in principle to paying an additional, reasonable fee to have its validated TMC records included in a Claims 2 service lasting 6-12 months or longer (starting 90 days after launch), but the benefit must justify the cost. *GE (11 Jan. 2013); Chrysler (15 Jan. 2013); Verizon (15 Jan. 2013); AIA (15 Jan. 2013); NBA/NFL/NHL (15 Jan. 2013); IPC (15 Jan. 2013); NCTA (15 Jan. 2013); Microsoft (15 Jan. 2013); INTA Internet Committee (16 Jan. 2013); Intel (17 Jan. 2013); Facebook (18 Jan. 2013)*

- The following modifications to Claims 2 are required: potential registrants must receive a "full" Claims notice (e.g., the specific Clearinghouse data that triggered the notice) and potential registrants must be required to acknowledge receipt of it (and, by extension, must be required to make the representations and warranties found in the "full" Claims notice). *GE (11 Jan. 2013); BBC (15 Jan. 2013); Verizon (15 Jan. 2013); AIA (15 Jan. 2013); NBA/NFL/NHL (15 Jan. 2013); IPC (15 Jan. 2013); GBOC (15 Jan. 2013); Microsoft (15 Jan. 2013); Facebook (18 Jan. 2013)*
- As a practical matter, continuing the Claims 1 requirements means that entities

administering the Claims 2 notice will not have to create new systems or modify those designed to implement the Claims 1 service. Moreover, retaining the Claims 1 requirements also neatly counters the argument that Claims 2 is a new RPM, not implementation of an agreed-to RPM. *GE (11 Jan. 2013); Microsoft (15 Jan. 2013)*

- Several “unanswered questions” about Claims 2 posed by critics are red herrings: Claims 2 is a notice system that does not prevent potential registrants from registering domain names, so “disenfranchisement” concerns are irrelevant; submission and distribution of payments made by Claims 2 subscribers is an implementation detail that does not require resolution before deciding to proceed with Claims 2; regarding technical system adaptations by registries and registrars for accepting many more commands over 9-10 additional months, all gTLD applicants provided detailed financial projections that included registration volume estimates, so the number of commands likely to be triggered by Claims 2 should be easily estimated, and the registrars that intend to serve such registries have made similar projections; regarding fairness to all parties regarding burdens for building these systems, the potential costs and risks alleged by registries and registrars pales in comparison to expenditures brand owners incur for defensive registrations and enforcement actions against cybersquatters; and the Claims 2 notice should be identical to the Claims 1 notice. *GE (11 Jan. 2013); Microsoft (15 Jan. 2013)*

Verizon questions why the Claims 2 period artificially ends after 6-12 months, when cybersquatting, fraud and abuse continue indefinitely. *Verizon (15 Jan. 2013); DuPont (15 Jan. 2013); GBOC (15 Jan. 2013); General Mills (15 Jan. 2013); AIM (18 Jan. 2013)*

BC is troubled that “Claims 2” notices would be presented without specific claims data; also, because they provide valuable information to both trademark holders and registrants, TM claim notices should be continued indefinitely or at the very least until they can be evaluated as part of the comprehensive review of new gTLDs requested by the GAC. (BC notes that the GAC review should begin one year after the 75th non-IDN gTLD is launched so that the review can evaluate a range of gTLDs in determining the true effectiveness of RPMs.) *BC (15 Jan. 2013)*

If there is a cost for a Claims 2 notice, it should be revenue neutral; registrars and registries should not be able to monetize the Claims notices as yet another “service.” Consistent with these comments, Verizon could support the “enhanced” Trademark Claims service; however, trademark owners should not bear the expense and burden of paying for an ineffective and generic Claims 2 notice, for any trademarks, much less 50 variations. The Enhanced Claims service only becomes an effective remedy for the trademark community if the wording of the information sent and the acknowledgement requirement are the same for Claims 1 and Claims 2 notices. *Verizon (15 Jan. 2013); AIA (15 Jan. 2013);*

BC supports a reasonable fee, based on cost recovery for registrars, registries and the TMC provider, for the Claims 2 notice service provided that the notice includes the same information and registrant acknowledgement mechanism required for Claims 1 notices. Fees could be collected through an addition to the annual TMC renewal fee. Hopefully the “live query” model

recently adopted by ICANN is less expensive for registries and registrars, reducing the incremental costs for a perpetual claims service. *BC (15 Jan. 2013)*

The notice to the domain name applicant should include the trademark rights of the mark owner, even if the applicant is not required to acknowledge those rights. Providing such information in the notice will benefit all parties, including the domain name applicants. Opponents of the Claims Service have asserted a hypothetical “chilling” effect; however, a detailed and accurate claims notice should foster more legitimate domain name registrations in the long-term. *INTA Internet Committee (16 Jan. 2013)*

ALAC supports Claims 2 but considers Claim 2 to be a policy issue that requires GNSO attention. ALAC encourages the GNSO to evaluate the impact of Claims 2 on stakeholders and if applicable recommend its implementation. *ALAC (16 Jan. 2013)*

ICANN should implement an Enhanced Trademark Claims Service (ETCS) because the current limited time model does not provide brand owners with sufficient post-registration enforcement evidence. *IPO (15 Jan. 2013) ; P & G (15 Jan. 2013)*

- Under ETCS a third party who attempts to register a domain identical to a mark or previously abused string registered with the TMC will be required to complete a declaration that it is seeking to register and use the domain name for a bona fide, legitimate and non-infringing purpose. *IPO (15 Jan. 2013) ; P & G (15 Jan. 2013)*
- The third party would also be required to describe the nature of the intended use. *IPO (15 Jan. 2013); P & G (15 Jan. 2013)*
- Upon making the declaration the third party would be permitted to register the domain name but at any time the trademark owner could challenge the truth of the registrant’s declaration as applied to the subsequent use of the domain name at issue, which could serve as the basis for cancellation or transfer. *IPO (15 Jan. 2013); P & G (15 Jan. 2013)*

Opponents of the optional Claims 2 period have incorrectly labeled this reasonable solution as an RPM requiring a PDP. In addition, a common theme among the opposition is that registries and registrars would bear risks and costs in building the system, essentially complaining that an idea that makes good sense to protect consumers, registrants and brand owners may be an additional cost to them. This argument ignores the enormous additional costs that brand owners will incur to protect their brands and the additional profit that these parties will rake in from infringing domain name registrants. Contrary to opponents’ comments, the Claims 2 process should present no new technical challenges. *IPC (5 Feb. 2013)*

NCSG’s assertions that TM Claims chill First Amendment rights are not supported by evidence. The fact that trademark registrants have a Sunrise will tend to give them first choice of domain names identical to their trademarks, but that is not amplified by the LPR or the Strawman. The LPR does not grant any additional rights to brand owners, but just makes the exercise of existing rights easier and more cost effective. *ANA (6 Feb. 2013)*

E. COMMENTS ON PROTECTION FOR PREVIOUSLY ABUSED NAMES

Trademark Claims Expanded Scope (up to 50): Opposition

NTAG agrees with ICANN staff that an expansion of trademark claims scope (beyond exact match) is a matter of policy. Applicants have relied on long-settled community-based agreements about the Trademark Claims scope; their reversal now should appropriately come only from the entire community. *NTAG (9 Jan. 2013); DotGreen (10 Jan. 2013); PIR (14 Jan. 2013); Dot Kiwi (14 Jan. 2013); NCSG (14 Jan. 2013); Momentous (16 Jan. 2013); dotStrategy (14 Jan. 2013); Key-Systems (15 Jan. 2013); Donuts (15 Jan. 2013)*

Expansion of trademark claims scope would be a policy change. Reversal of prior community agreements and expansion of trademark rights beyond law is inappropriate. The community has correctly determined the potential harm outweighs any benefit and would negatively impact registrants. *RrSG (14 Jan. 2013); CRONON (15 Jan. 2013); NCSG (14 Jan. 2013); Momentous (16 Jan. 2013); Key-Systems (15 Jan. 2013); United TLD (15 Jan. 2013); Demand Media (16 Jan. 2013); Blacknight (16 Jan. 2013); Nordreg (16 Jan. 2013)*

The strawman proposal 4 would change the UDRP legal standard for infringement that involves the conjunctive “and” in favor of a lower standard of “or” (“Where there are domain labels that have been previously determined to have been abusively registered or used...”). This significantly expands trademark holders’ rights and outside a proper PDP. UDRP requires 3 separate elements to be met for infringement to be found, while ICANN’s strawman proposal uses a test of only a single element before treating the situation as an infringement and privileging the trademark complainant. The proposal also ignores trademark law principles such as territoriality, which limits the reach of a trademark holder’s rights to a particular geographic territory. ICANN proposals that turn trademark law principles on their head must go through a proper policy process so the issues can be considered by all impacted stakeholders. *NCSG (14 Jan. 2013); Momentous (16 Jan. 2013)*

Inclusion of up to 50 variations on a name is a broad increase in rights protections that has a serious impact on registries and registrars; it would de facto lead to a new global IP right which is out of the scope of ICANN. *DOTZON (10 Jan. 2013)*

- Cases can be envisaged when variations may be legitimate but implicate the TMC record of a different trademark holder. This is particularly an issue in predominantly non-English-language registries, where many variations on words or trademarks in other languages may be perfectly legitimate registrations. There may be cases when variations could be included, but this should be on the discretion of the registry, and not mandatory. *DOTZON (10 Jan. 2013)*
- It is difficult to see how the proposed measures were arrived at by a balanced process based on facts. The addition of many names variations imposes new obligations on registrars, raising operational costs to operate the measure and deal with dispute. It does not appear that thought was given to the financial and reputational costs to registries and registrars. Registrars are not, and should not be made to be, the trademark police for trademark owners. The amendment would also prevent many legitimate registrations, harming registries, registrars and registrants; registrants will not risk registering many

legitimate names because of the perceived threat that they might infringe another rights holder's mark(s). *DOTZON (10 Jan. 2013)*

ICA strongly opposes this element. Adoption of it would severely dilute the quality of the TMC and turn it into something else entirely. It is a policy matter that has not in any way been adequately vetted through an acceptable policy process. *ICA (15 Jan. 2013); Key-Systems (15 Jan. 2013)*

- Such an alteration is clearly a substantial policy departure that deserves full vetting under standard ICANN processes. *ICA (15 Jan. 2013)*
- The proposal also carries the danger of creating rights rather than protecting them. The fact that a particular domain name was previously found to have been registered and used in bad faith at an incumbent gTLD in no way indicates that a potential registrant intends to use it for cybersquatting at a new gTLD, particularly if the intended "string" is for a vertical category of goods and services that bears no relationship to the rights holder's activities covered by its trademark. *ICA (15 Jan. 2013)*
- Adding variations of trademarks to the TMC database for the purpose of generating claims notices to potential registrants would assert trademark rights where they may not exist, putting ICANN in the untenable position of both expanding rights and determining their scope. ICA must oppose any proposal that would put ICANN in the position of creating new rights rather than protecting existing rights established by national legislatures and international treaty. *ICA (15 Jan. 2013)*
- ICANN's own summary of the Strawman Model clearly states that the expansion of the scope of trademark claims involves policy and not mere implementation. *ICA (15 Jan. 2013)*

Since UDRP decisions are not always flawless or beyond reproach as many have been successfully overturned in court, basing a blocking mechanism on UDRP decisions seems like an overreach. *Key-Systems (15 Jan. 2013)*

Trademark Claims Expanded Scope (up to 50): Support

The proposed limit (up to 50) on the number of domain names previously registered or used abusively that would be allowed to be added to the TMC is arbitrary. LEGO welcomes the possibility of adding such abusively registered or used domain names to the TMC but this solution should be able to allow for all abusively registered or used domain names to be added. *LEGO (11 Jan. 2013); Com Laude (14 Jan. 2013); MARQUES (14 Jan. 2013); Nestle (14 Jan. 2013); HSBC (15 Jan. 2013); Chrysler (15 Jan. 2013); AIPLA (15 Jan. 2013); IPO (15 Jan. 2013); P & G (15 Jan. 2013); DuPont (15 Jan. 2013); INTA Internet Committee (16 Jan. 2013); AIM (18 Jan. 2013)*

Some brands may have more than 50 domains that have been shown to be abusively registered and used. If so, the Strawman Solution may need to allow sufficient related domains to cover all actual instances of past abuse. *BC (15 Jan. 2013)*

GE fully supports the "Enhanced" Trademark Claims Service ("ETCS"). GE would prefer that the 50-label ceiling be higher because its 40 UDRP and ccTLD equivalent proceedings involved more than

50 labels, but GE is prepared to agree to such a ceiling if necessary to ensure that ETCS is implemented. *GE (11 Jan. 2013); Valideus (14 Jan. 2013); Microsoft (15 Jan. 2013); Facebook (18 Jan. 2013)*

- The ETCS is the logical response to the void in the RPMs in the current AGB, that they are limited to identical matches. Cybersquatters do not limit themselves to identical matches. Equally important, trademark law does not limit protection from infringement to identical marks--the standard (worded differently from country to country) is whether there is a likelihood of confusion. *GE (11 Jan. 2013); Microsoft (15 Jan. 2013); INTA Internet Committee (16 Jan. 2013)*
- ETCS is only a notice and does not bar a registrant from proceeding with a domain name registration. Only those labels that have been previously determined through UDRP proceedings or court proceedings to have been abusively registered or used are eligible, which limits the scope to labels that (a) are more likely to be targeted by cybersquatters in new gTLDs given their targeting in existing TLDs, and (b) are deemed to be identical or confusingly similar to a trademark. Evidence of third party determinations is required for validation. *GE (11 Jan. 2013); Com Laude (14 Jan. 2013); Valideus (14 Jan. 2013); NBA/NFL/NHL (15 Jan. 2013); IPC (15 Jan. 2013); Microsoft (15 Jan. 2013)*
- The TMC will neither adjudicate nor create new legal rights; its role in ETCS is limited to validating documentation of the relevant proceeding(s) and associating the labels with the relevant, previously validated trademark record. That is neither legal rights adjudication nor creation. The labels that are eligible for inclusion in the TMC under ETCS have already been determined to be within the scope of trademark law. ETCS does not violate the IRT principle that rights protections should protect the existing rights of brand owners, but neither expand those rights nor create additional rights. *GE (11 Jan. 2013); IPC (15 Jan. 2013); Microsoft (15 Jan. 2013); INTA Internet Committee (16 Jan. 2013)*

Inclusion of previously abused domain names in Trademark Claims services as proposed in the Strawman Model will help to protect the safety and reliability of e-commerce in the new gTLD space and serve the public interest. *CADNA (15 Jan. 2013); BBC (15 Jan. 2013); AIA (15 Jan. 2013); NBA/NFL/NHL (15 Jan. 2013); IPC (15 Jan. 2013)*

General Mills supports expanding the scope of the trademark claims services to cover the additional 50 names, but additional improvements could be made to streamline the process and reduce the burden on mark holders. This element of the Strawman should be included in the TMC regardless of whether it is deemed policy or implementation. *General Mills (15 Jan. 2013)*

- The requirement to show that the mark has *already* been abused should be lifted or modified; brand holders should be able to protect the most profitable registrations--those that reflect *new* product innovations being brought to market that have not yet been infringed upon, but undoubtedly will be. *General Mills (15 Jan. 2013)*
- In many cases the "infringement value" of registering a previously abused mark is likely minimal. Mark owners would be better served, e.g., by permitting them to protect 25

abused domains and 25 domains that have not been abused previously but which contain an exact match of a registered mark. *General Mills (15 Jan. 2013)*

- Giving notice to a mark holder of a registration that contains an exact match as *part* of the second-level domain (e.g., *generalmillscereals.TLD*) whether or not the domain has already been abused, would serve the important purpose of alerting the mark holder to the need to take action, where appropriate, to protect their rights and interests. As a brand owner, this notice would be valuable, even if the registry is not blocking the registration because it is only blocking “exact matches” as it would enable a brand owner’s to lower costs of monitoring for second-level domain infringement. *General Mills (15 Jan. 2013)*

Coca-Cola supports Strawman Solution #4, which recognizes that cybersquatters will go after multiple variations of brands, but since it only lasts as long as the TMC, unless the TMC continues in perpetuity it provides no long-term protection. *Coca-Cola (15 Jan. 2013)*

NCTA supports the expanded scope to 50 names but it is too limited. E.g., if *TRADEMARKstore.TLD* is found to be abusive, then at a minimum *TRADEMARK-store.TLD*, *TRADEMARKstores.TLD* and *TRADEMARK-stores.TLD* should be eligible to be added to the TMC. In addition, if a particular trademark owner is a common target for abusive registrations of variation on its mark(s), it should be able to obtain protection through the TMC for all of those second-level domains in all the new gTLDs through a streamlined and cost-sensitive procedure. *NCTA (15 Jan. 2013)*

This mechanism is welcome, but far from complete. The list of protected strings will at best be arbitrary, depending on the accidental history of a brand owner having had to pursue litigation of certain cases and not others (e.g., because of a voluntary surrender of a string). *INTA Internet Committee (16 Jan. 2013)*

Given the limited nature of this protection and its reliance on past abuse, ALAC supports the inclusion of domain names previously determined to have been abusively registered or used in both Trademark Claims services. This change is a totally new mechanism that has not been the subject of previous extensive discussion and investigation; as such, it is clearly policy and cannot be judged simply as implementation. ALAC encourages the GNSO to fairly investigate the benefits and impacts of this mechanism and to recommend its adoption. *ALAC (16 Jan. 2013)*

Protection for Terms Combined Before and After the Dot

Both the LPR and Strawman Proposal should allow for protection against domain names that, when taken together as a whole with terms combined before and after the dot, are identical to a registered trademark (e.g., *priority.mail*, *best.buy*) This might be most easily accomplished in the present implementation phase in connection with the proposal to permit 50 variations of registered or abused trademarks to be entered into the TMC records. *USPS (15 Jan. 2013)*

Trademark Claims Expanded Scope (up to 50)

Opposition to the proposal to allow mark owners to record with the TMC up to 50 domain names previously determined to have been abusively registered or used centers on a mistaken assertion

that this is a departure from the IRT's recommendation of applying only "identical matches." *IPC (5 Feb. 2013)*

- Allowing this expansion can be implemented using an exact match standard and does not create any new rights. *IPC (5 Feb. 2013)*
- Extending the claims service to previously abused domains as a trigger to receive a claims notice is no different than if a brand owner had multiple variant trademark registrations encompassing a core mark. The cost of implementation can be built into the relevant registration fees. *IPC (5 Feb. 2013)*

Some commenters argued that the proposal goes beyond the rights that are provided to trademark owners under the federal and international trademark laws on which the RPMs were originally based; however, the proposal stops no one from registering any domain name and gives no one any additional rights. *IPC (5 Feb. 2013)*

- Since inclusion of a string would require a previous judicial or UDRP decision, the scope is far narrower than registrations covered by Claims 1 or Claims 2. This limitation ensures that rights in these variants will have been legally affirmed by a court or arbitrator. *IPC (5 Feb. 2013)*
- At most it may help to reduce the need for brand owners to initiate a UDRP action or litigation to challenge domain names that have previously been found confusingly similar to their trademarks. This is not an expansion of rights but merely a normal and logical implementation of the accepted rules. *IPC (5 Feb. 2013)*

NCSG's concern that this proposal amplifies risks, concerns and rights infringement in an enormous and unpredictable way ignores the underlying concern that most cybersquatters use variants rather than domains identical to registered trademarks. There is nothing enormous or particularly unpredictable about the proposal—it will only be available in narrow circumstances. *ANA (6 Feb. 2013)*

F. COMMENTS ON LIMITED PREVENTIVE MECHANISM (LPR) PROPOSAL

Opposition to LPR

Any blocking scheme, including the LPR, is unsound and does not consider legitimate potential registrants' rights to non-infringing domain names. This is an unprecedented expansion of trademark rights, would injure the new gTLD program by removing swaths of generic terms otherwise available to legitimate registrants, and should not be considered. *RrSG (14 Jan. 2013); CRONON (15 Jan. 2013); Key-Systems (15 Jan. 2013); Blacknight (16 Jan. 2013); Nordreg (16 Jan. 2013)*

The blocking (LPR) proposal raises the spectre of the Globally Protected Marks Lists, a type of "super trademark" beyond any known existing law or policy. This proposal gives trademark owners a new and unprecedented right to prevent the second level registration of domain names in all gTLDs. What is completely unprecedented is the idea of using a trademark far outside the scope of

its good or services; and, further, all forms of noncommercial, generic and descriptive use of basic words are now forestalled because trademark owners choose to block them. This is neither fair nor in accord with trademark law principles. Contrary to legal due process and trademark law principles, the blocking proposal assumes that all uses of a trademark are presumed to be infringing uses and should be prevented. This type of upfront shutting down of domain names, absent any proof of infringement or cybersquatting, is completely counter to the openness of the Internet and fundamental due process of law. The proposal creates far-reaching concerns for freedom of expression rights and cannot be cobbled together and imposed on the Internet community in this way. The LPR is pure policy and was strongly opposed at the LA meeting, and no further consideration is merited at this time. *NCSG (14 Jan. 2013); Momentous (16 Jan. 2013)* ICA opposes any further consideration of the LPR until it has been subjected to broad community review through a full PDP. *ICA (15 Jan. 2013)*

- The LPR is clearly a significant new policy initiative and an entirely new RPM. It presumes implementation of an expanded TMC database, which ICA also opposes. *ICA (15 Jan. 2013)*
- The LPR may well expand trademark rights far beyond their status in current law--from a reactive right that can be enforced when infringed by a domain registrant to a preemptive one that can be exercised to block a domain registration. Both the UDRP and URS require a complainant to show both bad faith registration and use on the part of a registrant, but the LPRM would presume bad faith registration and future bad faith use by a new registrant based upon the past action of an entirely different registrant at a different TLD. The “crystal ball,” pre-infringement approach embodied in this proposed RPM is unacceptable. *ICA (15 Jan. 2013)*

Any effort to block registrations, including the LPR proposal, is a change in policy and should be a matter of Council policy business if it is to be considered. *Donuts (15 Jan. 2013)*

United TLD opposes the proposal to allow trademark owners the option to “block” trademarks across all TLDs for a fee. This element should be rejected as it is commercially impractical. Some trademarks should not be blocked from certain gTLDs (e.g.” McDonalds” may appropriately be blocked from .FOOD but not from .FAMILY). United TLD can support a block feature such as what is featured in its new gTLD application, but not one that is automatic and across the board and does not give some discretion to the registry operator to disallow a block for certain strings. *United TLD (15 Jan. 2013)*

The LPR is clearly policy; it is not part of the Strawman proposal and differs from anything previously accepted by the community. It is a form of blocking without (to date) any practical method of over-riding it to account for fair-use situations. The ALAC cannot support any form of such a change at this time. *ALAC (16 Jan. 2013)*

The decision to implement a blocking service such as the LPR and how to remediate blocked terms should be left with the TLD applicant. The idea of a service of this nature has merit, but there are too many nuances to individual TLDs and second level domains to mandate an across-the-board

block to specific terms that are in the TMC. Any decision to implement a new policy across all TLDs should be subject to community input and go through a PDP. *Demand Media (16 Jan. 2013)*

Support for LPR

The LPR proposal offers significantly more protection by providing a cost-efficient and streamlined method to register names across hundreds of new registries as opposed to the current mechanism in the new gTLD program, which is cumbersome, inefficient, resource-intensive and expensive. *Eli Lilly and Company (3 Jan. 2013); BBC (15 Jan. 2013); Verizon (15 Jan. 2013); AIA (15 Jan. 2013); NAM et al. (15 Jan. 2013); BC (15 Jan. 2013); AIM (18 Jan. 2013); QBPC (24 Jan. 2013)*

INTA Internet Committee supports the LPR proposal as an efficient procedure to scale defensive sunrise registrations to the expanded volume of gTLD applications. *INTA Internet Committee (16 Jan. 2013)*

NCTA supports the LPR but notes that it perpetuates the approach that trademark owners must bear the burden and expense of policing. NCTA believes that it is fairer to shift some of these costs to other stakeholders. *NCTA (15 Jan. 2013)*

LEGO is pleased to see the LPR proposal which will hopefully limit the number of useless defensive registrations that trademark owners will need to do in order to avoid potential trademark conflicts in the new gTLDs. This solution will have to be reasonably priced so as not to place a prohibitive burden on trademark owners and be able to include all registered trademarks and domain names that have previously been abusively registered or used. *LEGO (11 Jan. 2013)*

The LPR provides a means for trademark holders to achieve limited protection for key second-level domain names across all gTLDs; this approach provides significantly better protection for consumers and trademark holders than does Strawman alone. *PCIAA (8 Jan. 2013); USTelecom (15 Jan. 2013)*

The LPR protects longer range particularly with regard to avoiding cyber squatters. The Strawman Solution had some short-term advantages in extending the time but in and of itself without the LPR does not adequately offer the needed protection. The added LPR helps eliminate fraud and protects consumer interests in actually knowing they are on our web site. *Goodville Mutual Casualty Company (8 Jan. 2013)*

The LPR builds on the long-standing ability of trademark owners to register defensively, during the mandatory sunrise period, second-level domains that match exactly their verified trademarks that have been entered into the TMC. While the LPR opportunity would occur after the end of sunrise, no second level domain that is ineligible to be registered under sunrise may be registered under LPR. Although LPR does not expand by one iota a trademark owner's ability to make a preemptive defensive registration of a second-level domain identical to its mark, it does enable such registrations to be made more efficiently--on a multi-TLD basis--and more purely for defensive purposes, by culminating in a registration that does not resolve. *COA (10 Jan. 2013); INTA Internet*

Committee (16 Jan. 2013)

The LPR proposal must be implemented before any new gTLDs are launched. GE strongly supports the LPR as the only currently proposed mechanism to address the problem of defensive registrations. *GE (11 Jan. 2013); ANA (15 Jan. 2013); Verizon (15 Jan. 2013); NBA/NFL/NHL (15 Jan. 2013); IPO (15 Jan. 2013); P & G (15 Jan. 2013); USPS (15 Jan. 2013); AAFA (15 Jan. 2013); Exelon (15 Jan. 2013); DuPont (15 Jan. 2013); Adobe (15 Jan. 2013); IPC (15 Jan. 2013); GBOC (15 Jan. 2013); General Mills (15 Jan. 2013); Microsoft (15 Jan. 2013); Intel (17 Jan. 2013); Facebook (18 Jan. 2013)*

- LPRs are prospective, not retroactive, so a brand owner could not use the LPR to take a domain name away from an existing registrant. Applicants for a Sunrise registration take priority over applicants for a LPR registration, which maximizes the likelihood that the domain name will be actively but legitimately used. The proposed Reverse Domain Name Hijacking exclusion provides an important registrant safeguard that does not currently apply to Sunrise registrations. *GE (11 Jan. 2013); NBA/NFL/NHL (15 Jan. 2013); Microsoft (15 Jan. 2013)*
- The LPR is paid for by brand owners, would not cost registries and registrars a dime, and would not expand brand owners' rights whatsoever. Absent a universal protection mechanism such as LPR, each brand owner will face enormous costs per mark to try to protect their brands and consumers at large. Even large brand owners cannot afford millions of dollars to protect and defensively register domain names for each of their brands, and smaller companies will likely have to forego protection of their marks in this space almost altogether. All brand owners are looking for is a cost-effective way to further consumer and brand protection--and minimize abuse and fraud--without having to separately register and pay for every domain name in Sunrise. Further, LPR is based on similar, successful systems adopted in the past (e.g., the system for .xxx). *GE (11 Jan. 2013)*
- LPR is not a "block;" it is a non-resolving registration subject to the same eligibility requirements as a Sunrise registration that the brand owner designates through a cost-effective and streamlined process that leverages the TMC. *GE (11 Jan. 2013); NBA/NFL/NHL (15 Jan. 2013); DuPont (15 Jan. 2013); Microsoft (15 Jan. 2013); INTA Internet Committee (16 Jan. 2013); Facebook (18 Jan. 2013)*
- Fears of economic exploitation of LPRs are misplaced. There is no economic incentive other than brand protection for registering an LPR. The same harm registries and registrars fear in the LPR (that trademark owners of "dictionary words" will use LPR to register the most valuable domains rendering them unavailable for premium pricing) is more likely to occur in the current Sunrise process which does not have the "non-resolving" disincentive. *GE (11 Jan. 2013); Microsoft (15 Jan. 2013)*
- LPR is protective of free speech because it comes after Sunrise and thus does not get in the way of any legitimate rights holders who want to register domain names in the Sunrise process. LPR can be used only for strings corresponding to exact marks; trademark variants cannot be stopped by LPR so there are ample opportunities for legitimate commentary or fair use. *GE (11 Jan. 2013)*

- Since brand owners have to pay for the LPR system in varying levels depending on how many TLDs for which the protections are requested, it would be against the interests of brand owners to use LPR for TLDs completely irrelevant to their business or industry, so even the entity that holds a trademark for what would otherwise be a generic word would only want to use LPRs on a limited basis. *GE (11 Jan. 2013)*

The GNSO specifically and ICANN generally should heed the concerns of brand owners and adopt LPRs; without them, the damage to consumers and businesses will be tremendous--all to the benefit of cyber squatters and other bad actors. The LPR proposal is essential and must be adopted by ICANN as part of any adequate RPM solution. An effective LPR mechanism is the only current or proposed RPM that in any way will resolve the critical problem of enormously costly and burdensome defensive registrations in the new gTLD framework. *ANA (15 Jan. 2013); WFA et al. (14 Jan. 2013); AAF (15 Jan. 2013); Verizon (15 Jan. 2013); AAFA (15 Jan. 2013); Exelon (15 Jan. 2013); DuPont (15 Jan. 2013); IPC (15 Jan. 2013)*

- The LPR provides an avenue to acquire domain name registrations necessary for consumer protection purposes, but which are not needed for communications purposes. *ANA (15 Jan. 2013); WFA et al. (14 Jan. 2013); Coca-Cola (15 Jan. 2013); Exelon (15 Jan. 2013)*
- Procedural arguments must not be permitted to minimize the problems merely to protect registry and registrar interests. The LPR mechanism strikes a fair balance between the needs of consumers, brand owners and registrars/registries and in the long run will benefit all Internet stakeholders. *ANA (15 Jan. 2013); WFA et al. (14 Jan. 2013); Coca-Cola (15 Jan. 2013); Verizon (15 Jan. 2013); Adobe (15 Jan. 2013)*
- The LPR will operate best if it is supported by other reforms that will protect consumers and improve brand policing on the web. For effective consumer and brand protection on the web, we need: (1) the LPR; (2) a reliable and accurate WHOIS database; (3) a strong URS system with a lower burden of proof and domain transfer right; and (4) an empowered ICANN compliance department that will diligently pursue wrongdoers. *ANA (15 Jan. 2013); WFA et al. (14 Jan. 2013); Exelon (15 Jan. 2013); Adobe (15 Jan. 2013)*

LPRs will provide significant revenues to registries and registrars which will more than offset any modest burden on them from maintaining this variation on Sunrise. Such revenues are not speculative; a properly priced LPR (i.e., one with a significant discount from the cost of a full, resolving registration) will be used by a great number of brand owners, given the alternatives, and thus will be revenue-generating. *ANA (15 Jan. 2013); IPC (15 Jan. 2013)*

Unlike a “block” list, the LPR would provide revenues to registrars and registries, and using an LPR to pre-empt other registrations is consistent with the existing first-to-file principle. *INTA Internet Committee (16 Jan. 2013)*

LPRs will not expand brand owner rights or the scope of protections as they are only available for exact matches for strings in the TMC. Thus, LPRs will have no greater effect than Sunrise on the availability of domain names. Since LPRs will only register in a TLD after the close of Sunrise, LPRs

will not block Sunrise registrations for resolving domain names from other legitimate registrants. Since LPRs must meet the same eligibility criteria as other registrations in domains with restrictive criteria, LPRs will not block “relevant” registrants in such TLDs. *ANA (15 Jan. 2013); DuPont (15 Jan. 2013); IPC (15 Jan. 2013)*

The LPR is not a true “blocking mechanism”—co-existing rights holders and otherwise legitimate third-party users will have an advance opportunity to register strings based on registry eligibility criteria, sunrise phases for community members, and trademark sunrise periods. The proposal is limited to exact matches of marks that are eligible for sunrise registration, but in a much less efficient manner, and at a much higher cost. Otherwise, for a company like General Mills, with a portfolio of dozens of brands, protecting these brands across one thousand new gTLDs, even for a nominal fee, would cost millions of dollars; this would do nothing to enhance consumer experience or online commerce, and is purely a windfall for the new gTLD owners. *General Mills (15 Jan. 2013)*

The LPR should be prioritized as an RPM and promptly considered by ICANN as a critical part of its new gTLD launch; it is the very type of mechanism that has been sought from the start of the new gTLD program to avoid unwanted, costly defensive registrations. *Com Laude (14 Jan. 2013)*

- ICANN has committed to review RPMs relatively soon after new gTLDs launch. If the LPR proves overly restrictive with respect to legitimate registrants, then registration experiences can guide a path to adapting it to better suit the registration community. On the other hand, if an LPR is not in place, and brands are faced with scores of defensive registrations and infringements, it will be practically impossible to bolster existing RPMs after-the-fact. *Com Laude (14 Jan. 2013)*
- An important part of any LPR involves safeguards for legitimate registrants (whether business or individuals), such as a mechanism that would allow for registration of a domain name upon certain warranties/representations. *Com Laude (14 Jan. 2013)*

Valideus supports ICANN’s implementation of an LPR tool, which does not apply retroactively. The LPR can operate in tandem with sunrises, with priority to use-based sunrise applications. *Valideus (14 Jan. 2013); NBA/NFL/NHL (15 Jan. 2013)*

Bayer favors the LPR which might constitute an efficient RPM for trademark owners and lead to an appropriate balance of interests in the extended domain space, provided that the fees for using the LPR will be truly modest. *Bayer (15 Jan. 2013); Chrysler (15 Jan. 2013)*

Valideus would welcome more detail on LPR safeguards for bona fide third-party registrants. Where a domain name is placed on an “LPR list,” this should include a mechanism for “removal” of that domain name from the LPR list so that bona fide co-existing third-parties may seek registration of LPR-listed domain names. *Valideus (14 Jan. 2013); MARQUES (14 Jan. 2013); Nestle (14 Jan. 2013)*

An LPR mechanism should be adopted by ICANN, should apply across all gTLDs to all sunrise periods everywhere, and should go in effect in parallel with sunrise registration periods. The LPR

should be extended to include previously harmed Trademark variations (as is being contemplated for Trademark Claims). The LPR should not be limited to marks which are eligible for a particular sunrise. *MARQUES (14 Jan. 2013); Nestle (14 Jan. 2013)*

AIPLA supports implementation of a mechanism for trademark owners to prevent second-level registration of their marks (exact matches, plus character strings previously determined to have been abusively registered or used) across all registries, upon payment of a reasonable fee, with appropriate safeguards for registrants with a legitimate right or interest. The LPR should be available at cost during any sunrise registration period and apply across all gTLDs going forward as well as during general registration. *AIPLA (15 Jan. 2013)*

New gTLDs present a serious challenge to retailers as they attempt to protect their intellectual property and their customers from the increased access bad actors will have to secondary domains in the new gTLD system. NRF supports the inclusion of additional RPMs across all open, generic applications for trademark owners including both the Strawman Solution and LPRs. With an effective LPR mechanism addressing the critical problem of defensive registrations across multiple new gTLD registries, NRF hopes to be able to register these domains for what NRF expects to be a fair price using a manageable procedure. *NRF (15 Jan. 2013); Chrysler (15 Jan. 2013); Adobe (15 Jan. 2013)*

CADNA urges ICANN to require that all open registries implement a block mechanism similar to the block offered by ICM Registry or a DPML. A “trademark block option” or LPR would allow brand owners to protect their consumers for a more manageable fee. *CADNA (15 Jan. 2013); Zippo (15 Jan. 2013)*

- A newly expanded space that may contain 1,398 unique strings will change the way that brands will have to police the landscape. The business community cannot be expected to bear the enormous costs of defensive registrations. *CADNA (15 Jan. 2013); Zippo (15 Jan. 2013)*
- Rather than forcing businesses to pay billions of dollars in defensive registrations to protect their trademarks, CADNA proposes that new gTLD registries be required to offer perpetual block products across the board. This would eliminate yearly renewal fees in the approximately 275 gTLDs that do not currently plan on offering a block option, lowering the annual cost of basic brand and consumer protection down from US \$2.64 billion per year to just U.S. \$0.88 billion per year over the same ten-year period. Overall, this would save brand owners, who are caught in the middle of the gTLD expansion, US \$17.6 billion. *CADNA (15 Jan. 2013); Zippo (15 Jan. 2013)*

ICANN should view the URS and LPR frameworks as complementary protections. While the LPR is proactive--designed to prevent problematic second level registrations from occurring--the URS is responsive, and should be implemented in a manner that effectively and efficiently addresses abusive registrations in the event they occur. The collective impact of the Strawman Solution, the LPR and an improved URS will provide reasonable and balanced mechanisms to protect consumers and brand owners from the potential effects of abusive second level domain name registrations.

USTelecom (15 Jan. 2013); Verizon (15 Jan. 2013); IPC (15 Jan. 2013)

The vast majority of the comments submitted express strong support for the LPR, the Strawman Solution and additional remedies. ICANN should give substantial weight not only to the number of comments but carefully examine who filed--companies and associations who provide significant economic and social value to the global community. *Verizon (5 Feb. 2013)*

A rough count of the comments indicates that approximately 70% of the commenters supported the Strawman and LPR proposal. *IPC (5 Feb. 2013)*

BC points out that 76% of the commenters favor implementation changes to the RPMs. These supporting comments came from businesses that are negatively affected by having to purchase defensive registrations and engage in other expensive and often inadequate mechanisms to protect their consumers against confusion or outright fraud using second level domain names. The comments show that present anti-abuse mechanisms are simply inadequate. *BC (6 Feb. 2013)*

The current RPMs for new gTLDs fail to meet ICANN's obligations under the Affirmation of Commitments and do not provide sufficient protection for consumers and brand holders. ICANN is obligated to move forward with implementing LPRs (or similar RPMs) as a necessary consumer protection and also to implement the Strawman proposal (modified as set forth in ANA's initial comments). Consumers, Internet users and brand holders deserve no less. *ANA (6 Feb. 2013)*

The large majority of commenters indicate that LPR is an urgent key priority that must be adopted. *Verizon (5 Feb. 2013); IPC (5 Feb. 2013); BC (6 Feb. 2013); ANA (6 Feb. 2013)*

GE hopes that ICANN will act to implement both the Strawman and the LPR in accordance with ICANN's mandate under the Affirmation of Commitments (Section 9.3). While GE supports the protections outlined in the Strawman proposal, without the LPR, the Strawman is inadequate to protect consumers and brands from massive fraud and abuse in the new gTLD system. The LPR is absolutely necessary. The majority of comments express overwhelming support for the LPR and the protections in Strawman, and consistently state that the LPR is a top priority. *GE (5 Feb. 2013); IPC (5 Feb. 2013); ANA (6 Feb. 2013)*

- The process surrounding the new gTLD program is dominated by those who seek to profit off the program. A substantial portion of the public has no knowledge of the program and many businesses lack legal staff or budgets large enough to be actively engaged in these issues. *GE (5 Feb. 2013)*
- For each trademark holder that came forward to express its views, there are certainly many more who feel the same way. Yet even among those who filed comments, the support leaned strongly in favor of enacting the LPR. *GE (5 Feb. 2013)*

Contrary to NCSG's assertion that LPRs were strongly opposed at the Los Angeles meeting, ANA understands that LPRs also received strong support from important constituencies at that meeting. *ANA (6 Feb. 2013)*

Arguments from LPR opponents that the LPR is an effort to block registrations fundamentally misrepresent the proposal. *IPC (5 Feb. 2013); ANA (6 Feb. 2013)*

- The LPRs block nothing that is not already blocked under the existing Sunrise, and are merely a lightweight version of a traditional domain name registration, designed to offer the defensive registrant what it needs in a registration and no more. Although an LPR will be non-resolving and will be procured through a centralized process, it will otherwise be indistinguishable from a traditional registration in any significant way. *IPC (5 Feb. 2013); ANA (6 Feb. 2013)*
- It telling that NTAG makes no real comments on this point, perhaps thinking that invoking the mere spectre of a “blocking” mechanism will be sufficient in some circles to kill this reasonable proposal. *IPC (5 Feb. 2013); ANA (6 Feb. 2013)*

“Hassle factor” arguments posed by RrSG about the LPR proposal’s’ burdens on registrars must be weighed against the real and serious economic burdens being visited on brand owners and consumers if there is no LPR. Allowing a brand owner’s defensive registration budget to be spread across more new gTLDs will be a very positive development for the protection of consumers and Internet users generally. ANA anticipates that the LPR will operate similar to ICM Registry’s successful .xxx reserved registrations. Engineers within the Internet community can be utilized to devise technical solutions for LPR. *ANA (6 Feb. 2013)*

NCSG’s assertion that the LPR creates a “super trademark” is a scare tactic; it is no more true of the TMC, the Strawman, or the LPRs than it is of UDRPs generally, which are a core, well-accepted RPM by this time. *ANA (6 Feb. 2013)*

The concerns raised by NCSG about blocks to generic words (e.g. “apple”) regardless of context have nothing to do with the LPR, RPMs and the TMC, but are a function of the binary nature of domain names. Contrary to NCSG’s assertion that the LPR presumes the “guilt” of a prospective registrant, LPRs have nothing to do with guilt or innocence of other potential registrants. *ANA (6 Feb. 2013)*

G. COMMENTS ON PROCESS

Distinguishing between “Implementation” and “Policy”

The ISPCP endorses the intent and critical importance of preventing fraudulent registrations and reducing defensive measures and agrees that the RPMs currently in the AGB may be improved; however, ISPCP is neutral on the subject of specific RPMs. *ISPCP (6 Jan. 2013)*

- The bottom-up policy process is important and we bypass it at our peril. *ISPCP (6 Jan. 2013)*
- The framework for sifting issues between “policy” and “implementation” that was discussed early in the first day of the Los Angeles meeting (and which is summarized in the ISPCP comments text) provides a good starting point. ISPCP encourages the GNSO (and the rest of ICANN) to quickly refine and endorse a process of this type. *ISPCP (6 Jan. 2013)*

- The proposals in the Strawman need an expedited “policy” v. “implementation” discussion/decision by the Council. *ISPCP (6 Jan. 2013)*
- There is very uneven support for the various proposals at this point, ranging from agreement to strong opposition. The ISPCP remains in the middle--interested in finding a good solution, but not at the expense of meeting our other commitments and responsibilities with respect to the new gTLD program. *ISPCP (6 Jan. 2013)*
- The work of rolling out the new gTLD program needs to proceed and is on a very tight schedule. *ISPCP (6 Jan. 2013)*
- Thus, any changes made to the TMCH, the AGB and RPMs in this round must be deemed essential and the GNSO should take up most of the proposals in due order. *ISPCP (6 Jan. 2013)*

Whether the Strawman Solution and LPR involve policy, implementation, or something in between is a highly nuanced topic which merits a timely discussion on its own terms. *Com Laude (14 Jan. 2013); Valideus (14 Jan. 2013)*

For present purposes, we have accepted ICANN’s view that the Strawman Solution is not inconsistent with GNSO policy advice concerning protection of the legal rights of others such as trademarks. *Com Laude (14 Jan. 2013); Valideus (14 Jan. 2013); MARQUES (14 Jan. 2013)*

To the extent that any of NAM et al.’s recommendations require consultation via ICANN’s PDP, NAM et al. requests that ICANN initiate quickly an expedited process under the PDP to consider them. *NAM et al. (15 Jan. 2013); QBPC (24 Jan. 2013) COA (10 Jan. 2013); IPC (15 Jan. 2013); COA (10 Jan. 2013);)*

Open, Transparent Process

The precise relation of the Strawman proposal to the ICANN policymaking process and the status of these public comments are unclear. The proposal was developed in private and amongst a small group of stakeholders; much of it seems to focus on benefits for rights-holders. Without the benefit of an open process it is difficult to see how these proposals could have been developed to also benefit all stakeholders including registries and registrars. We appreciate the efforts of the group that developed the proposal but are concerned that a somewhat narrow set of interests was represented (e.g. no one concentrating on community-based TLDs was included). *DOTZON (10 Jan. 2013)*

- DOTZON requests that ICANN staff ensure that all future discussions on this and other gTLD matters are conducted openly and transparently, and that if selection is deemed necessary that the participants are selected by a transparent process. The participation issue particularly affects new applicants whose interests are not yet fully articulated in the GNSO constituency structure or who have application types considered out of the norm (e.g. community or geo-TLDs). DOTZON requests that any discussion with selected participants will be available for broad, remote participation and a transcription be published on a short notice. *DOTZON (10 Jan. 2013)*

- While we understand that the AGB is not final and is subject to amendments, any amendments to the current version of the AGB have to account to the multi-stakeholder model as well as the amendment clause in the AGB (see AGB, pp. 6-7, 14). *DOTZON (10 Jan. 2013)*
- ICANN should clarify what the next steps are with respect to these proposals; it is unclear how the Strawman proposal might be approved or further amended, whether by the GNSO Councils input or via staff action. As there seems to be a growing consensus that at least parts of the Strawman proposal are policy, are further PDPs required? DOTZON does not want to see any further delays to the new gTLD launch. *DOTZON (10 Jan. 2013)*

NCSG is concerned about the way the Strawman was developed; much time was spent on issues of policy and not just implementation. Policy is a bottom up, community-driven process that involves the equal participation from all impacted stakeholders; its development belongs in the GNSO and should be bottom-up. NCSG urges this strawman to be the exception, not the rule, for developing policy at ICANN. NCSG further expresses concern about the late timing of the IPC-BC Strawman proposals, long after matters had been closed, negotiated compromises were approved at every level and included in the final AGB, and applications were accepted from registries based upon the agreed policies. NCSG welcomes ICANN's support of its own processes and rules and trusts that the next round will build and learn from this one. *NCSG (14 Jan. 2013); Momentous (16 Jan. 2013); Key-Systems (15 Jan. 2013)*

The manner in which the Model was developed is not in accord with ICANN aspirations and principles and should not be repeated. This is not the way to fashion sound policy that can garner consensus community support. *ICA (15 Jan. 2014); Key-Systems (15 Jan. 2013)*

The specific process used in the Brussels and LA meetings (lack of clarity, timely notice and inclusiveness, remote participation disadvantages, etc.) was severely flawed and demands significant revision. The decision to try to identify what differentiates implementation and was an important one and should have been addressed by ICANN long before now in a more comprehensive fashion. The lack of clarity of this even now is one of the root sources for disagreement among the various parties. Nonetheless, the effort to use innovative methodology is a positive constructive step that is to be encouraged. The challenge will be how to use such a process as a prelude to or part of the GNSO policy processes. ALAC welcomes the opportunity to take part in a decision-making process that is effective, efficient and inclusive. *ALAC (16 Jan. 2013)*

Publish a Timeline

To ensure constructive participation by all of the community in future processes, ICANN should publish a timeline and set of actions to clarify matters. This would both help to manage workload of the staff and community and avoid the perception that some groups will always want another bite. *DOTZON (10 Jan. 2013)*

"Policy" and Impact on Applicants

New and "enhanced" RPMs should have GNSO Council support to be considered at this stage and

should apply to all TLDs. There can be no doubt that the strawman proposal represents changes to policy rather than implementation of decided policy. Moreover, under the terms of the AGB, because the proposals would have significant impact on applicants, the applicant community should be supportive before attempts to change such agreements, and any negative impacts must be mitigated by ICANN. Absent strong and broad community support, the existing RPMs, which were agreed to through the multi-stakeholder process and memorialized in the application agreement between ICANN and applicants, should not be tampered with by ICANN staff. *NTAG (9 Jan. 2013)*; *DOTZON (10 Jan. 2013)*; *PIR (14 Jan. 2013)*; *Dot Kiwi (14 Jan. 2013)*; *Key-Systems (15 Jan. 2013)*; *Donuts (15 Jan. 2013)*

The IPC/BC proposals (the so-called “strawman”) are best described as changes to policy vs. points of implementation, and deserve consultation by the GNSO Council, not as a matter of intentional delay, but rather to ensure significant policy considerations are reviewed by all stakeholders. The proposals impose a burden on registrars and their customers that have not been sufficiently estimated or mitigated. ICANN’s communications about these matters has been confusing and at times contradictory. While RrSG appreciates the ICANN staff’s new focus on moving forward, the process by which these proposals were entertained--or the fact that they were entertained at all at this stage--undermines the bottom-up consensus model on which ICANN is based. The potential harms of the proposals significantly outweigh any perceived benefit. All members of the community should honor the good faith agreements reached on established policy matters, and not make side-door attempts at new policy. *RrSG (14 Jan. 2013)*; *CRONON (15 Jan. 2013)*; *Key-Systems (15 Jan. 2013)*; *Blacknight (16 Jan. 2013)*; *Nordreg (16 Jan. 2013)*

Name.com hopes that ICANN can regain confidence in its own principles and processes while recognizing the need for predictability and equity intrinsic to the bottom-up consensus model. Removing the predictable and equitable nature of decision-making the ICANN community has relied on for years has far broader effects than the serious cost and implementation concerns for those directly affected--in this case registrars and applicants directly. This departure also has substantial effects on ICANN’s role in the community. ICANN should reflect on how it can claim to be the proponent of an open and free Internet while at the same time catering to the interests of a minority outside of the established consensus model. *Name.com (15 Jan. 2013)*; *Blacknight (16 Jan. 2013)*

Additional RPMs should be evaluated under the normal ICANN policy development process that would apply to all gTLD, new and existing. ICANN should put the “strawman” element through these processes so that they are developed and implemented fairly. *United TLD (15 Jan. 2013)*

Demand Media understands that ICANN has claimed that the items included in the Strawman Solution are implementation rather than policy. Demand Media disagrees with this conclusion. Proposals in the Strawman Solution create new obligations on contracted parties and significantly affect multiple parties and constituencies. Demand Media understands that there are differing viewpoints and looks forward to ICANN presenting the rationale and thought process on how it arrived at this specific decision. *Demand Media (16 Jan. 2013)*

“Implementation,” Not “Policy”

Because the changes proposed in the Strawman Solution and the LPR proposal are matters of implementation, not of policy, they should be considered on their merits within the public comment process that ICANN has established. COA believes strongly that on their merits these changes should be adopted by ICANN. *COA (10 Jan. 2013); Time Warner (15 Jan. 2013)*

- The existing RPMs, which the Strawman Solution and LPR proposal would marginally modify, are in no way statements of policy and none is the product of a PDP. The RPMs are simply measures adopted to implement policies calling for the new gTLD process to incorporate respect for the rights of others (including intellectual property rights). It defies reason to assert that mechanisms instituted to implement policy cannot now be modified, even to the minimal extent provided in the current proposals, without invoking the entire PDP apparatus. *COA (10 Jan. 2013); Time Warner (15 Jan. 2013); IPC (15 Jan. 2013); INTA Internet Committee (16 Jan. 2013)*
- Nor is the AGB a statement of policy; it is an implementation document for previously-approved consensus policies. Adjustments to the AGB made by staff in the face of new or changed circumstances (such as the unanticipated high-volume of new gTLD applications) and which advance existing policy goals are simply a facet of effective implementation. *COA (10 Jan. 2013); IPC (15 Jan. 2013); INTA Internet Committee (16 Jan. 2013)*
- ICANN already has made far more sweeping changes to the AGB based on changed conditions, and with far less community consultation than is being provided in the case of changes to the existing RPMs (e.g., the “prioritization draw”). Module 6, paragraph 14 of the AGB undermines the argument that it is somehow “too late” for ICANN to make any changes to the AGB to which some new gTLD applicants object; it constitutes an explicit agreement by every applicant that ICANN may in fact make reasonable implementation changes to respond to changed circumstances, subject only to the possibility that an individual applicant who can prove material hardship based on its specific circumstances may seek a reasonable accommodation. *COA (10 Jan. 2013); IPC (15 Jan. 2013)*
- The Change Review Process document that ICANN first published on Sept. 19, 2011, and that has been annexed to each version of the AGB published since that date, further put all applicants on notice that changes like the ones now under consideration might occur. In this document, ICANN explicitly retained the authority, even after the closing of the application window, to make material changes to the AGB, even those that could have a “substantial effect on potential new gTLD applicants.” *COA (10 Jan. 2013); IPC (15 Jan. 2013)*

The sheer number of new gTLD applicants demonstrates the need for more robust protections and more liberal timelines than were contemplated during the policy development process. IACC recognizes that new RPMs may require a more fully developed PDP, but the modest proposals outlined in the TMC Solution clearly do not fall within this category. Because they only contemplate an enlargement of deadlines and a secondary “fall-back” effectiveness for trademark claims, they fall within the scope of policy implementation which ICANN can address through less

formal and more expeditious decision-making process. IACC recommends that this be only a first step by ICANN towards introducing more robust RPMs in the DNS. *IACC (11 Jan. 2013)*

The debate over whether the Strawman Solution and the LPR proposal are policy or implementation detracts from meaningful analysis of their merits. Discussion of the Strawman Solution and LPR implicates only one PDP-developed consensus policy recommendation: “Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.” All other work done on RPMs has been completed as implementation of this policy recommendation--starting from the IRT and continuing on until today. Critical aspects of the implementation work resulting in the RPMs in the current version of the AGB originated with the ICANN Board, not the community. In addition, ICANN also recently conducted the prioritization draw as implementation, without a PDP, without a policy working group, and without protest from those community members who now define the Strawman and LPR as “policy.” Paragraph 14 of the “Top Level Domain Application Terms and Conditions” and the “Change Review Process” specifically and explicitly anticipate the possibility of substantive changes not the result of “new policies” to the AGB. Applicants have no “veto” over such change and no PDP or policy working group is required. Even material changes would require only a public comment period, like this one. *GE (11 Jan. 2013); USPS (15 Jan. 2013); IPC (15 Jan. 2013); Microsoft (15 Jan. 2013); Facebook (18 Jan. 2013)*

ANA strongly disagrees with those who label the LPR as “policy” rather than implementation. LPRs do not broaden the scope of protection; the scope is identical to the TMC and Sunrise and no new strings are eligible for protection. LPRs merely provide a more reasonable alternative to defensive registrations for brand owners who do not want to use a domain name but also do not wish the domain to fall into the hands of cybersquatters. Even if LPRs were labeled “policy,” it is not too late to implement action on such a critical issue. Consumer harm and abuse in the current domain environment is abundant, and it will only increase in the new, drastically expanded TLD environment, when the name space increases by 6000%. The Affirmation of Commitments demands that ICANN pause and address the consumer, malicious abuse and trademark rights that ANA has raised in a policy process; only then should ICANN proceed to implementation. The current procedural tactic of labeling items as “policy” and “already settled” does not address the substance of these very real concerns. *ANA (15 Jan. 2013)*

The LPR should be evaluated as an implementation item along with the other Strawman solutions. If however the LPR is going to be evaluated as new policy, the BC requests a PDP done through a “fast track” process. The BC understands that a PDP on LPR would not delay the delegation of new gTLDs. This PDP should be conducted in parallel with the delegations expected to begin in mid-2013 and could be considered by the Board as early as November 2013. At that time, any new consensus policies regarding LPR would apply to all gTLDs, not just new gTLDs. *BC (15 Jan. 2013)*

Request for TMC Pilot Program

Numerous policy decisions have apparently been made in connection with the implementation of the TMC without adequate time for public comment. No pilot program to test the operation of the

TMC before it goes live has been put forth. USPS, in addition to supporting the Strawman Solution (with suggested changes) and the LPRs, requests that after the TMC is modified to support them that ICANN launch a Pilot Program for the TCM to test its implementation and ability to function properly. The TMC could be vulnerable to start up “glitches,” so a Pilot Program is highly recommended. *USPS (15 Jan. 2013)*

Application of the Strawman Model to Existing gTLDs

New or enhanced RPMs that extend across all gTLDs should only be considered in the context of comprehensive review and reform of the UDRP. Any consideration of RPMs across both incumbent and new gTLDs must proceed in regular order through a standard PDP. Any such PDP must, for the sake of balance, also encompass consideration of UDRP reforms addressing current registrant concerns. Any process that seeks only to add to existing RPMs without including comprehensive review of the most important foundational RPM, the UDRP, is one that will inevitably subordinate registrant rights and concerns and produce an imbalanced, incomplete, and unfair result. *ICA (15 Jan. 2013)*

ICANN insiders who raised concerns about the Strawman Solution and LPR based them on usual process arguments and semantics rather than focusing on substance. *Verizon (5 Feb. 2013); GE (5 Feb. 2013); IPC (5 Feb. 2013); ANA (6 Feb. 2013)*

- They continue to make these arguments despite clear views from the rest of the larger community--large and small businesses, nonprofits, and government agencies--urging the need to take urgent and immediate action to minimize unforeseen consequences. *Verizon (5 Feb. 2013)*
- Registrars and registries are apparently uninterested in any changes that may affect their ability to quickly profit from a rapid rollout of new gTLDs. ICANN has a greater fiduciary duty to the global Internet community to ensure that the new gTLD rollout is implemented correctly, without unintended consequences and with robust RPMs in place to protect consumers from confusion, fraud and abuse. *Verizon (5 Feb. 2013); GE (5 Feb. 2013)*
- Arguments that the Strawman and LPR are “material changes” to the AGB miss the mark because the proposals are not “material”; they are reasonable adjustments of existing protections and are necessary to make the RPMs meaningful in light of the huge disparity between the anticipated and the actual volume of new gTLD applications. *IPC (5 Feb. 2013); GE (5 Feb. 2013); ANA (6 Feb. 2013)*

As ICANN considers the Strawman and LPR proposals, it should recognize that being responsive to the concerns of the broader business community is also acting in the public interest to protect consumers. It is essential that the views of the broader business community are heard and addressed to ensure their continued engagement in ICANN’s work. *BC (6 Feb. 2013)*

Whether ICANN characterizes the RPMs as “implementation” or “policy,” the solutions must be implemented before the rollout of new gTLDs. ICANN can do this by moving the RPMs to an expedited working group to finish their work before the rollout, or if that is impossible, can wisely delay the rollout by an appropriate amount of time to ensure these changes can be discussed,

developed and fully implemented. *Verizon (5 Feb. 2013); IPC (5 Feb. 2013)*

BC believes that the LPR can be done as a matter of implementation; however, if ICANN determines that LPR is new policy, then the GNSO Council should embark on a fast-track PDP, and ICANN should commit to provide support for it, such as consulting services and travel funding for PDP participants. *BC (6 Feb. 2013)*

GE urges ICANN to delay the launch or put that option on the table with a comment period. The entire gTLD process will be evaluated a year after launch. GE does not understand why ICANN would want to put something forward for evaluation that is broken or destined to fail. *GE (5 Feb. 2013)*

- ICANN's CEO reportedly commented recently in Amsterdam to registries and registrars a belief that the gTLD program is not ready to launch, will not be for a long time, and that if it were up to the CEO, he would wait at least a year to get the proper technical aspects and protections aspects properly in place. If more time is needed, and GE agrees that it is, then more time should be taken to launch the new gTLD program correctly. *GE (5 Feb. 2013)*
- Since January 2012, there have been many missteps and setbacks in attempting to implement the gTLD expansion; conflicts of interest exposed and personnel changes necessary; a lack of significant progress not only on developing meaningful RPMs but also, e.g., with respect to key aspects of the standard registrar agreement. *GE (5 Feb. 2013)*
- There is no greater threat at this moment to the independence of the Internet than a demonstration on the world stage, for all to see, that ICANN is not a worthy fiduciary of the enormous responsibilities that have been entrusted to it. *GE (5 Feb. 2013)*
- The risks are too great not to take the time needed to make sure this unprecedented gTLD expansion, when launched, is as perfect as reasonably possible and that its benefits truly outweigh its costs, which ICANN will ultimately have the burden of demonstrating under the Affirmation of Commitments. *GE (5 Feb. 2013)*

ICANN's treatment of the RPMs issue should not be a victim of its own inherent process inefficiencies. ICANN has been adept in making sure that other important fixes could be made quickly and successfully (e.g. switch to prioritization draw; Board origination of Sunrise period and original Trademark Claims processes). ICANN's AGB allows for (and in fact anticipates) substantive changes will occur. The only real mistake going forward would be a failure by ICANN at this critical juncture to prove that its internal processes and obligations under the Affirmation of Commitments can work to protect the public interest. *Verizon (5 Feb. 2013)*

Opponents of the Strawman and LPR proposals stick to procedural arguments (form over substance) because they cannot refute that a serious problem exists. No commenters on this very docket have disputed that consumers could be harmed by increased fraud in the new gTLDs and that billions of dollars in defensive registrations will be needed by industry to protect consumers. In fact, it is quite the opposite. Commercially suspect new gTLD pre-registration products are being offered to consumers by some registrars already and fraud warnings have already been issued on

new gTLDs, even in the early pre-registration stages, by registries and registrars. It is clear already that without increased RPMs the system will not protect consumers and brand holders. *ANA (6 Feb. 2013)*

- ANA believes that the Strawman and LPR are implementation issues that put into practice broad ICANN policies in favor of protecting rights holders. The RrSG's claim that the Strawman proposal is a "policy" matter that deserves GNSO consultation obscures the key point that regardless of whether it is deemed "policy" or "implementation," the Affirmation of Commitments demands that this issue be resolved prior to new gTLD deployment. Consumer protection and brand protection issues are important considerations under the Affirmation of Commitments and cannot be dismissed due to "lack of time." ICANN can adopt an expedited PDP to address timeliness concerns; if this is done, the PDP's end result, consensus position must meet ICANN's obligations under the Affirmation of Commitment. *ANA (6 Feb. 2013)*
- Contrary to RrSG's assertions that the process for considering the Strawman and LPR was deficient and undermined the bottom up consensus model, ANA believes that the process was a welcome breath of fresh air at ICANN. It was the ability of certain stakeholder groups to thwart a balanced review of consumer protection matters, as mandated by the Affirmation of Commitments, that was undermined. In any event, the various stakeholder groups did participate and logistics difficulties affected IPC/BC participants as well. *ANA (6 Feb. 2013)*
- Contrary to NCSG's argument, this effort to improve the RPMs should not be viewed as a "second bite at the apple," because it is a commercial and legal necessity for ICANN. To label the current RPMs as a "unanimous agreement" belies the facts. *ANA (6 Feb. 2013)*

H. OTHER COMMENTS

Strengthen the Uniform Rapid Suspension (URS)

After the LPR, the most important RPM change needed before the gTLDs can be launched is the strengthening of the URS system so that it is effective in terms of cost and speed. The URS standard of proof should be changed to "preponderance of the evidence" as in the UDRP. If a brand owner prevails in the URS, there needs to be an option to transfer the domain name back into brand owner's portfolio or the ability to obtain a permanent suspension. Absent these remedies, brand owners will be placed in a perpetual monitoring situation. The URS should also operate on a "loser pays" model, otherwise many brand owners will not be able to use the URS and it will be ineffective as an RPM. *GE (11 Jan. 2013); Verizon (15 Jan. 2013); AIA (15 Jan. 2013)*

USTelecom is concerned that ICANN has not yet selected a URS provider, has not yet confirmed that a successful URS proceeding will result in indefinite suspension of the domain name, and has not yet clarified that the URS will operate as a "loser pays" system. In addition the burden of proof standard for URS should be changed to "preponderance of the evidence," consistent with the UDRP. *USTelecom (15 Jan. 2013)*

The current trademark RPM framework is inadequate to protect the public or brands in an

expanded Internet naming space. URS improvements must be completed--including that successfully suspended strings must become ineligible for future registration in perpetuity, which would help address problems and costs associated with growing portfolios of unwanted second-level registrations for purely defensive purposes; and the current response fee requirement must be extended beyond the partial loser-pays threshold for fifteen or more domain names in a single complaint, which would shift some enforcement costs on to infringers. The appropriate standard for the URS should be "preponderance of the evidence." *GBOC (15 Jan. 2013)*

Each RPM is part of a tapestry of interrelated and interdependent solutions, and this applies to the Strawman and LPR modifications. The potential utility of the extra claims notifications contemplated by the Strawman will be compromised if the URS is not concomitantly streamlined with non-answer default judgment and a full loser pays model. *Time Warner (15 June 2013)*

The URS needs to be fully functional prior to launch of new gTLDs; it is critical to have a URS provider that can deal efficiently with infringement at an affordable price point. Rather than mere suspension of domain names, they should be cancelled or transferred to the trademark owner, along with easing the burden on brand owners in proving ownership of their trademarks. *NAM et al. (15 Jan. 2013); QBPC (24 Jan. 2013)*

Changes must be made to achieve the needed effective, low-cost URS. The burden of proof on trademark owners is set extremely high; the provisions allowing review of a decision to a registrant that defaults are far too liberal; the only remedy, suspension until the registration expires, is temporary. *NCTA (15 Jan. 2013)*

URS Implementation--Substantive Evaluation

ICA is concerned that the BC/IPC consensus position that the URS must include substantive evaluation even in default cases was not included in the Strawman Model. ICA will continue to monitor and speak out on URS implementation to best assure that essential registrant rights are protected and that ICANN enters into binding and enforceable contracts with selected URS arbitration providers. ICA will closely monitor continued URS implementation to assure that it continues to fulfill its intended role as a narrow supplement to the UDRP reserved solely for instances of incontrovertible cybersquatting. ICA will also be on guard against any suggested URS alterations that would substantially alter the carefully constructed balance between registrants and rights holders; in particular, ICA would oppose any suggestion that a general "loser pays" regime be imposed on all new gTLD registrants regardless of past cybersquatting history or the number of domains at issue in a URS filing. *ICA (15 Jan. 2013)*

The URS should be amended to remove any requirement that a URS provider make any substantive determination about how a trademark owner is "using" its mark. *Verizon (15 Jan. 2013)*

String Similarity Panel--Co-existence/Contention Sets

It is of concern to Com Laude's clients, who include present and future likely new gTLD applicants, that there is no apparent clarity on the standards ICANN's examiners are applying; that ICANN

does not presently foresee an appeals process; nor does ICANN seem open to accepting evidence of trademark-based co-existence agreements. ICANN should expeditiously consider a path forward on this issue. Allowing applicants to provide letters of co-existence would be a welcome solution, as a way for legitimate rights owners with similar strings who co-exist in the real world of avoiding contention sets. *Com Laude (14 Jan. 2013); MARQUES (14 Jan. 2013)*

Original BC/IPC Consensus Proposal--Support for Other Points

NBA/NFL/NHL supports several points that were deferred in discussions leading to the TMC Strawman Solution: (1) complete the URS as a low cost alternative and improve its usefulness (if necessary, ICANN could underwrite for an initial period); (2) validate contact information for registrants in WHOIS; (3) all registrars active in new gTLD registrations must adhere to an amended RAA for all gTLD registrations they sponsor; (4) enforce compliance of all registry commitments for Standard applications. *NBA/NHL/NFL (15 Jan. 2013); BC (15 Jan. 2013); Facebook (18 Jan. 2013)*

INTA Internet Committee supports implementation of the Strawman Solution and LPR in the new gTLD program as an important first step to the eventual implementation of all eight of the IPC/BC's Improvements to the RPMs for new gTLDs. All eight of the Improvements are complementary and should all be implemented as soon as possible. *INTA Internet Committee (16 Jan. 2013)*

Request for AGB Amendment: Sunrise Period--National and International Trademark Law

In April 2012, FAITID submitted to ICANN an application for .MOSCOW and .MOCKBA, supported by the Government of Moscow. It is extremely important for FAITID to ensure that trademark holder rights are respected; however, ICANN's requirement of domain registration during priority registration period only for trademark holders who are compliant with the TMC, without taking into consideration the interests and rights of other rightful trademark holders and not giving them any alternative, makes it impossible. FAITID is asking ICANN to make an amendment to the AGB regulating the registration of the new TLDs during the Sunrise period, in compliance with FAITID's position. It will help to avoid violation of trademark protection rights under national and international legislation. If necessary, FAITID is ready to provide further clarifications on this issue and provide FAITID's proposals for the Sunrise period to prevent the violation of the rights of rights holders. *FAITID (15 Jan. 2013)*

Misleading "Pre-Registration" Services

Verizon is concerned that some ICANN-accredited registrars have already begun to offer misleading services to the public, advertising that registrants can "pre-register" domain names to the new TLDs. Such services are, at a minimum, premature and demonstrate how registrars are eager to sell extensions that have not been vetted or approved through the ICANN process, only further adding to consumer confusion. *Verizon (15 Jan. 2013)*

URS Improvement and Other Remedies

Verizon and others flagged the need for important changes to the URS. *Verizon (5 Feb. 2013)*

The IPC cannot emphasize enough the importance of implementation of all eight suggested IPC/BC

improvements, including but not limited to those in the Strawman and the LPR; they are all complementary and necessary to ensure that adequate RPMs exist in the new gTLD space to protect consumers, brand owners and registrants. *IPC (5 Feb. 2013)*