Input to New TLD Consultation

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About eNom / Demand Media

- Los Angeles based online media company that creates rich content for our family of websites that serve passionate user communities

- Currently more than 70M unique visitors per month and growing steadily as a top-twenty-five media property in the US

- Also the second largest ICANN registrar with 12M names managed

- Active in the ICANN process for 11 years

- Intend to apply for a new TLD. We think TLDs will bring more choice, lower prices and a range of new services to consumers

Our Philosophy on the IRT

What It's <u>Not</u> About:

- Whether there should be new TLDs

- Whether new TLDs require additional safeguards for trademark abuse

- Whether the IRT is a legitimate voice in the new TLD process

What It Is About:

- Defining solutions that: (1) are practical (2) not overly burdensome on legitimate users and (3) have benefits that substantially outweigh their costs

How do we decide which solutions are best?

Pages 7 and 11 of the Report spell out 10 Guiding Principles against which *"all proposals should be measured"*

We think these Principles are appropriate. Let me read some......

- Four of IRT's recommended solutions satisfy the principles and we endorse those four

- Two of the proposals need modifications to become compliant

- One proposal fails and we believe that one is inherently flawed

IP Clearinghouse - we support it

- <u>Doesn't</u> create policy – it's just an authenticated database

- Creates efficiency and standardization

- Will save trademark holders considerable cost

- Is an important and complex job --- requires a careful and well executed procurement action

- If not initiated by ICANN the market will create this – though several Clearinghouses would likely emerge

Thick WhoIs – we support it

- Never previously mandated for gTLDs

- Good consensus on this RPM – concerns are privacy related

- IRT says --- *"Thick WHOIS model is essential to the cost-effective protection of consumers and intellectual property owners".*

- ICANN have included Thick WhoIs in the current draft of the Applicant Guidebook

- As there is no Thick WhoIs in .COM or .NET (which represent 84% of all gTLD registrations) this is a <u>major</u> trademark improvement for new TLDs

Pre-Launch (Sunrise or IP Claims) – we support it

1. Has been tested and proven across multiple TLD launches

2. Of finite duration – probably the first few months after launch

3. IRT modified previous Sunrise methods to make their proposed mechanism more specific to actual trademark rights

4. Solid consensus on these RPMs – no significant criticisms during public comment

Expanded Algorithm for Top Level Review – we support it

- Current Applicant Guidebook has an algorithm that flags <u>visual</u> similarity of a proposed TLD to existing or applied for TLDs – e.g. **BIZ and B1Z**, or **SUN and SON**

- IRT propose to take any visual matches and then apply <u>aural</u> and <u>meaning</u> tests to further determine if there is a likelihood of consumer confusion

- Clearly there's subjectivity here – but IRT is only recommending flagging of these applications for further human review

- Also, importantly, this is not replacing any of the existing Objection mechanisms in the Applicant Guidebook

URS (Uniform Rapid Suspension) – we support it with modifications

- URS is a very powerful RPM with potential to significantly reduce trademark infringement

- Seven important features as proposed by IRT:
  1. Only applies if there is <u>use</u> of the name (i.e. a website)
  2. Initial 'freeze' does not disable website
  3. Intended standard *absolutely clear-cut cases of trademark infringement*
  4. Only trademarks from jurisdictions that conduct *substantive examination of trademark applications*
  5. No default judgment if the registrant doesn't respond
  6. No fee to Registrant unless more than 25 names
  7. If claim is successful names are suspended but not transferred

  We believe the URS <u>as currently specified</u> will be abused by Claimants

Improving the URS

Some ideas to reduce URS abuse by overreaching trademark holders, competitors or malicious parties:

- Limit to one trademark per claim
- Increase the Claimant Fee
- Further narrow the test
- Require a bond
- Increase registrant response time
- Fax notice to registrant
- Require bi-annual reviews of effectiveness/ abuse
- Reduce abuse suspension threshold (currently 3 'strikes')
- Compress the volume/ price tiers (currently 0-25/ 26-100/ 101-200/200+)
- **Set a minimum number of names subject to one claim**

Post Delegation Dispute – we support it with modifications

- **The Part We Like** --- Penalties if a Registry breaches its contract or representations in its proposal

- **The Part We Don't Like** – Third party beneficiary rights based on judgments of *"bad faith", "manner of use", "intent to profit"* or other subjective terms

This RPM largely comes from a perception ICANN doesn't enforce its contracts:

First, we dispute that assertion

Second, to the extent people believe it is a problem the appropriate solution is increased resource and focus on compliance

GMPL – we oppose it

- Will be extremely difficult, controversial, and politicized to create this List

- Has been attempted before - without success

- Expands existing legal rights

- Cannot be applied to existing TLDs

- **<u>Creates no new benefits at Top Level</u>**

- **<u>Creates marginal benefits at Second level</u>**

- <u>SUMMARY</u> -- The costs of this List significantly outweigh its benefits. Other proposed RPMs more effectively solve the problem