

November 20, 2008

**AIPLA Comments Regarding the AGP Limits Policy and  
Draft Implementation Plan**

These comments are submitted on behalf of the American Intellectual Property Law Association (AIPLA) to the ICANN Board and its Generic Names Supporting Organization (GNSO) regarding the AGP Limits Policy and Draft Implementation Plan.

AIPLA is a national bar association whose more than 16,000 members are primarily lawyers in private and corporate practice, in government service, and in the academic community. AIPLA represents a wide and diverse spectrum of individuals, companies, and institutions involved directly or indirectly in the practice of trademark, copyright, patent, and unfair competition law, as well as other fields of law affecting intellectual property. Our members represent both owners and users of intellectual property.

Domain tasting, the practice whereby would-be registrants leverage the 5-day Add Grace Period (AGP) to register thousands of domain names free of charge and test their value before deciding whether or not to keep them, has become an unanticipated abuse of the AGP. The AGP was originally implemented to protect registrars from registrants who failed to pay for domain names and to allow a registrant to delete a newly registered domain that was erroneously registered (e.g., with a typo), obtain a correctly spelled domain name, and get a full refund for the mistakenly registered name.

Unfortunately, speculators have realized that the AGP allows them to try out any domain for five days for free. So called “domain tasting” now constitutes the majority of domain transactions, improperly taking advantage of the AGP to undermine the normal operation of the DNS in order to reap a profit for a select few who have perfected tasting mechanisms. Often, tasting also involves the violation of trademark rights through typosquatting. Domain tasting harms consumers and wastes their time, because an inadvertent entry of a misspelled URL or trademark by a consumer performing an internet search for a particular website may lead to a confusing parking page whose sole purpose is to generate search engine advertising income for the typosquatter. Moreover, it appears that the concerns which led to the original implementation of the AGP are no longer material.

For these reasons, while AIPLA would prefer to see the complete elimination of the AGP, AIPLA supports the AGP Limits Policy as a first step. Prohibiting gTLD Operators (“registries”) from offering to registrars a refund of registration fees for domain names deleted

during the AGP that exceed 10% of that registrar's net new registrations (or 50 domain names, whichever is greater) will likely put a significant dent in unscrupulous industrial domain name monetization. The policy of eliminating refunds of the domain name registration fees, which are currently about \$6.42, should eliminate the ability of domainers to engage in free high volume automated domain name tasting. This, AIPLA believes, will help to reduce the risks trademark owners currently face through typosquatting and other products of domain tasting.

Finally, AIPLA supports the comments submitted by the Intellectual Property Interests Constituency. AIPLA shares the IPC's concern that stricter guidelines should be put into place concerning when a registrar has demonstrated "extraordinary circumstances" for purposes of avoiding the AGP limits. In addition, a public disclosure system should be implemented so that registry operators, who, under the current plan, will be given broad discretion, are not placed in a position to abuse this exception and dilute the efficacy of the limits.

Sincerely

A handwritten signature in black ink, appearing to read "Q. Todd Dickinson", with a long horizontal flourish extending to the right.

Q. Todd Dickinson  
Executive Director