

May 13, 2011

Mr. Peter Dengate Thrush
Chairman
ICANN
4676 Admiralty Way, Suite 330
Marina Del Ray, CA 90292

Mr. Rod Beckstrom
President and CEO
ICANN
4676 Admiralty Way, Suite 330
Marina Del Ray, CA 90292

Dear Chairman Thrush and President Beckstrom:

The American Intellectual Property Law Association (AIPLA) wishes to express its continued strong concerns with ICANN's intention to introduce new generic top-level domains (gTLDs) in the manner provided in Version 5 of the Applicant Guidebook, released April 15, 2011 (Guidebook).

AIPLA is a national bar association whose approximately 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.

AIPLA has previously commented on several occasions on the specifics of the New gTLD Applicant Guidebook, and its members have actively participated within the ICANN community in working to address the concerns that are the subject of this letter. We are, therefore, aware that ICANN has taken steps to study these concerns and has consulted with the Government Advisory Committee (GAC) regarding its concerns.

The April 15, 2011 Guidebook details the procedures for applying for new Generic Top-Level Domain Names (gTLDs). The most publicized change in the Guidebook is the increased involvement of the Government Advisory Committee (GAC) in the selection and approval of new gTLDs.

Our concerns center on the impact of new gTLDs on intellectual property owners and users, that is, consumers and the general public. We believe the proposed procedures remain flawed and untested and are unlikely to meet the needs of consumers and businesses to avoid the consumer fraud and unwarranted expense likely to result from a dramatic expansion of new gTLDs.

ICANN formally acknowledged these concerns and committed itself to addressing them in the *Affirmation of Commitments* signed in September 2009:

ICANN will ensure that as it contemplates expanding the top-level domain space, the various issues that are involved (including competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection) will be adequately addressed prior to implementation.

Affirmation of Commitments, paragraph 9.3

AIPLA continues to believe that ICANN's current plan does not meet this commitment. The current plan still requires businesses to pay for defensive registrations or file IP claims in hundreds of new gTLDs, at prices that are unconstrained by ICANN or other regulatory bodies. These defensive registrations will be necessary to prevent consumer fraud and confusion on the part of users who are rightfully concerned about deceptive websites and online scams. Moreover, the legal expenses and domain acquisition costs of defensive registrations and IP claims will not be offset by potential economic or informational value to either registrants or Internet users. Indeed, ICANN's own economic studies indicate that there is no compelling economic need to introduce new gTLDs, and that the current gTLD structure adequately accommodates the current and forecasted needs of Internet users.

AIPLA recognizes the modifications made to the Guidebook relating to the Uniform Rapid Suspension System, the Trademark Clearinghouse, and the Rights Protection Mechanisms. While the modifications demonstrate progress, there is still need for improvement.

Uniform Rapid Suspension System

In the newest version of the URS, a registrant will have six months to appeal a judgment after a default. A shorter time period, such as sixty to ninety days would be more appropriate.

AIPLA remains concerned that the only remedy available to a URS Complainant is a lock on the domain name. Greater consideration should be given to a Complainant's option to obtain the domain name after the appeal period has ended. This would avoid unnecessary time and expense to seek further relief in court or via the UDRP.

Trademark Clearinghouse

In the newest version of the Guidebook, any "marks which constitute intellectual property" can be included, which broadens the scope of what will be included in the Trademark Clearinghouse. This is a positive change, which AIPLA supports.

Rights Protection Mechanisms

The newest version of the Guidebook requires all gTLD registries to implement both a Trademark Claims service and a Sunrise Process. In the previous Guidebook, registries had the option of including either a Trademark Claims service or a Sunrise Process. Again, this is a positive change, which AIPLA supports.

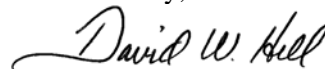
The major issue with the Trademark Claims service requirement is the short amount of time a registry has to maintain the service. According to section 6.1.1 of the Guidebook, a registry must provide Trademark Claims services for at least the first sixty days that domain registration is open for general registration. Section 6.1.1 implies that the registry can cease offering Trademark Claims services after sixty days, which should not be the case. Registries should be required to post Trademark Claims whenever a party attempts to register a domain which incorporates a mark on the Trademark Clearinghouse.

Despite these positive changes, the planned launch of new gTLDs continues to impose unwarranted expense due to legal costs and the costs of defensive registrations and IP claims.

ICANN should not proceed with a wide-open gTLD program until the mechanisms to address these concerns are fully developed and adequately tested. If ICANN believes that further delays are unacceptable, then it should begin with "a small pilot programme" as previously suggested by the GAC for a strictly limited number of gTLDs designed to serve linguistic, geographical, and cultural communities. As the GAC suggests, such a pilot could provide actual data that could be used "to refine and improve the application rules for subsequent rounds." The lack of economic need for new gTLDs, as indicated in ICANN's economic studies, demonstrates that there is adequate time to test new gTLDs through a pilot program and supports the position of AIPLA expressed in this letter and in prior submissions.

We understand that the need to study and respond to these concerns will not end with the publication of a final Applicant Guidebook or the launch of new gTLDs. Thank you for your consideration of this important matter, and we look forward to working with ICANN on ways to minimize defensive registrations and consumer fraud. These issues have been highlighted consistently and need to be addressed before the business and intellectual property community can support ICANN's new gTLD plan.

Sincerely,



David W. Hill
AIPLA President