



International Chamber of Commerce

The world business organization

Policy statement

Comments on WIPO Interim Report on the management of Internet names and addresses: intellectual property issues (RFC-3)

Commission on Intellectual and Industrial Property, 18 March 1999

The International Chamber of Commerce (ICC) is the world business organization. It is the only representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world. Founded in 1919, it represents today thousands of member companies and associations, both large and small, from over 130 countries. ICC's purpose is to promote international trade, investment and the market economy. It is actively involved in formulating private sector rules and guidelines for electronic commerce, and operates the foremost international arbitration service for dealing with commercial disputes. ICC is also actively contributing to the process of the creation of a domain name management system, whose smooth functioning is essential to the stability of the Internet and for electronic commerce.

ICC appreciates the work being done by the World Intellectual Property Organization (WIPO) to develop recommendations regarding intellectual property issues associated with Internet domain names and is pleased to have this opportunity to comment on The Management of Internet Names and Addresses: Intellectual Property Issues Report (RFC-3). Intellectual property will play a crucial role in electronic commerce. Brand names and trading styles, in particular, are markers of trust in electronic commerce and must be taken into account in the domain name registration system to reduce the scope of fraud and confusion of the public.

WIPO and its Panel of Experts have created a thoughtful and comprehensive paper that contains many excellent recommendations for resolving the growing problems between domain name registrations and intellectual property rights. It is clear from the draft that the Panel of Experts carefully considered the testimony of witnesses from around the world and incorporated many constructive proposals into the RFC-3 report. While recognizing the concerns expressed on some of the proposals, ICC supports many of the excellent recommendations proffered in the report, including (1) requiring accurate information in the domain name registration; (2) recommending the registration agreement contain an agreement in which the applicant submits to jurisdiction; (3) uniform dispute resolution procedures; (4) prepayment of fees before receiving a domain name registration; (5) limited registration periods and required re-registration fees, and (6) policies for obtaining and enforcing exclusions for well-known marks. Importantly, RFC-3 correctly recognizes the growing number of disputes resulting from the clash of domain name registrations and intellectual property rights and endorses that new gTLDs be introduced in a "controlled manner" only after uniform procedures are in place to protect intellectual property rights. ICC wholeheartedly endorses this go slow approach for the addition of new gTLDs.

With respect to the many other recommendations and requests for further comment throughout the report, ICC offers the following section-by-section comments in numerical order, which correspond to the original paragraph numbers in RFC-3:

Detailed remarks

Chapter 2 - Practices designed to minimize conflicts arising out of domain name registrations

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Paragraph 46

RFC-3 recommends that a domain name agreement between the registration authority and the applicant be reflected in either an electronic or paper agreement. Although ICC supports the idea of the electronic contract, WIPO should seek clarification that its member states will recognize the electronic contract as a binding instrument. For example, will the registrant's acknowledgement of the agreement by clicking on a button (also known as a "click wrap" agreement) be sufficient or will electronic signatures be required? If an electronic signature is required, what type is required and will it be recognized by member states? By signing the agreement, the applicant should consent to have all its applicant information published in a searchable database.

Paragraph 50

ICC considers that domain name applicants should provide the same level of information as would be required for a trade mark application and that this information should be publicly available on the same basis. There should also be provision for sanctions for use of false address details and presumptions about service of correspondence sent by registered mail to the specified address. There is some support within ICC for the domain name agreement to require a street address for the applicant rather than accepting a post office box, as ICC members have found a significant correlation among cybersquatting and fraud from applicants who list fraudulent post office addresses. A physical street address would enable intellectual property owners to more easily contact and locate the registrant in the event of a domain name dispute. Similar to the NSI WHOIS database in existence today, the applicant should also provide an administrative and engineering contact who can also be qualified to accept service of process.

Paragraph 51

RFC-3 requests further comments on whether it would be desirable to permit the domain name holder to remain anonymous on the condition that it supplies its contact details to a designated agent. ICC strongly opposes anonymity in domain name applications in any TLD used for commercial business. This will not prevent users, individuals or businesses wishing to remain anonymous from doing so, as they can easily reside on a web page on a third party server (e.g., [Click here to send a mail.](#)) without having to own their own domain name.

While ICC appreciates concerns about privacy, permitting anonymity in gTLD space used for commercial purposes will facilitate the growth of Internet fraud, of which intellectual property piracy is one aspect. This would seriously undermine consumer and business confidence in the Internet. It must be remembered that it is Internet users who are the victims of fraudulent trademark use as this is aimed at misleading consumers. The new gTLD space will primarily be used for electronic commerce and business purposes. One proposal which has been made to accommodate concerns about privacy and the need to create a secure and transparent environment for electronic commerce in which both businesses and consumers can have confidence, is to create specific non-commercial gTLDs where users could make use of the space purely for non-commercial purposes. In such specific non-commercial gTLDs, the domain name registrant should still be required to give accurate identifying information to the registration authority, but the publication of such information could, upon request, be withheld to protect anonymity. The implications of this proposal however have to be properly thought through before being pursued further. Rights holders, if investigating instances of consumer fraud, intellectual property infringement or other illegal activities in such non-commercial space, should still be able to contact the registration authority and obtain contact information without undue delay, subject to appropriate safeguards.

Intellectual property rights holders frequently rely on databases, like the WHOIS database, to find user names, addresses, and evidence of cybersquatting. Easy and quick access to databases is needed to

ascertain the true identity and addresses of fraudsters, cybersquatters and domain name infringers. Even with open access to WHOIS, ICC members experience difficulties with fraudulent information in the databases.

The idea of appointing an agent for service of process without revealing the applicant's name or address is undesirable. ICC members have difficulty locating infringers when a business incorporates and lists only the name and address of its agent with the local registration authority. Cease and desist letters to the agent go unanswered and finding the true registrant is a long and arduous process. If such appointment is to be allowed, then the agent must be made contractually liable to comply with requests to identify the actual applicant. ICC members would be glad to meet with WIPO to discuss this critical concern in more detail.

Paragraph 53

ICC agrees with this recommendation.

Paragraph 55

ICC recommends that, in name spaces used for commercial purposes, there should be the same level of open access to registrant details as is possible in most trademarks registries. Access to details should certainly not be subject to any prior allegation of infringement as these details are needed to make allegations in the first place. Legitimate search businesses should be allowed access to the information databases, but it is reasonable to expect that there should be restrictions on the use of the data, for example, to prevent use for junk mailing purposes.

Paragraph 57

ICC supports the recommendation that the provision of inaccurate or unreliable information in the registration agreement should constitute a material breach of the contract and be a basis for the cancellation of the domain name by the registration authority. However, this should be subject to the applicant being given a limited period to supply corrected details before the ultimate sanction of cancellation can be invoked (see paragraph 101).

Paragraph 59

ICC has previously recommended that appropriate jurisdictional options for parties should be preserved and that jurisdictional choices should not be restricted to the advantage or disadvantage of the parties from one country relative to those from any other country. Concern has also been expressed by some members of the WIPO Panel of Experts that recommended provisions on jurisdiction could be oppressive for SME or individual registrants. Further, contractual provisions on jurisdiction between registrar and registrant would not bind third party disputants except where remedies are provided under administrative challenge systems subject to the disputant also accepting specific jurisdictional restrictions. While it is clearly open to the Registrar to make its contracts with registrants subject to specific jurisdictional provisions, provisions on jurisdiction need to be looked at with care to ensure that they are equitable and do not unduly favour residents of one jurisdiction over another.

Paragraph 62

A statement in the registration agreement concerning an intention to use a domain name and the intended purpose would be a helpful mechanism for discouraging cybersquatting, fraud and other illegitimate uses of domain names. ICC believes however that the issue of the intended purpose use of the domain name could be dealt with more effectively by having (g)TLDs assigned to specific fields of use (e.g. airline, bank, cars etc) with provision for cancellation on challenge if the domain name was not used for the specified field of business. It could also be useful to include a requirement that use of

the domain name has to be made within a certain time after registration, say one year. "Use" for the purpose of this requirement should also be clarified.

Paragraph 64

ICC supports the recommendation that an agent for service of process should be designated in a domain name application process though some ICC members feel that this should only be mandatory if the registrant resides outside the applicable jurisdiction and should be optional if he resides within the jurisdiction. This paragraph suggests that the "provision of accurate and reliable contact details" should be a sufficient safeguard, but RFC-3 does not explain exactly how the registration authority will ensure that the applicant's contact information is accurate and reliable. For example, if a real street address is required, the applicant's zip code could be checked by the registration authority for conformity with the correct zip code associated with the city, town or country specified in the applicant's address. The registration authority could send a test message to each applicant and require confirmation to ensure the e-mail contact was correct. Such measures are now routinely implemented by credit card agencies and on listservers, for example, so they are practical and not unduly burdensome. In the absence of stricter quality control mechanisms, designation of an agent could be yet another measure to ensure that a domain name applicant can be found if a domain name infringement dispute occurs.

Paragraph 67

ICC strongly supports the recommendation that a domain name should not be activated unless the payment of a registration fee has been received. NSI's recent difficulties with mass registration requests by serial cybersquatters would have been substantially alleviated if the cybersquatters had been obliged to make non-refundable payments before getting delegation of the requested names.

Paragraph 69

ICC agrees with this recommendation; it is essential to have some mechanism for getting rid of the dead wood. A two-year periodic renewal system would seem appropriate given the pace of Internet developments.

Paragraph 75

While some ICC members believe that waiting periods prior to the activation of a domain name would be a useful screening mechanism, others feel that, as most domains are not challenged, waiting periods should not be required to avoid imposing a general delay. If waiting periods are not required, however, there must be an expedited challenge procedure - including the provision to suspend a newly registered name pending resolution of the challenge - to ensure that trademark owners do have adequate recourse to nip evident abuses in the bud. Names and registrant details must be published promptly on delegation with provision for suspension on challenge within a limited (say 2 month) period - by analogy with oppositions against trademark registrations.

Paragraph 78

While trademark searches should not be mandatory prior to receiving a domain name registration, the registration agreement should affirmatively recommend to registrants that they conduct a trademark clearance search before registering a domain name. This warning could be built into the application itself. Notice as to the advisability of a trademark clearance search would help all parties before a domain name is registered and would also dispel the false notion that a first-come, first-served registration policy somehow entitles an applicant to register third party trademarks at will. A search of trademark databases as a conditional requirement, however, would be extremely valuable with respect to famous/well known trademarks.

Paragraphs 88, 89 and 92

As mentioned above, it is critical that databases of domain name registrants in name spaces used for commercial purposes be made publicly available to all users and that accurate contact details be included in such databases. This is an essential requirement to enable domain name registrants to be identified. Access should be unrestricted and the registrant should not receive automatic notice of any enquiry regarding its domain name.

Protection should be directed at preventing use of such databases for purposes other than identification of a domain name owner for matters connected with the registration and use of the name concerned. For instance, all users who log on to the database should be required to enter into an electronic agreement (subject to comments and questions in Paragraph 46 above) which provides that the database cannot be used for wholesale downloading, marketing purposes or the sending of unsolicited e-mail (spamming).

The provision of essential and accurate contact details should be mandatory and subject to validation where this is reasonably practicable. For example, it is understood that many TLD registries already use various security measures to validate applications from their registrars and this sort of measure may be capable of general application. ICC supports the call for mandatory fields in domain name applications and an on-line validation mechanism. We seek further clarification from WIPO on how such a mechanism would work in real time and how the registration authorities would confirm the existence of the domain name registrant.

Paragraph 101

We strongly endorse the recommendation that inclusion of inaccurate information in the domain name registration should result in a material breach of the domain name contract. The Panel of Experts heard from numerous witnesses about the correlation between false information and cybersquatting, infringement and other fraud. However, registrants should be given a limited period to correct errors and omissions upon reasonable notice before the ultimate sanction of cancellation is invoked. Many legitimate registrants' details on WHOIS databases contain out of date information.

The take down procedure is an excellent mechanism for enforcing this requirement. The concept of notice and take down, originally conceived in connection with the Digital Millennium Copyright Act, balances appropriate rights and responsibilities by providing incentives to registration authorities to assist in the removal of fraudulent domain name registrations.

Paragraph 106

ICC agrees that portals or gateway pages should not be compulsory in the event of competing claims to common elements of an address. However they may provide acceptable voluntary solutions in some cases where there is more than one legitimate claimant to use of the same mark in a domain name. As also noted above in the comments on Paragraph 62, the provision of (g)TLDs for specific fields of business would reduce the potential for multiple claimants.

Chapter 3 - Uniform dispute resolution procedures

Paragraph 115

ICC agrees that dispute resolution systems alternative to litigation should not deny the parties' access to court litigation.

Paragraph 119

ICC has concerns about the recommendation that the domain name applicant should be required to

submit to jurisdiction only in the applicant's country of domicile or in the country where the registration authority is located (subject to compliance with the Paris Convention or the TRIPs Agreement). Until the trademark laws of the world are significantly harmonized, the infringer or cybersquatter will seek to exploit differences in national trademark laws by forum shopping for registration authorities whose national trademark laws are more loosely interpreted and enforced. Rights holders will not have adequate and effective protection for trademarks without access to the widest possible jurisdictional options, including submission to the jurisdiction where the registrar and registry is located as well as where the A root server is located. If, for example, an infringer is a citizen of a country with less than adequate trademark laws and chooses to register in a ccTLD, whose country effectively supports the "first come, first serve principle", the trademark owner will be without any effective judicial remedy.

Some cc TLDs are operated as a generic TLD like .com, and not as a badge of geographic origin, but nevertheless assert that they will only entertain claims under the laws of that country. Registrants in such registries should not be protected from attack in other jurisdictions simply because the TLD seeks association with the jurisdiction of one particular country.

While ICC strongly supports a wide range of jurisdictional options for disputes over rights relating to domain names, jurisdictional choice may pose problems for disputes concerning the contractual arrangements between the registration authorities and registrants. Difficulties may arise, for example, if the registrant's jurisdiction has different statutes on unfair contract terms or on the admissibility of arbitration.

Paragraphs 128 and 134

ICC supports these recommendations and the availability of a choice of dispute resolution bodies, including services offered by WIPO and ICC.

Paragraph 138

Arbitration online would be a cost-effective and desirable method of resolving domain name disputes. Issues such as those regarding the authentication of documents transmitted online will have to be considered, however.

Paragraph 142

ICC supports the creation of an administrative dispute resolution procedure that applies to all gTLDs and ccTLDs. The applicant should be required to agree in its registration agreement to submit to this procedure. The procedure should not only be uniform but widely available from a choice of bodies (including ICC and WIPO). It is essential that all gTLDs and ccTLDs should be obliged to adopt consistent administrative policies for first-level resolution of disputes. ICANN should resist calls from the ccTLDs to abdicate authority over them in this respect and should use the chain of contractual authority inherited from IANA and its authority over the Root.

(NB. We suggest that the abbreviation ADR for "administrative dispute resolution" procedure be avoided as this may lead to confusion with "alternative dispute resolution" for which this is a long-established acronym.)

Paragraph 145

ICC supports mandatory submission by registrants to the administrative dispute resolution procedure for first-line resolution provided that the procedure is consistent, effective and independent of the disputing parties. It should be clarified whether the administrative dispute resolution procedure is intended to cover both disputes between a registrant and a third party and between registrant and

registry/registrar. However, recommendation 115 must still prevail to allow the parties recourse to competent courts.

Paragraph 151

ICC believes it would be prudent for administrative dispute resolution procedures to be limited initially to straightforward cases where there is a strong prima facie case for one party or the other, such as cases involving cyber piracy and other evident abuses. The applicability of an administrative dispute resolution process might be determined by looking for the predominant presence (or absence) of factors indicative of abuse (cf. paragraph 244 of RFC-3) and in accordance with appropriate Guidelines (cf. Paragraphs 196-201 of RFC-3) established for that purpose. If the issues are finely balanced, the administrative dispute authority should decline jurisdiction. However, the option of extending the remit progressively to other disputes in the longer term, as confidence develops, should not be excluded.

Paragraph 158

In addition to the remedies proposed, the imposition of conditions on the future registration of the disputed name whether by a disputing party or any other party could also be a remedy available under the administrative procedure.

Paragraph 159

ICC does not believe that the decision-maker under the administrative dispute resolution procedure should have the power to order other measures such as those suggested in this recommendation. This would not preclude the decision-maker from making recommendations to the parties without prejudice.

Paragraph 163

Consolidation of disputes in cases where there is one infringer who has appropriated the same or different intellectual property rights through domain name registrations is an excellent recommendation. Consolidation of disputes will ease the burden on the trademark owner and the decision-maker, and will ultimately benefit the public and electronic commerce. Fees for adjudicating such disputes should not be significantly higher than instituting a single action, and should certainly be discounted relative to the fees for adjudicating multiple, separate actions, due to the efficiencies of consolidation.

Paragraph 165

ICC supports the principle that the administrative dispute resolution procedures should not preclude recourse to national courts. Determinations made under administrative procedures should be open to reconsideration (judicial review) by national courts. WIPO should monitor the application of this principle closely to ensure that infringers and cyberpirates are not forum shopping to take advantage of differences in national trademark laws. At a minimum, the override principle should only apply to courts, which are located in a country, that is a party to either the Paris Convention or the TRIPs Agreement. Concerns have also been expressed that, under the system currently proposed, parties may not be able to appeal to courts in some jurisdictions for lack of a cause of action in certain situations. As mentioned in previous submissions, trademark harmonization should be a critical WIPO agenda item to allow trademark laws to meet the global challenges of the digital age.

Paragraphs 171

ICC believes that a decision on suspension of a domain name should be taken as rapidly as possible. Suspension could also be automatic subject to payment of a bond by the challenger. Conversely, the suspension could be subject to accelerated review if the registrant then posts an equivalent bond for

that purpose. Equivalent and significant bonds should be required in the former case to discourage frivolous demands for suspension, and in the latter case to ensure that a registrant also has a financial disincentive to stringing out the process simply to cause the challenger further expense.

Paragraph 174

It may be preferable to allow either party the option to request three decision-makers and to indicate the basis on which it wishes to do so: e.g. if both parties elect to request three decision-makers, then they share the additional costs; but, if only one party so requests then it is given the option still to have a panel of three provided it pays all the additional costs. There may also be circumstances where a panel of three ought to be automatic - particularly if the challenger and registrant are from different jurisdictions.

Paragraph 178

In the interests of promoting confidence in the process, participation by the parties in the appointment of the panel is desirable.

Paragraph 182

ICC agrees that the administrative dispute resolution procedure should be conducted online. However, all decision making bodies must first test such online systems before opening them to the public to ensure that (1) the system operates efficiently; (2) security and encryption measures are in place to protect the litigants and ensure that the system itself is secure and not subject to hacking, cyber attacks and other disruptions. The procedure should allow for other means where necessary to ensure that parties receive a fair hearing.

Paragraph 187

ICC agrees that all these steps should be recommended. Further consideration needs to be given as to whether an appeal should have a suspensive effect on enforcement or whether enforcement should proceed and be subject to reversal if an appeal so decides.

Paragraph 189

ICC would like more information from WIPO on the nature and role of a centralized appeals process. What would serve as the appeals body? Would there be one such body or several choices? Who would pay the costs of litigating the appeals? What laws would be applied in such body's finding? Who would serve on the body and what qualifications would decision-makers need to participate as a decision-maker? It should also be clarified how the administrative appeals process is intended to be centralized as, if the disputes concern only evident cases of abuse, it is unclear why centralization is necessary. It is essential that any review panel be independent of the decision-maker(s) of first instance.

Paragraph 194

There should be competition and flexibility in pricing for administration fees and fees payable to decision-makers for dispute resolution. The success of an alternative dispute resolution process, however, will depend on keeping the fees for such services as low as possible.

Further consideration should be given as to whether the ultimate allocation of fees and costs could be based on a "loser pays" model. "Loser pays" would act as a deterrent to cut down on frivolous suits and to discourage cybersquatting, fraud and bad faith misappropriation of trademarks.

However, as an order of costs in cases of domain names dispute will often be irrelevant because of the unwillingness or inability of the registrant to pay, a model could also be adopted where the costs are built into the dispute resolution system incrementally. Thus a challenger would pay a fee to challenge and a bond for requesting suspension. A registrant would have to post an equivalent bond for review of the suspension and a fee to resist the challenge. Further fees would be payable for appeals. The payment of money up front (recoverable in whole or part if a party wins) would help focus the minds of registrants and challengers alike.

Paragraph 198

This provision states that the merits of a dispute be decided by the decision-maker in accordance "with the laws that, in light of all the circumstances of the case, are applicable..." by reference to guiding principles. This creates uncertainty for parties as it is unclear which laws would be applicable. Certain countries' laws may recognize trademark rights, protection of well-known rights, and dilution principles. Other countries may decide that the first-come, first-serve principle overrules trademark rights. Until significant trademark harmonization occurs throughout the world, decision-makers should limit their jurisdiction to deciding cases of cybersquatting, bad faith registration and cyberfraud involving the use of trademarks as domain names. Decision-makers must rely on detailed guiding principles, which are designed to take into account considerations that national court cases protecting intellectual property have taken into account. The "guiding principles" will need to be specified and applied to all TLDs in rules laid down by ICANN. At least to begin with, such principles should probably be restricted to defining cybersquatting and other evident forms of abuse. These principles should be included in future WIPO Requests for Comments.

Paragraph 201

ICC agrees that it would certainly be desirable to collate the principles described above into guidelines and to provide a non-exclusive set of examples, based on legislative decisions in various jurisdictions and circumstances.

Chapter 4 - Famous and well-known marks

Paragraphs 218 and 221

ICC strongly supports the availability of exclusions for famous and well-known marks, as famous marks are the most often abused. This should be subject to some threshold criteria and conditions set out below being met.

Paragraphs 223, 225, 229 and 232

ICC agrees that any exclusion should be published and subject to challenge and review. However, ICC requests further clarification in Paragraph 223(iii) on which third parties can be assessed as "interested" for purposes of obtaining an exclusion. What mechanism will prevent those with no legitimate interest from engaging in harassment, anti-competitive conduct or frivolous interventions? Applications on exclusions should have no binding effect on national or regional intellectual property offices or national courts.

ICC also agrees that determinations on applications for exclusions for famous or well-known marks should have no binding effect on national or regional industrial property offices or national courts in their implementation of international norms for the protection of famous and well-known marks. These Internet-based determinations should be purely for administrative convenience. To this end, it would be preferable to avoid having panels making subjective assessments of fame based on the WIPO SCT factors, precisely because these are the factors courts would also use.

While there is some support within the ICC membership for the mechanisms suggested by WIPO to obtain and enforce exclusions for well known marks, concerns have also been expressed that the detailed procedures proposed are too heavy for what is meant to be an administrative, rather than a judgmental process and would risk being seen as authoritative outside of this limited field, despite what Recommendation 225 says. Some ICC members have suggested that a simpler, quicker and cheaper process based on readily assessed quantitative criteria rather than subjective analysis would be more appropriate. This would make the basic process one of identifying "widely-registered" marks rather than allegedly "famous" or "well-known" marks. In practice, there would be substantial overlap with what trademark practitioners would recognise as genuinely famous traditional marks. Another consideration should be whether the trademark has been subject to numerous instances of cybersquatting in the gTLDs and ccTLDs. The fact that a trademark has been misappropriated on numerous occasions creates a clear presumption of its market value and fame. Consideration would also have to be given to the case of marks, which are only famous on the Internet (e.g. amazon.com), where this system would not be so effective. According to this proposal, the system would put the onus on a party seeking registration of an excluded domain name (widely registered as a trademark by another party) to show that it in fact had legitimate rights to use the mark in the particular domain name requested. Decisions on such claims would be made by a review panel and would not require any assessment of whether the original mark was famous or not. If TLDs are associated with specified fields of business, then the scope of exclusions can be qualified correspondingly.

Paragraph 234

The exclusion should apply to both gTLD and ccTLDs. If ccTLDs are operated as open pseudo-gTLDs (i.e. without regard to their intended geographical designation) then they should be subject to the same rules as other gTLDs, including broad principles for exclusion. However, if a ccTLD is operated as a country specific TLD then it should be subject only to national determination of what may or may not be a famous mark. On a broader level, ICC strongly believes that the ccTLDs must be subject to the same rules governing gTLDs. Without uniform rules for gTLDs and ccTLDs, certain ccTLD countries will rapidly become piracy havens that do not recognize or adequately protect famous and well-known marks.

Paragraph 238

ICC supports this recommendation; the exclusion must absolutely give rise to an evidentiary presumption in favour of the rights holder.

Paragraph 245

The examples in Paragraphs 239-244 of factors, which are potentially indicative of abuse, are well chosen. Abusive registration of a domain name should clearly give rise to a cancellation or transfer of the registration in dispute as proposed. Moreover, as discussed above, as a deterrent to abuse it is desirable that the decision maker should be empowered to award all costs for such proceedings to be borne by the domain name applicant in cases of abusive registration.

Paragraph 284

ICC supports the principle that new gTLDs must be opened in an extremely slow and controlled manner. New gTLDs should be created where necessary to improve the functionality and utility of the DNS for businesses and consumers as a whole, rather than just to increase business opportunities for new registries themselves. New gTLDs should be adequately scalable to meet future demands; must facilitate fair competition and limit the potential for conflicts; must not jeopardize system stability; and should be phased in to allow time to review the benefits/effects of their introduction. A checklist should be created to ensure that there are adequate safeguards and measures to reduce the potential for, and to allow effective action against fraud and intellectual property piracy, including effective dispute mechanism procedures. GTLDs should only be added after a study to ensure that they are truly

opening up new name spaces and are not becoming merely an additional space in which infringement occurs.

The idea of opening a personal, non-commercial space, like .nom or .per would be a possible idea for an initial expansion of the gTLD space only if such space was limited to personal, non-commercial use (as opposed to commercial use). Failure to comply should be an automatic, material breach of the domain name agreement and result in the forfeiture of the domain name. (especially if anonymity is tolerated in the space) Further study is required to determine if some of the existing problems could be solved by clearly separating TLDs principally for commercial use from non-commercial TLDs, and by enforcing the distinction (e.g. by opening registrations to challenge by third parties for non-compliance). Another possible solution to allow different legitimate right holders to co-exist on the Internet would be to structure commercial TLDs to separate different fields of business.

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