



**Etienne Sanz de Acedo**  
Chief Executive Officer

655 Third Avenue, 10th Floor, New York, NY 10017-5646, USA  
t: +1-212-642-1776 | f: +1-212-768-7796  
inta.org | esanzdeacedo@inta.org

Submitted to: [comments-cct-recs-27nov17@icann.org](mailto:comments-cct-recs-27nov17@icann.org)

January 12, 2017

Ms. Negar Farzinnia  
Director, MSSSI Technical Reviews & Review Implementation  
ICANN  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094-2536

Re: Competition, Consumer Trust, and Consumer Choice Review Team – New Sections to Draft Report of Recommendations

Dear Ms. Farzinnia:

The International Trademark Association (INTA) is pleased to submit the attached comments regarding the new sections to the Competition, Consumer Trust, and Consumer Choice Review Team Draft Report of Recommendations. This report is particularly important to brand owners as it goes to the heart of INTA's mission which is dedicated to supporting trademarks and related intellectual property (IP) to foster consumer trust, economic growth, and innovation.

INTA supports the work of the review team and was pleased to submit its New gTLD Cost Impact Study results as part of the data gathering for this important topic. We urge ICANN to continue its analysis of the new gTLD program and its effect on consumers and the market place and emphasize the importance of trademarks in promoting trust and providing security within the domain name system.

Should you have any questions about our comments, I invite you to contact Lori Schulman, INTA's Senior Director of Internet Policy at 202-261-6588 or at [lschulman@inta.org](mailto:lschulman@inta.org).

Sincerely,

A handwritten signature in blue ink, appearing to read "Etienne Sanz de Acedo". The signature is fluid and cursive, with the first name "Etienne" being the most prominent.

Etienne Sanz de Acedo  
Chief Executive Officer

**INTA Comments on the New Sections of the CCT-RT's Draft Report of  
Recommendations for New gTLDs**

**January 12, 2018**

The International Trademark Association (INTA) appreciates this opportunity to comment on the ICANN Competition, Consumer Trust and Consumer Choice Review Team's (CCT-RT) New Sections Draft ("New Sections Report") prepared as an amendment the earlier Draft Report. The reports were prepared pursuant to the Affirmation of Commitments to assess the New Generic Top-Level Domain (New gTLD) Program in the following areas: competition, consumer trust and consumer choice.

INTA's views on the information, issues and proposals outlined in the New Sections Report are informed by its mission as an association "dedicated to supporting trademarks in order to protect consumers and to promote fair and effective commerce."<sup>1</sup> Inherent in this mission is a fundamental concern with preventing the abuse and misuse of trademarks in the domain name system ("DNS") and the potential for increased abuse in the New gTLD Program. These matters not only affect trademark owners' rights and interests but, most importantly, affect consumer trust and the healthy working of the domain name system and the Internet. The CCT-RT's findings and recommendations are therefore of utmost interest to INTA.

**I. Introduction**

We understand and support the CCT-RT's goal of reviewing the impact of ICANN's New gTLD Program on competition, consumer trust and consumer choice. We also appreciate the challenges the CCT-RT faced in considering how to design its review, identify information that would enable it to carry out its charter, and the extensive amount of work required to define areas of inquiry including the commissioning and analysis of reports, studies and surveys to assist in its review. We therefore applaud the CCT-RT for undertaking this work, and we believe it has made an extremely important start to understanding the effects of the New gTLD Program on competition, consumer trust, and consumer choice.

INTA addresses the New Sections Report regarding INTA's New gTLD Cost Impact Study and the recommendations to mitigate DNS abuse below.

**II. INTA's New gTLD Cost Impact Study Results**

INTA, in consultation with the CCT-RT, was pleased to commission a New gTLD Cost Impact Study ("Impact Study") to provide empirical data and insight into the effects and cost of the New gTLD program on trademark owners. We note that the New Sections Report has taken the Impact Study into consideration and characterizes the motivation behind the study "to begin to explore the experience of trademark owners." (New Sections Report, p. 4) This statement requires

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<sup>1</sup> <http://www.inta.org/About/Pages/Overview.aspx>

clarification as INTA's rationale for the study was to provide concrete information on the impact of the New gTLD program on enforcement costs incurred by trademark owners. This information is directly relevant to INTA's core mission to protect consumers and promote fair commerce. In this way, the goals of the CCT-RT and INTA are aligned particularly around issues of consumer trust. The study is a natural outgrowth of that alignment.

INTA also provided the CCT-RT with its analysis of the Impact Study. However, much of this analysis is omitted in the New Sections Report, a substantial portion of which appears to be based solely on the CCT-RT's interpretation and not on the interpretations of either the third-party provider<sup>2</sup> or INTA. Consequently, INTA wishes to address the analysis and conclusions drawn by the CCT-RT, and to clarify the takeaways discussed below.

## **1. Costs to Trademark Owners**

The New Sections Report states that the CCT-RT does not presently have data on the costs associated with the costs of trademark enforcement efforts, such as court action, UDRP and URS complaints, and other actions that do not involve an adversarial proceeding.<sup>3</sup> In fact, the Impact Study provided such information. For example, the Impact Study reveals that 76% of the responding trademark owners have spent more than \$1000.00 on cease and desist letters to owners of new gTLD domain names, while 28% have spent \$10,000.00 or more. The average cost to the responding trademark owners for such cease and desist letters was \$17,813 and the median cost was \$3,000.<sup>4</sup>

Some trademark owners have also had to incur costs in order to take actions against registrars, such as sending letters relating to the inaccuracy of WHOIS information or the failure to comply with registrars' contractual obligations to ICANN.<sup>5</sup> The Impact Study also provided data on the costs incurred to register with the Trademark Clearinghouse ("TMCH"), to file Proofs of Use with the TMCH, to investigate and take appropriate actions regarding Trademark Clearinghouse Claim Notices, for Internet monitoring, for counter-confusion marketing efforts.<sup>6</sup>

Ultimately, the Impact Study indicated that the average annual cost of taking action in connection with new gTLDs was \$15,000 for actions against domain name owners, \$3,768 for actions against registrars and \$1,487 for actions against registries.<sup>7</sup> When extrapolated to the whole of trademark owners, it should be recognized that trademark owners are incurring substantial costs as a result of the new gTLD program solely to protect their trademarks and the public's ability to trust the

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<sup>2</sup> The Impact Study was commissioned by INTA from The Nielsen Company ("Nielsen"). The CCT-RT was consulted regarding the drafting of the survey questions. The final design and conduct of the survey was the responsibility of INTA in consultation with Nielsen.

<sup>3</sup> New Sections Report at 38, 41.

<sup>4</sup> Impact Study Report at 40.

<sup>5</sup> Impact Study Report at 42.

<sup>6</sup> Impact Study Report at 30, 33-34, 35 and 37, respectively.

<sup>7</sup> Impact Study Report at 27.

accuracy of domain names to refer them to sites related to the trademarks contained in the domain names.

## **2. Defensive Registrations**

The New Sections Report notes that the Global Registrant Survey, Wave 2, found that 60% of those that registered at least one name in a new gTLD indicated that they did so for defensive purposes.<sup>8</sup> Even so, the report concludes that “some registrants are motivated by defensive objectives,” but “many ... choose to register in new gTLDs to broaden the appeal or reach of their offerings.”<sup>9</sup> This conclusion implies that the number of new gTLD domain name registrants who seek to improve their business exceeds the number that do so for defensive purposes. As the Global Registrant Study indicates, the majority of new gTLD registrants register domain names in the new gTLDs for defensive purposes, the conclusion should be the opposite of the stated conclusion.

In acknowledging the existence of defensive domain name registrations, however, the New Sections Report concludes blandly that,

“it appears that “defensive” registrations are a real phenomenon, apparently because the costs of challenging registrations by others can be considerably greater than the costs of registering their marks in multiple domains . . . .”<sup>10</sup>

That said, the Impact Study concluded that most of the brand owners who responded to the survey are not purchasing new gTLDs with choice in mind. Further, it should not be suggested that brand owners are purchasing these new gTLDs for any other purpose than to avoid abuse. In fact, the Impact Study found that most brand owners who responded have defensively registered new gTLDs to prevent third-party infringement, as opposed to for any purposes associated with potential use. The reason for this is clear. The cost of enforcement can be considerably greater than the cost of defensive registrations. Thus, the New Sections Report discussion misses the main conclusion to be drawn from the data in the Impact Study, namely, that trademark owners are registering new gTLD domain names and incurring the costs of doing so to avoid infringement – and not to utilize those domains.

The New Sections Report comments that the direct cost of defensive registrations in new gTLDs appears to be lower than some had feared prior to the inception of the program.<sup>11</sup> This statement does not appear to be supported and misses the issue. This issue is, in fact, what costs are being incurred and how they compare to any benefits that might accrue from a further expansion of new gTLDs.

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<sup>8</sup> New Sections Report at 14.

<sup>9</sup> New Sections Report at 14-15.

<sup>10</sup> New Sections Report at 13.

<sup>11</sup> New Sections Report at 15-16.

### **3. Parked Domains**

The Impact Study concluded that most brand owners park new gTLDs that they have purchased and, unsurprisingly, brands generally do not intend to use the more problematic premium priced gTLDs (such as “. sucks” or “. feedback”). Instead, they register them to prevent unauthorized third-party use and corresponding abuse. The New Sections Report fails to acknowledge this finding, and instead gives credence to a theory that parking is ascribed to: “... (1) speculation in order to sell the domain later at a profit; (2) plans to develop the domain at a later date; or (3) unsuccessful development.”<sup>12</sup>

INTA suggests that the CCT-RT revise the New Sections Report to reference the Impact Study’s conclusion that brand owners generally park newly acquired gTLD domains to prevent third-party infringement, typosquatting, and related conduct.

### **4. Trademark Rights Protection Mechanisms (RPMs)**

The New Sections Report supports the Impact Study’s Conclusion that “RPMs are generally considered to have been helpful in mitigating the risks anticipated with new gTLDs.”<sup>13</sup> However, there is an omitted caveat to this conclusion. While trademark owners who responded found the RPM’s generally helpful, there is a corresponding observation that while RPM’s may be technically effective, the New gTLD Program has expanded the domain landscape so broadly that it is increasingly difficult and costly to protect against the exponentially expanding opportunities for and instances of trademark infringement and misuse in domain names. At least one brand owner described domain enforcement as a game of “Whack a Mole,” and stated that the “RPMs are just another way to spend money on” an enforcement tool “that doesn’t buy much protection.”

Moreover, although approximately two-thirds of the Impact Study respondents stated that UDRPs and required Sunrise periods have helped mitigate some risks to a major or moderate extent, substantially fewer feel that other RPMs such as Trademark Claims (36%), URS (27%) and PDDRP, RRDRD or PICDRP (15%) Rights Protection Mechanisms help and then only to a moderate extent.<sup>14</sup>

INTA’s takeaway from the Impact Study was that trademark owners believe while RPM’s have been helpful, their overall effectiveness has been limited. Indeed, the selected portions of responses to that very question, which are included in the New Sections Report,<sup>15</sup> are generally negative in nature as to the effectiveness and the cost of RPMs.

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<sup>12</sup> New Sections Report at 8.

<sup>13</sup> New Sections Report at 35.

<sup>14</sup> Impact Study Report at 15.

<sup>15</sup> New Sections Report at 35-36, n. 123.

This is not to be seen as advocating for the removal of the RPMs but merely that the extent to which brand owners have found them of value is inextricably linked with factors such as:

- their scope and criteria, including issues such as the matching rules and the qualification criteria for bringing a claim under the new DRPs; and
- cost, both overall cost of the program and individual cost arising from registry decisions on pricing, such as premium pricing.

The comments received from INTA members who completed the survey are set out fully in the Impact Study Report<sup>16</sup> and should be taken into account.

### III. **Sunrise Premium Pricing**

The New Sections Report briefly incorporates some of the data from the Impact Study concerning premium pricing for new gTLD Sunrise registrations that correspond to trademarks.<sup>17</sup> Unfortunately, the CCT-RT's recommendations in the New Sections Report do not reflect this data or the view of many trademark owners that the practice of premium pricing for new gTLD Sunrise registrations is a discriminatory and/or unfair practice.<sup>18</sup> The adverse cost effect of premium pricing deserves additional attention and analysis.

### IV. **Matching for Trademark Claims**

As part of its discussion of the Analysis Group's Independent Review of Trademark Clearinghouse (TMCH) Services report, the New Sections Report concludes without support that "trademark holders appeared less concerned about variations of trademark strings and thus felt that an expansion of the matching criteria may in fact bring little benefit to trademark holders."<sup>19</sup> To the contrary, the [Independent Review of Trademark Clearinghouse \(TMCH\) Services Revised Report](#) ("Revised Report") stated: "Initial responses to our questionnaires from trademark holders and TMCH agents often expressed interest in expanding the matching criteria."<sup>20</sup> Indeed, several INTA members have proposed an expansion of the matching criteria for Trademark Clearinghouse Claim Notices be expanded to include non-exact matches to maximize the effectiveness of RPMs both in anecdotal responses to the Impact Study and as part of ICANN's Review of all Rights Protection Mechanisms in all gTLDs PDP working group discussions currently underway.

### V. **Privacy/Proxy Services**

The New Sections Report acknowledges that the Impact Study revealed that more than 75% of the cases where trademark owners needed to act against the owner of a new gTLD registration

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<sup>16</sup> Impact Study Report at 50.

<sup>17</sup> New Sections Report at 36, 37.

<sup>18</sup> Impact Study Report at 50, 58.

<sup>19</sup> New Sections Report at 40.

<sup>20</sup> Revised Report at 25.

involved registrants using privacy and proxy services to block their identities.<sup>21</sup> It concludes, however, that this only “suggests the need for further research.”<sup>22</sup>

While further research may clarify the effects of these services over time, INTA is hard-pressed to know what type of further research is needed to reach the conclusion that these services pose substantial barriers to the efficient resolution of conflicts and increase the cost consumers and trademark owners face in ensuring a safe and trustworthy domain name and online environment. Manifestly, those privacy and proxy services that do not reveal the underlying customer data upon request from a trademark owner after a proper showing of harm prevent trademark owners from being able to settle domain disputes without filing formal actions, which in turn results in substantially higher costs to protect trademarks and consumer trust.

## **VI. Additional Studies (Recommendation 40)**

One of the final recommendations made in both the Draft CCT-RT Report and the New Sections Report is that an additional Impact Study is needed to ascertain the impact of the New gTLD Program on the cost and effort required to protect trademarks, and that the Impact Study should be repeated at regular intervals. (New Sections Report pp. 7, 42-43). INTA advises the CCT-RT that it intends to conduct follow-up studies to develop additional and important data on these subjects.<sup>23</sup> While we anticipate these studies will result in engagement by and responses from a greater number of trademark owners, we also believe they will support the findings of the initial Impact Study that INTA conducted in part for the very consideration by the CCT-RT that the New Sections Report attempts to address.

## **VII. Recommendations to Mitigate DNS Abuse**

INTA is pleased to see that the new sections added to the CCTRT’s Draft Report offered four new recommendations designed to mitigate the DNS abuse that was documented in the recent “Statistical Analysis of DNS Abuse in gTLDs Report” (the “SADAG Report”).<sup>24</sup> INTA had previously commented on the SADAG Report when it was first published.<sup>25</sup> In that comment, INTA expressed some reservations that the SADAG Report defined “abuse” too narrowly by

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<sup>21</sup> New Sections Report at 4, 35.

<sup>22</sup> New Sections Report at 35)

<sup>23</sup> INTA’s learnings from the Impact Study will be useful moving forward as we have discovered that the complexity of the data desired by review teams may not, in fact, correspond to how real-world portfolio managers collect or track data. INTA is helping to resolve this issue by creating and distributing a tracking sheet for our members to use on a volunteer basis. This should help create consistency with information gathering and reporting. It is important that future surveys be shorter and more user friendly.

<sup>24</sup> <https://www.icann.org/public-comments/sadag-final-2017-08-09-en>.

<sup>25</sup> <http://mm.icann.org/pipermail/comments-sadag-final-09aug17/attachments/20170920/14110126/INTACommentonSADAGReport9-20-17FINAL-0001.pdf>.

excluding some forms of trademark abuse that were proscribed by both the New gTLD Registry Agreement (the “New RA”)<sup>26</sup> and the 2013 Registrar Accreditation Agreement (the “2013 RAA”),<sup>27</sup> and that were critical to protecting consumers. The criticism was directed at the scope of the SADAG Report not of its findings. As INTA noted, for the narrow range of abuse that it did examine, the SADAG Report provided a useful and comprehensive statistical comparison of rates of spam, phishing, and malware in new and legacy gTLDs. Those findings were troubling. Specifically, the SADAG Report showed “high levels of DNS abuse concentrated in a relatively small number of registries and registrars and geographic regions,” and determined that abuse “appears to have gone on unremedied for an extended amount of time in some cases.”<sup>28</sup>

In response to the alarmingly high level of unremedied abuse identified by the SADAG Report, the CCT-RT has now proffered four new recommendations to “address the reality” that the new gTLD safeguards have not apparently worked to mitigate technical DNS abuse.<sup>29</sup> INTA shares the CCT-RT’s concerns about the excessive levels of DNS abuse uncovered by the SADAG Report, and thus supports each of these four recommendations in principle. As the final details of each will be critical, INTA also offers more specific comments on each.

## 1. Financial incentives

**Recommendation:** “Consider directing ICANN org, in its discussions with registries, to negotiate amendments to existing Registry Agreements, or in negotiations of new Registry Agreements associated with subsequent rounds of new gTLDs, to include provisions in the agreements to provide incentives, including financial incentives, to registries, especially open registries, to adopt proactive anti-abuse measures.”<sup>30</sup>

**INTA response:** In general, INTA supports the CCTRT recommendation that ICANN negotiate amendments to the New RA (or to future RAs) to provide incentives, including financial incentives such as fee discounts, to registries, especially open registries, that adopt proactive anti-abuse measures. It is, of course, ultimately ICANN’s mission to “ensure the stable and secure operation of the Internet’s unique identifier systems.”<sup>31</sup> But to the extent that ICANN looks to registries to assist in the fulfillment of that mission by implementing their own proactive anti-abuse measures (above and beyond whatever proactive measures they would be contractually obligated to adopt per the second recommendation discussed below), it follows that ICANN could subsidize such efforts in the form of fee discounts. While the CCT-RT did not enumerate what form these “proactive anti-abuse measures” might take, it did provide three general objectives that they should attempt to meet: 1) identifying repeat offenders; 2) monitoring suspicious registrations; and 3) actively detecting abuse instead of merely waiting for complaints to be filed.<sup>32</sup> The CCT-RT then highlighted two possible examples: 1) delayed delegation of registrations identified as potentially abusive by machine-learning algorithms (as proposed by EURid); and 2) use of abuse-monitoring tools (as proposed by the .XYZ registry).<sup>33</sup>

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<sup>26</sup> <https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-09jan14-en.pdf>.

<sup>27</sup> <https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en>.

<sup>28</sup> <https://www.icann.org/en/system/files/files/cct-rt-draft-recs-new-sections-27nov17-en.pdf> at page 25 (hereafter “New Sections”).

<sup>29</sup> *Id.*

<sup>30</sup> New Sections Report at 26.

<sup>31</sup> <https://www.icann.org/resources/pages/governance/bylaws-en/#article1>.

<sup>32</sup> New Sections Report at 26.

<sup>33</sup> New Sections Report at 26, fn. 110.



## 2. Amendments

**Recommendation:** “Consider directing ICANN org, in its discussions with registrars and registries, to negotiate amendments to the Registrar Accreditation Agreement and Registry Agreements to include provisions aimed at preventing systemic use of specific registrars for technical DNS abuse.”<sup>34</sup>

**INTA Response:** INTA supports the CCT-RT recommendation that ICANN negotiate amendments to the New RA and the 2013 RAA to include provisions aimed at preventing systemic use of specific registrars for technical DNS abuse. INTA also agrees with the CCT-RT recommendation that such language “should impose upon registrars, and their affiliated entities such as resellers, a duty to mitigate technical DNS abuse, whereby ICANN may suspend registrars and registry operators found to be associated with unabated, abnormal and extremely high rates of technical abuse.”<sup>35</sup> Such language would work in tandem with, for example, ¶ 3.18.1 of the 2013 RAA, which already provides that registrars “shall take reasonable and prompt steps to investigate and respond appropriately to any reports of abuse.”<sup>36</sup> INTA agrees with the CCT-RT that in order to address the excessive level of systemic abuse that was identified in the SADAG Report, this existing duty to respond **reactively** to abuse complaints from others should be supplemented with a contractual duty to take steps **proactively** to mitigate abuse as well. Moreover, INTA would suggest that this recommendation could be tied to the following recommendation on data collection (including through DAAR), such that ICANN could define by contract what would constitute *prima facie* evidence (or at least a rebuttable presumption) of an “excessive” level of abuse.

## 3. Data Collection

**Recommendation:** “Further study the relationship between specific registry operators, registrars and DNS abuse by commissioning ongoing data collection, including but not limited to, ICANN Domain Abuse Activity Reporting (DAAR) initiatives. For transparency purposes, this information should be regularly published in order to be able to identify registries and registrars that need to come under greater scrutiny and higher priority by ICANN Compliance. Upon identifying abuse phenomena, ICANN should put in place an action plan to respond to such studies, remediate problems identified, and define future ongoing data collection.”<sup>37</sup>

**INTA Response:** INTA supports the CCT-RT recommendation that ICANN commission ongoing data collection (including through DAAR initiatives) to study the relationship between specific registry operators, registrars, and DNS abuse. INTA also strongly supports the CCT-RT recommendation that ICANN regularly publish such data so that the community and ICANN and consumers can identify registries and registrars that require greater scrutiny. INTA sees no downside to this recommendation, and shares the belief in data-driven analysis and transparency, upon which it is based.

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<sup>34</sup> New Sections Report at 27.

<sup>35</sup> New Sections Report at 27.

<sup>36</sup> <https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en>.

<sup>37</sup> New Sections Report at 27.

#### 4. DNS Dispute Resolution Policy

**Recommendation:** “A DNS Abuse Dispute Resolution Policy (“DADRP”) should be considered by the community to deal with registry operators and registrars that are identified as having excessive levels of abuse (to define, e.g. over 10% of their domain names are blacklisted domain names). Such registry operators or registrars should in the first instance be required to a) explain to ICANN Compliance why this is, b) commit to clean up that abuse within a certain time period, and/or adopt stricter registration policies within a certain time period. Failure to comply will result in a DADRP, should ICANN not take any action themselves.”<sup>38</sup>

**INTA Response:** INTA supports the CCT-RT recommendation that ICANN consider designing and implementing a DNS Abuse Dispute Resolution Policy to deal with registry operators and registrars that are identified as having excessive levels of abuse. INTA agrees with the CCT-RT’s rationale that “[a]busive behavior needs to be eradicated from the DNS” and that a DADRP could “provide an additional arm to combat that abuse.”<sup>39</sup>

That said, INTA must stress that its support for the idea of a DADRP is conditioned on the premise that it will be an **additional** arm to combat abuse – **not** a substitute for any existing dispute-resolution procedure (e.g., the UDRP, PDDRP, PICDRP), and **not** a substitute for ICANN Compliance rigorously enforcing all the existing provisions of the New RA or the 2013 RAA that are related to abuse (e.g., 2013 RAA ¶¶ 3.7.7 and 3.18.1; New RA ¶ 2.8 and Specs. 7 and 11). On this specific point, INTA agrees with the portion of the CCT-RT Minority View that argued “To the extent that there is a concern that ICANN Compliance may be ineffective at enforcing registries’ contractual obligations, the solution should be to improve ICANN Compliance rather than creating a new dispute resolution procedure.”<sup>40</sup> A DADRP (should one exist) cannot be an excuse for ICANN to choose not to enforce any provision of the New RA or the 2013 RAA, and instead outsource and offload that responsibility to a private DADRP claimant.

While we concur with points raised in the Minority Report on the DADRP, we believe it goes too far in its assumption that a robust regime of contract enforcement by ICANN cannot coexist side-by-side with a robust regime of private enforcement via a dispute resolution mechanism. For example, INTA does not understand the concern expressed by the Minority View that a DADRP might create “a great amount of uncertainty for contracted parties who may find that even though ICANN has investigated an issue and found that they complying, a third party now disagrees with that assessment and can launch a costly and complex dispute procedure of their own.”<sup>41</sup> INTA does not view this as a problem. Quite the opposite, this is exactly what a DADRP would be intended to do, add an extra layer of protection against the “extremely high rates of abuse” identified by the SADAG Report. To the extent that a DADRP can be crafted to fill that narrow niche, to serve as a complement, and not a substitute, for all existing safeguards, procedures, and contractual provisions, then INTA supports it.

INTA supports the CCT-RT recommendation that ICANN commission ongoing data collection (including through DAAR initiatives) to study the relationship between specific registry operators, registrars, and DNS abuse. INTA also strongly supports the CCT-RT recommendation that

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<sup>38</sup> New Sections Report at 28.

<sup>39</sup> New Sections Report at 28.

<sup>40</sup> New Sections Report at 45.

<sup>41</sup> New Sections Report at 45.

ICANN regularly publish such data so that the community, ICANN and consumers can identify registries and registrars that require greater scrutiny. INTA sees no downside to this recommendation and shares the belief in data-driven analysis and transparency which form the basis of the recommendation.

### **VIII. Trademarks as Mechanisms for Accountability in the Marketplace**

INTA also would like to highlight the role that trademarks can play as market mechanisms that create accountability by identifying and distinguishing the goods or services of their owner from those of others, which in turn creates an incentive for their owner to maintain a predictable, consistent quality of goods. Thus, any “proactive measures” implemented by registries to protect trademarks (above and beyond what is already required by the New RA) will, by definition, also protect consumers, and enhance consumer trust in new gTLDs. Given the extent to which phishing and malware schemes often rely on misuse of famous trademarks,<sup>42</sup> such proactive measures will also decrease the amount of abuse that this recommendation is meant to ameliorate. As such, INTA encourages registries and the ICANN community to continue to work on improving the existing RPMs to develop new consensus policies which reflect the CCT-RT’s general anti-abuse objectives, and such policies should also qualify for the financial incentives or fee discounts contemplated by the CCT-RT recommendations.

### **IX. About INTA and the Internet Committee**

Founded in 1848, INTA is a global not-for-profit association with more than 5,700 member organizations from over 190 countries. One of INTA’s goals is the promotion and protection of trademarks as a primary means for consumers to make informed choices regarding the products and services they purchase. During the last two decades, INTA has also been the leading voice of trademark owners within the Internet community, serving as a founding member of the Intellectual Property Constituency of the Internet Corporation for Assigned Names and Numbers (ICANN). INTA’s Internet Committee is a group of over 150 trademark owners and professionals from around the world charged with evaluating treaties, laws, regulations and procedures relating to domain name assignment, use of trademarks on the Internet, and unfair competition on the Internet, whose mission is to advance the balanced protection of trademarks on the Internet.

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<sup>42</sup> SADAG Report at 12.