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September 26, 2018

Mr. Steve Chan  
Senior Policy Manager  
ICANN  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094-2536

Re: GNSO New gTLD Subsequent Procedures Policy Development Process (PDP) Initial Report

Dear Mr. Chan:

INTA is pleased to submit the attached comments regarding the GNSO New gTLD Subsequent Procedures Policy Development Process (PDP) Initial Report. The issues presented in the report are of top concern to INTA members because of their connection to brand protection and, ultimately, consumer protection. While some brands are looking to enjoy new marketing possibilities, all have an interest in protecting consumers who seek the quality goods and services that brands represent online.

Key elements to any subsequent procedures for delegating new TLDs include consistency, transparency and predictability. The applicant guidebook (AGB) that outlines those procedures should be unambiguous and not subject to change during the application period. This will ensure fairness in the process which is resource intensive. The playing field must be fair, and outcomes reasonably predicted in order to attract investment in new TLDs. INTA supports ICANN's efforts in that direction.

Should you have any questions about our submission, 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 black ink, appearing to read "Etienne Sanz de Acedo". The signature is fluid and cursive, with a long horizontal stroke at the end.

Etienne Sanz de Acedo  
Chief Executive Officer

## **About INTA**

INTA is a global not for profit association with more than 7,200 member organizations from 191 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. 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 ICANN. INTA's Internet Committee is a group of over 175 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.

Attachment 1: Detailed Chart of INTA Responses to Subsequent Procedures Initial Report

Attachment 2: INTA Letter to Allen Grogan, June 22, 2015

## INTA Responses to Subsequent Procedures Initial Report

Topic	Type	Text	INTA Response
2.2.2.2: Clarity of Application Process (WT1)	Preliminary Recommendation	2.2.2.2.c.1: When substantive/disruptive changes to the Applicant Guidebook or application processing are necessary and made through the Predictability Framework discussed above, there should be a mechanism that allows impacted applicants the opportunity to either (a) request an appropriate refund or (b) be tracked into a parallel process that deals with the discrete issues directly without impacting the rest of the program.	<p>The process for applying for a new gTLD is both time consuming and expensive. Applicants rely on the Applicant Guidebook and the accompanying Registry Agreement to make decisions and set budgets. Significant changes that present unforeseen risks to an application severely prejudices affected applicants. It is a principle of fairness that an applicant must have a path to minimize their damage where the nature of the application has been changed mid-process by ICANN.</p> <p>INTA supports the recommendation that an impacted applicant should be afforded the opportunity to request a refund. Such a refund should be of the majority of the application fee. In the 2012 New gTLD Round, refunds to withdrawing applicants were on a reducing scale depending on the stage in the application process at which the applicant withdrew. Where the withdrawal is due to changes imposed after submission the applicant should not be more financially disadvantaged than possible.</p> <p>With regard to the alternative of being tracked into a parallel process, INTA believes that this also could be beneficial, subject to the following points:</p> <p>(1) This must be at the option of the applicant - they should not be obliged to proceed down a parallel track if their preference is to receive a refund;</p> <p>(2) A parallel track has the potential to significantly disadvantage applicants. This is particularly true when the application is not processed in a timely fashion. The effect is the risk of applications languishing in</p>

			<p>limbo. This is a very real risk, and one that some applicants from the 2012 Round, such as those who wished to operate a so-called closed generic TLD, have experienced even without an official parallel track. Any parallel track should have a clear path and timelines for resolution;</p> <p>(3) There are good reasons that the parallel track should not impact the rest of the program. However, to minimize the disadvantage to affected applicants the recommendation at 2.6.1.c.6 must apply, i.e. all applications submitted in a prior round must have priority over applications in any subsequent round, which should include ensuring that a string which has been applied for and is still in progress cannot be applied for by others in a later round.</p>
2.2.3: Applications Assessed in Rounds (full WG)	Preliminary Recommendation	<p>2.2.3.c.1: The Working Group recommends that the next introduction of new gTLDs shall be in the form of a “round.” With respect to subsequent introductions of the new gTLDs, although the Working Group does not have any consensus on a specific proposal, it does generally believe that it should be known prior to the launch of the next round either (a) the date in which the next introduction of new gTLDs will take place or (b) the specific set of criteria and/or events that must occur prior to the opening up of the subsequent process. For the purposes of providing an example, prior to the launch of the next round of new gTLDs, ICANN could state something like, “The subsequent introduction of new gTLDs after this round will occur on January 1, 2023 or nine months following the date in which 50% of the applications from the last round have completed Initial Evaluation.”</p>	<p>Generally, INTA prefers the concept of discrete, regular and predictably-timed rounds of gTLD applications with one exception. This exception should be for a new company or brand to apply for a .Brand gTLD outside the normal cycle.</p> <p>Discrete rounds allow applicants certainty when preparing for new gTLDs. They also assist with the monitoring of applied-for new gTLDs by brand owners, governments and associations and provide parties the opportunity to decide on objections during a definite period. Depending on the timing and regularity of future application rounds, there may need to be a mechanism in place to allow a new company or brand to apply for a new .Brand gTLD outside the normal window. This is because new products and or companies arise very quickly and become ubiquitous throughout the world. For example, some of the current most popular and widely used social media and digital brands were relatively small companies at the time of the first round of gTLD applications. ICANN should recognize that situations like This can occur and provide a</p>

			mechanism for provisional applications outside the normal windows, if those normal windows will not open with sufficient predictability and regularity.
2.2.3: Applications Assessed in Rounds (full WG)	Option	2.2.3.d.1: Conduct one additional “round” followed by an undefined review period to determine how future applications for new gTLDs should be accepted.	INTA is opposed to this option. There should not be a continuous stop and start of the rounds particularly when periods of no applications can stretch on for an indeterminate time. This risks generating an unreal demand when the next application window opens, due to the uncertainty of when further application opportunities will exist. It also impacts business planning and implementation making it nearly impossible to predict outcomes.
2.2.3: Applications Assessed in Rounds (full WG)	Option	2.2.3.d.2: Conduct two or three additional application “rounds” separated by predictable periods for the purpose of major “course corrections,” to determine the permanent process for the acceptance of new gTLDs in the future. For illustration purposes only, this could include commencing an application window in Q1 of Year 1, a second application window in Q1 of Year 2, and a final application window in Q1 of Year 3 followed by a lengthy gap to determine the permanent process moving forward after Year 3.	INTA largely approves this option. Giving both ICANN and applicants three rounds should be enough time to identify any additional issues and to begin creating solutions to newly discovered issues in the permanent process. However, this envisages a lengthy pause after the last of these application rounds, which reduces the predictability of timing of further application windows. INTA would like to think that this review/evaluation exercise could be an ongoing process, so that, going into the final of these initial windows there would already be some certainty about the duration of an “gap” and the likely permanent mechanism.
2.2.3: Applications Assessed in Rounds (full WG)	Option	2.2.3.d.3: Conduct all future new gTLD procedures in “rounds” separated by predictable periods for the purpose of course corrections indefinitely. Policy development processes would then be required to make substantial, policy-driven changes to the program and would then only apply to the opening of the application round following the date in which the PDP recommendations were adopted by the ICANN Board.	See our comments at 2.2.3.d.2 above.
2.2.3: Applications Assessed in Rounds (full WG)	Option	2.2.3.d.4: Conduct one additional “round” followed by the permanent opening up of a first-come, first-served process of new gTLD applications.	INTA is opposed to this option as it creates an additional burden on both ICANN, governments and brand owners who are monitoring new gTLDs and their impact.
2.2.3: Applications	Option	2.2.3.d.5: Commence two or three additional application “rounds” separated	INTA considers that this option has some merit. The additional

Assessed in Rounds (full WG)		by predictable periods for the purpose of major course corrections, followed shortly thereafter by the permanent opening up of a first-come, first-served process of accepting new gTLD applications.	three rounds ought to be enough to confirm that the new policy adopted is operating as expected. Any further changes will more than likely be minor in the future. INTA does note however that this option will create an additional burden on ICANN, governments and brand owners who are monitoring new gTLD applications. For that reason, this would not be INTA's favored option.
2.2.3: Applications Assessed in Rounds (full WG)	Option	2.2.3.d.6: Immediately commence a permanent first-come, first-served process of accepting new gTLD Applications.	INTA does not support this option.
2.2.3: Applications Assessed in Rounds (full WG)	Question	2.2.3.e.1: Of the models described above, which model do you believe should be employed, if any? Please explain.	INTA approves of Option 2.2.3.d.2. This option allows applicants who were or are considering obtaining a gTLD several chances to prepare for the application process. At the end of the third round there should be an expectation that any issues will have been spotted and can then be addressed in the creation of the permanent process.
2.2.3: Applications Assessed in Rounds (full WG)	Question	2.2.3.e.2: For the model you have selected, what are some mechanisms that can be employed to mitigate any of the listed (or unlisted) downsides.	This model provided allows potential applicants the opportunity to decide whether they wish to pursue a new gTLD. This model would be beneficial to brand owners who did not participate in the 2012 round and now wish to do so, or those who applied for one or a small number of their brands and wish to now apply for others. Having three rounds also relieves the pent-up demand for gTLDs. If applicants know they have three opportunities to apply there should be less of a bottleneck of pending applications once the first round opens. The three rounds also provide potential first-time applicants the opportunity to familiarize themselves with the requirements and benefits of obtaining a new gTLD.
2.2.3: Applications Assessed in Rounds (full WG)	Question	2.2.3.e.3: Is there a way to assess the demand for new gTLDs to help us determine whether the subsequent new gTLD process should be a "round" or a "first-come first-served process? (e.g. Do we introduce an Expressions of Interest process?)	INTA is opposed to the introduction of Expressions of Interest as it could force brand owners to release confidential information about new products. Further, given that 1930 applications were filed in the

			<p>most recent round, the assumption might be that a similar number will be applied for in the upcoming rounds. In any event, introducing a set of (at a minimum) two or three further rounds after the next one already envisaged should provide adequate data as to the demand.</p>
2.2.4: Different TLD Types (full WG)	Preliminary Recommendation	<p>2.2.4.c.1: The Working Group recommends that each of the categories recognized by the 2012 Applicant Guidebook, both explicitly and implicitly, continue to be recognized on a going forward basis. These include standard TLDs, community-based TLDs, TLDs for which a governmental entity serves as the registry operator, and geographic TLDs. In addition, the Working Group also recognizes that Specification 13 .Brand TLDs should also be formally established as a category. The ramifications of being designated a specific category are addressed throughout this Initial Report as applicable.</p>	<p>INTA agrees with this recommendation with respect to Specification 13 .Brand TLDs. It is appropriate that .Brand TLDs be formally considered a distinct category since, by virtue of Specification 13, different contractual provisions apply. Although those different contractual provisions had not been identified at the time of application in the 2012 round, they were subsequently developed through a process which involved feedback and comment from the community. This category should therefore be formalized for the avoidance of doubt.</p> <p>At this point in the process, INTA is does not agree that geographic TLDs constitute a separate specific category. In the 2012 Round, the AGB recognized certain listed geographic names as requiring governmental consent or non-objection to proceed. Provided this pre-qualification was met, however, then the application and contract proceeded in the same way as a "standard" TLD. Unless different contractual provisions are envisaged for "geographic TLDs" or some other significant point of difference is adopted, it is not clear what the purpose or benefit is in identifying geographic TLDs as a separate category, or in adopting other categories. The work of work track 5 may obviously impact on this.</p>
2.2.4: Different TLD Types (full WG)	Question	<p>2.2.4.e.1: The Working Group did not reach agreement on adding any additional categories of gTLDs. What would be the benefit of adding a further category/further categories? Should additional categories of TLDs be established and if so, what categories? Why or why not?</p>	<p>See response to 2.2.4.c.1. Consideration should first be given to whether any TLD type requires different treatment or contractual provisions. Only if so, is there a need for a separate category.</p>



2.2.4: Different TLD Types (full WG)	Question	2.2.4.e.2: To the extent that you believe additional categories should be created, how would applications for those TLDs be treated differently from a standard TLD throughout the application process, evaluation process, string contention process, contracting, post-delegation, etc.	See responses to 2.2.4.c.1 and 2.2.4.e.1.
2.2.4: Different TLD Types (full WG)	Question	2.2.4.e.3: If you have recommended additional categories of TLDs, what would be the eligibility requirements for those categories, how would those be enforced and what would be the ramifications of a TLD that qualified for a newly created category failing to continue to meet those qualifications?	See responses to 2.2.4.c.1 and 2.2.4.e.1.  With respect to .Brands and Specification 13, INTA believes that further consideration should be given to the qualification criteria. Currently to qualify, the registry operator (or a related company) must have a trade mark which is an exact match to the TLD string. If the working group decides to allow some issues of contention or objection to be overcome by one or more applicants adopting an alternative string then, in the case of a brand owner this might be by means of adopting a string consisting of their brand plus a corporate identifier or industry keyword. The provisions of Spec 13 should be flexible enough to allow this still to apply to the TLD string, even where, as a result, the string is not identical to the trademark but rather consists of "mark +".
2.3.2: Global Public Interest (WT2)	Preliminary Recommendation	2.3.2.c.1: Mandatory PICs: The Work Track is considering a recommendation to codify the current implementation of mandatory PICs as policy recommendations. In addition, such mandatory PICs should be revisited to reflect the ongoing discussions between the GAC Public Safety Working Group and Registries as appropriate.	INTA would support the Mandatory PICs being codified as policy recommendations. PICs have proved to be a valuable mechanism to seek to address concerns with new gTLDs, albeit that we might wish to see improvements.
2.3.2: Global Public Interest (WT2)	Preliminary Recommendation	2.3.2.c.2: Voluntary PICs: The Work Track recommends continuing the concept of voluntary Public Interest Commitments and asking applicants to state any voluntary PICs in their application. In addition, the Work Track supports the ability of applicants to commit to additional voluntary PICs in response to public comments, GAC Early Warnings and/or GAC Advice. The Work Track acknowledges that changes to voluntary PICs may result in changing the nature of the application except where expressly otherwise prohibited in the Applicant Guidebook and that this needs further discussion.	INTA supports this recommendation. Applicants should be able to set out voluntary PICs in their applications. Where the applicant anticipates concerns or objections from a third-party part of the community, and it believes that adopting a PIC would assist in addressing those concerns, then an applicant may see a benefit in setting out this PIC in the application and committing to its inclusion in the RA from the outset.



			We also support the recommendation that an applicant should be able to adopt additional voluntary PICs in response to public comments, GAC Early Warnings and/or GAC Advice. Additional voluntary PICs should also be an avenue open to an applicant to address objections.
2.3.2: Global Public Interest (WT2)	Preliminary Recommendation	2.3.2.c.3: At the time a voluntary PIC is made, the applicant must set forth whether such PIC is limited in time, duration and/or scope such that the PIC can adequately be reviewed by ICANN, an existing objector (if applicable) and/or the GAC (if the voluntary PIC was in response to a GAC Early Warning or GAC Advice).	INTA supports.
2.3.2: Global Public Interest (WT2)	Preliminary Recommendation	2.3.2.c.4: To the extent that a Voluntary PIC is accepted, such PIC must be reflected in the applicant's Registry Agreement. A process to change PICs should be established to allow for changes to that PIC to be made but only after being subject to public comment by the ICANN community. To the extent that the PIC was made in response to an objection, GAC Early Warning and/or GAC Advice, any proposed material changes to that PIC must take into account comments made by the applicable objector and/or the applicable GAC member(s) that issued the Early Warning, or in the case of GAC Advice, the GAC itself.	INTA supports.
2.3.2: Global Public Interest (WT2)	Question	2.3.2.e.1: Does you believe that there are additional Public Interest Commitments that should be mandatory for all registry operators to implement? If so, please specify these commitments in detail.	Please see comments elsewhere in this response, in particular in section 2.10.1.e.2.
2.3.2: Global Public Interest (WT2)	Question	2.3.2.e.2: Should there be any exemptions and/or waivers granted to registry operators of any of the mandatory Public Interest Commitments? Please explain.	<p>The commitment at Specification 11 3(a) are required to be passed down to a registrar and from there to the registrant. These are therefore not relevant for .Brands TLDs subject to Specification 13, or TLDs with a Specification 9 code of conduct exemption.</p> <p>The commitment to undertake security threat monitoring at Specification 11 3(b) is also arguably less necessary for a single registrant TLD, since the threat profile of such a TLD can be expected to be significantly lower than for a TLD which actively sells second level names.</p>

2.3.2: Global Public Interest (WT2)	Question	2.3.2.e.3: For any voluntary PICs submitted either in response to GAC Early Warnings, public comments, or any other concerns expressed by the community, is the inclusion of those PICs the appropriate way to address those issues? If not, what mechanism do you propose?	Yes, additional voluntary PICs can be a suitable mechanism to address public comments, GAC Early Warnings and/or GAC Advice, although this may not be the only appropriate solution.
2.3.2: Global Public Interest (WT2)	Question	2.3.2.e.4: To what extent should the inclusion of voluntary PICs after an application has been submitted be allowed, even if such inclusion results in a change to the nature of the original application?	This should be permissible. PICs may serve as a mechanism to address concerns raised by individual third parties or groups within the community, thereby reducing or reconciling disputes and objections.
2.3.2: Global Public Interest (WT2)	Question	2.3.2.e.5: If a voluntary PIC does change the nature of an application, to what extent (if any) should there be a reopening of public comment periods, objection periods, etc. offered to the community to address those changes?	Unless the PIC is one which has already been adopted by other registry operators, then principles of transparency favor a short public comment period.
2.3.2: Global Public Interest (WT2)	Question	2.3.2.e.6: The Work Track seeks to solicit input in regards to comments raised by the Verified TLD Consortium and National Association of Boards of Pharmacy that recommended a registry should be required to operate as a verified TLD if it 1) is linked to regulated or professional sectors; 2) is likely to invoke a level of implied trust from consumers; or 3) has implications for consumer safety and well-being. In order to fully consider the impact and nature of this recommendation, the WG is asking the following questions:	In principle INTA is in favor of verified TLDs as a means to seek to control eligibility and use of second level domains in TLDs which have sensitivity. We believe further discussion on this topic would be beneficial.
2.3.2: Global Public Interest (WT2)	Question	2.3.2.e.6.1: How would such a registry be recognized to be in line with these three criteria and who would make such a judgement?	See 2.3.2.e.6
2.3.2: Global Public Interest (WT2)	Question	2.3.2.e.6.2: What types of conditions should be placed upon a registry if it is required to operate as a verified TLD?	See 2.3.2.e.6
2.3.3: Applicant Freedom of Expression (WT3)	Preliminary Recommendation	2.3.3.c.1: Work Track 3 discussed the protection of an applicant's freedom of expression rights and how to ensure that evaluators and dispute resolution service providers (DSRPs) performed their roles in such a manner so as to protect these fundamental rights. The Work Track generally believes that the implementation guidelines should be clarified to ensure that dispute resolution service providers and evaluators are aware that freedom of expression rights are to be considered throughout the evaluation and any applicable objection processes as well as any Requests for Reconsideration and/or Independent Review Panel proceedings. To do this, each policy principle should not be	INTA agrees that the implementation guidelines should be clarified. These guidelines should be settled prior to any new applicant process. We note that Applicant Freedom of Expression is to be just one of the competing interests to be weighed against other legitimate interests. It is not clear how this will occur. However, with any change to the rules to be applied to subsequent rounds, it is important that Freedom of Expression rights are fairly balanced against other legitimate rights including trade mark rights. Freedom of Expression and

		<p>evaluated in isolation from the other policy principles, but rather should involve a balancing of legitimate interests where approved policy goals are not completely congruent or otherwise seem in conflict. Applicant freedom of expression is an important policy goal in the new gTLD process and should be fully implemented in accordance with the applicant's freedom of expression rights that exist under law.</p>	<p>Trademark rights coexist in the real world and should in the application process.</p> <p>INTA notes that in the overwhelming majority of LRO cases the panel found for the applicant and against the brand owner objector, indicating that concerns about the consideration of Freedom of Expression within the LRO appear to be unfounded. If anything, this may reflect an insufficient consideration of trade mark interests when adopting the LRO standard.</p>
2.3.3: Applicant Freedom of Expression (WT3)	Question	2.3.3.e.1: What specific advice or other guidance should dispute resolution service providers that adjudicate objections proceedings and other evaluators be given to ensure that the policy principle of protecting applicant freedom of expression can be effectively implemented in the overall program?	INTA suggests that this policy consideration be defined in any guidelines and practical examples provided as to how this principle has been applied under international law in relation to the adjudication of name/trademark disputes so that evaluators can see how the principle can and should be applied in deciding string contention and LROs.
2.3.3: Applicant Freedom of Expression (WT3)	Question	2.3.3.e.2: When considering Legal Rights Objections, what are some concrete guidelines that can be provided to dispute resolution service providers to consider "fair use," "parody," and other forms of freedom of expression rights in its evaluation as to whether an applied for string infringes on the legal rights of others?	<p>INTA notes that the concepts of "fair use," "parody," and other forms of freedom of expression rights are applied differently in different countries around the world. For example, while parody provides a defense to claims of trade mark infringement in the USA, this is not the case in other countries such as Australia. Concepts of fair use and the legal effect when applied to competing legitimate rights also vary from country to country. Applicants from different countries are likely to expect that these principles will be applied with similar effect in any LROs when this is not necessarily the case. A consistent agreed definition and mode of application needs to be agreed and published prior to any subsequent application rounds.</p> <p>A consideration of these rights and the legal effects in various jurisdictions might assist the WG in formulating guidelines, definitions of these terms, and a consistent method of application in LRO cases.</p>

2.3.3: Applicant Freedom of Expression (WT3)	Question	2.3.3.e.3: In the evaluation of a string, what criteria can ICANN and/or its evaluators apply to ensure that the refusal of the delegation of a particular string will not infringe an applicant's freedom of expression rights?	INTA suggests that this should form part of a 2-step evaluation process. We note the application of this principle is likely to arise in the context of a contentious string set or Objection process where third party(s) are disputing an applicant's entitlement to hold a gTLD, including a LRO. It is but one factor in deciding claims in relation to legitimate competing interests and legally, provides a defense to what otherwise would be regarded as an infringing use of a word string.
2.4.1: Applicant Guidebook (WT1)	Preliminary Recommendation	2.4.1.c.1: Work Track 1 generally agreed that an Applicant Guidebook (AGB) of some form should continue to be utilized in future waves of applications. The Work Track generally agreed, however, that the Applicant Guidebook should be made more user friendly.	INTA agrees with this recommendation.
2.4.1: Applicant Guidebook (WT1)	Preliminary Recommendation	2.4.1.c.2: In order to enhance accessibility for ease of understanding, especially for non-native English speakers and those that are less familiar with the ICANN environment, the Work Track believes that the AGB should:	
2.4.1: Applicant Guidebook (WT1)	Preliminary Recommendation	2.4.1.c.2.1: Be less focused on historical context and to the extent it is included, concentrate this content in appendices if possible.	INTA agrees with this recommendation
2.4.1: Applicant Guidebook (WT1)	Preliminary Recommendation	2.4.1.c.2.2: Be less about policy, with a stronger focus on the application process.	INTA agrees with this recommendation. There could be links to the policy, or it could be moved to appendices, for those who are interested.
2.4.1: Applicant Guidebook (WT1)	Preliminary Recommendation	2.4.1.c.2.3: Be focused on serving as a practical user guide that applicants can utilize in applying for a TLD. For instance, step-by-step instructions, possibly by type of application with a 'choose your own adventure' methodology.	INTA agrees with this recommendation. INTA would encourage ICANN to create specific instructions for both branded and community gTLDs.
2.4.1: Applicant Guidebook (WT1)	Preliminary Recommendation	2.4.1.c.2.4: Have an improved Table of Contents, include an index and the online version should contain links to appropriate sections, definitions, etc.	INTA agrees with this recommendation.
2.4.1: Applicant Guidebook (WT1)	Preliminary Recommendation	2.4.1.c.2.5: The online version could have sections that apply specifically to the type of application being applied for with the ability to only print those related sections.	INTA agrees with this recommendation.
2.4.1: Applicant Guidebook (WT1)	Preliminary Recommendation	2.4.1.c.2.6: In conjunction with the above, the online version should allow for advanced indexing of an omnibus text. A core set of standard provisions may be applicable to everyone, but additional provisions may only be applicable to some. If the text is tagged and searchable, users could more easily	INTA agrees with this recommendation.

		locate the parts of the text that are relevant to them.	
2.4.1: Applicant Guidebook (WT1)	Preliminary Recommendation	2.4.1.c.2.7: Any Agreements/Terms of Use for systems access (including those required to be “clicked-through” should be finalized in advance and included in the Applicant Guidebook with the goal of minimizing obstacles and/or legal burdens on applicants (see section 2.4.3 on Systems).	INTA agrees with this recommendation but is concerned that any agreements or terms of use are non-negotiable. The WG could explore whether there is a way for those who wish to negotiate to flag that intention.
2.5.1: Application Fees (WT1)	Preliminary Recommendation	2.5.1.c.1: Work Track 1 is considering proposing that the New gTLD Program continue to be self-funded where existing ICANN activities are not used to cross-subsidize the new gTLD application, evaluation, pre-delegation and delegation processes.	INTA agrees with this recommendation.
2.5.1: Application Fees (WT1)	Preliminary Recommendation	2.5.1.c.2: In addition, the Work Track generally believes that the application fee amount should continue to be based on the “revenue neutral” principal, though the accuracy should be improved to the greatest extent possible. Although the 2012 New gTLD Applicant Guidebook remained silent on what should happen with any excess fees obtained through the application process, the Work Track is leaning towards recommending that absent the use of an application fee floor (described in 3 below) excess fees should be refunded back to applicants. If a deficit arises, the Work Track considered several options (see deliberations below), but there seemed to be support for ICANN recovering the majority of funds in future TLD application windows.	INTA believes the application fee amount should be relatively high to dissuade frivolous applications. However, because branded gTLDs will be closed, and therefore any registry failure does not impact the wider public in the same way as an open TLD, it may be appropriate for there to be a lighter-touch evaluation process around aspects intended for registrant protection. If so, since the cost of evaluation would be lower, INTA believes there should be a reduced application fee for brand owners who wish to apply for a gTLD that wholly incorporates their trademark.
2.5.1: Application Fees (WT1)	Preliminary Recommendation	2.5.1.c.3: The Work Track also is considering proposing that if in the event that the estimated application fee, based on the “revenue neutral” principal, falls below a predetermined threshold amount (i.e., the application fee floor), the actual application fee will be set at that higher application fee floor instead. The purpose of an application fee floor, as more fully discussed below, would be to deter speculation, warehousing of TLDs, and mitigating against the use of TLDs for abusive or malicious purposes, that could more easily proliferate with a low application fee amount.	INTA agrees with this recommendation, subject to the comments at 2.5.1.c.2 above, i.e. if an applicant is seeking to obtain a branded gTLD that will be closed then the cost floor should be lowered.

2.5.1: Application Fees (WT1)	Preliminary Recommendation	2.5.1.c.4: The application fee floor is a predetermined value that is the minimum application fee. By definition, an application fee floor will not meet the revenue neutral principle as the floor amount will be greater than the application fees creating an excess. In the event that an application fee floor is used to determine the application fee, excess fees received by ICANN if the application fee floor is invoked should be used to benefit the following categories: Support general outreach and awareness for the New gTLD Program (e.g., Universal Awareness and Universal Acceptance initiatives); Support the gTLD long-term program needs such as system upgrades, fixed assets, etc.; Application Support Program; Top-up any shortfall in the segregated fund as described below.	INTA would suggest that excess fees should be applied to initiatives which would improve trust in the DNS, particularly around security threats, malware, fraud and intellectual property infringement. Funds should be allocated to ensure that there is robust monitoring and enforcement of the contractual commitments made by applicants and by registrars selling those names.
2.5.1: Application Fees (WT1)	Preliminary Recommendation	2.5.1.c.5: To help alleviate the burden of an overall shortfall, a separate segregated fund should be set up that can be used to absorb any shortfalls and topped-up in a later round. The amount of the contingency should be a predetermined value that is reviewed periodically to ensure its adequacy.	INTA agrees with this recommendation.
2.5.1: Application Fees (WT1)	Question	2.5.1.e.1: To the extent that warehousing/squatting of TLDs has taken place and may occur in the future, what other restrictions/methodologies, beyond pricing, might prevent such behavior?	<p>It is INTA's position that the strongest protection against warehousing/squatting of TLD is the high cost of the application. INTA is not aware of warehousing/squatting to date and cautions against any assumption that all applicants for TLDs have the same drivers in applying and intend to utilize the same business models. For many .Brand TLDs, for example, domains under management is not necessarily a relevant indication of use and value.</p> <p>INTA does not object to applicants applying for open TLDs which contain common words. If an applicant applies for a TLD that matches a trademark there must be an opportunity for the trademark owner to object to the application. INTA would propose that if an objection to a proposed TLD is successful then the costs of the objection would be borne by the applicant.</p>
2.5.1: Application Fees (WT1)	Question	2.5.1.e.2: What happens if the revenue-cost neutral amount results in a refund that is greater than the application fee floor value? Should it be only the	INTA's position is that the refund should be anything above the cost floor.



		difference between the cost floor and the amount refunded? Should there be any minimum dollar value for this to come into effect? i.e. the amount of the refund is a small amount, and if so, should this excess be distributed differently, i.e. Universal Awareness, Applicant Support, other?	
2.5.1: Application Fees (WT1)	Question	2.5.1.e.3: What are the considerations/implications if we move to continuous rounds, in this case limited to how it relates to ensuring the program is run in a revenue neutral manner?	INTA believes as the transition to more continuous rounds occurs there should be enough data to allow ICANN to determine the revenue neutral amount for applications. INTA also expects that ICANN would become more efficient in processing new applications that the cost will become lower.
2.5.1: Application Fees (WT1)	Question	2.5.1.e.4: Are there policy, economic, or other principles or factors that might help guide the establishment of the floor amount?	INTA believes the establishment of the floor amount should be based on the actual cost to ICANN to process new applications and should be determined by ICANN staff. Bringing in non-empirical reasons for the establishment of the floor amount will lead to confusion and an inaccurate number.
2.5.1: Application Fees (WT1)	Question	2.5.1.e.5: Under the circumstance where the application fee is set at the floor amount, do you have additional suggestions or strategy on the disbursement of excess funds?	INTA believes any excess funds should be refunded to the applicants. If this is not the case, then our comments at 2.5.1.c.4 would also apply.
2.5.1: Application Fees (WT1)	Question	2.5.1.e.6: Are we acknowledging and accepting of ICANN being a so-called “registry of registries” (i.e., does the community envision ICANN approving a few thousand / hundreds of thousands / millions of gTLDs to be added to the root? Should there be a cap?)	INTA is opposed to a cap on the number of new TLDs unless it can be proven that the root cannot operate correctly with a high number of TLDs
2.5.1: Application Fees (WT1)	Question	2.5.1.e.7: Is there a way in which the application fee can be structured such that it can encourage competition and innovation?	INTA supports a pricing system that reflects actual costs to ICANN. Competition and Innovation will follow with predictable fees and delegation outcomes. Innovation and competition are enhanced by reliable systems with realistic cost allocations. An unpredictable system makes planning very difficult for entrepreneurs and innovators.
2.5.1: Application Fees (WT1)	Question	2.5.1.e.8: How do we address the timely disbursement of excess funds? Can this happen prior to the “end” of the evaluation process for all applications? If yes, please explain. If not, what is the length of time applicants should expect a	INTA believes the disbursements should occur at the end of each round, subject perhaps to withholding some contingency funds.



		refund after the evaluation process is complete?	
2.5.1: Variable Fees (WT1)	Preliminary Recommendation	2.5.2.c.1: Though Work Track 1 discussed a number of different possible alternative approaches, there was no agreement on any alternatives to the 2012 round; namely that all applications should incur the same base application fee amount regardless of the type of application or the number of applications that the same applicant submits. This would not preclude the possibility of additional fees in certain circumstances, as was the case in the 2012 round of the program (e.g., objections, Registry Service Evaluation Process, etc.).	
2.5.1: Variable Fees (WT1)	Option	2.5.2.d.1: Different application fees for different types of applications is only warranted if the cost incurred for processing those different types is significant (for discussion purposes, 20% was used).	INTA agrees with this option. INTA believes because branded TLDs will be closed and therefore require less scrutiny for ICANN the cost to review these TLD applications will be significantly less expensive and thus branded TLD applications should be subject to lower fees.
2.5.1: Variable Fees (WT1)	Option	2.5.2.d.2: Fees imposed for changing the type of application should be higher than applying for the desired TLD type originally (for discussion purposes, the applicant must pay 125% of the difference between the different application types in terms of fees plus any other related processing fees.)	INTA agrees with this option, changing the type of application should require an administrative fee to be paid that discourages attempts to game the system by applying for a type with a lower fee and later swapping.
2.5.1: Variable Fees (WT1)	Question	2.5.2.d.1: If the number of applications exceed capacity limits and projected processing costs (assuming these are limiting factors) should there be an option to increase capacity and costs to meet service expectations? If so, how should capacity vs. increased costs and/or limits be set? What is an acceptable increase and how would the actual percentage be determined?	INTA does not have a definitive answer but notes that as ICANN becomes more efficient in processing new TLDs application, costs should become relatively stable or decrease.
2.5.1: Variable Fees (WT1)	Question	2.5.2.d.2: Should there be any exception to the rule that all applicants pay the same application fee regardless of the type of application? What exceptions might apply? Why or why not?	As branded TLDs will be closed, there should be a significant discount to brand owners who wish to apply for a gTLD that wholly incorporates their trademark.
2.5.1: Variable Fees (WT1)	Question	2.5.2.d.3: If different types of applications result in different costs, what value (e.g., amount, percentage, other) would justify having different fees? How could we seek to prevent gaming of the different costs?	Per the previous answer, branded TLDs will be closed and therefore require less scrutiny for ICANN. Therefore, the cost to review these TLD applications should be significantly less expensive and subject to lower fees. INTA supports the implementation of an administrative fee attached to changing the type of application.

			This should prevent the gaming of the system.
2.5.1: Variable Fees (WT1)	Question	2.5.2.d.4: If fees are imposed for changing the type of application, again what is an acceptable percentage and how should the percentage be determined?	If the application is changed the applicant should have to pay the initial difference between the original application and the new application plus a 15% administrative fee.
2.5.3: Application Submission Period (WT1)	Preliminary Recommendation	2.5.3.c.1: For the next round of new TLD applications, applicants should have a minimum of three (3) months from the time in which the application systems open until the time in which applications would become due ("application submission period"). This recommendation would apply if the next application opportunity is structured as a round.	All applicants will need a reasonable time within which to finalize and submit applications. The 2012 round was intended to have approximately a 3-month window, and this appeared to be a reasonable time-period for future rounds. We do not support this period being shortened.
2.5.3: Application Submission Period (WT1)	Option	2.5.3.d.1: In section 2.4.2 on Communications, Work Track 1 has recommended that the Communications Period for the next round of new gTLDs should be at least six (6) months. One possible recommendation is that no more than two (2) months of the Communications Period for the next round of new gTLDs should overlap with the application submissions period, leaving at least one (1) month after the closing of the Communications Period and before the closing of the applications submission period.	A communications period of 6 months seems reasonable. We do not support an overlap with the application window. Having a 2-month overlap with the application submission period would impact on the opportunity for some potential applications to become aware of the next round and to get an application in order. This has the potential to leave some with only one month of the application window in which to take action. This could likely disadvantage those from the regions which were less engaged and represented in the 2012 Round, exacerbating that geographical split.
2.5.3: Application Submission Period (WT1)	Option	2.5.3.d.2: In the event that following the next round of new gTLDs, application opportunities are organized as a series of application windows, steps related to application processing and delegation should be able to occur in parallel with the opening of subsequent application windows.	INTA supports this approach provided that the various windows are clearly identified and that controls are in place to ensure that a later application for a TLD (or one confusingly similar thereto) is not given priority to an earlier one.
2.5.3: Application Submission Period (WT1)	Option	2.5.3.d.3: In the event that following the next round of new gTLDs, application opportunities are organized as a series of application windows, the Applications submission period may be shortened to two (2) months.	INTA does not support a shortened period as 3 months is reasonable.
2.5.3: Application Submission Period (WT1)	Question	2.5.3.e.1: For the next round, is having the applicant submission period set at three (3) months sufficient?	As stated above in 2.5.3.c.1, all applicants will need a reasonable time within which to finalize and submit applications. The 2012 round was intended to have approximately a 3-month window, and this seems a reasonable time-period for future

			rounds. We do not support this period being shortened.
2.5.3: Application Submission Period (WT1)	Question	2.5.3.e.2: Is the concept of a fixed period of time for accepting applications the right approach? Why or why not? Does this help facilitate a predictable schedule for submission and objections/comments?	Generally, INTA prefers the concept of discrete, regular and predictably-timed rounds of gTLD applications, and as such a fixed period for accepting applications meets this aim. See our response to 2.2.3.c.1
2.5.5: Terms and Conditions (WT2)	Preliminary Recommendation	2.5.5.c.1: Work Track 2 believes that there should continue to be a Terms and Conditions document separate and apart from the Registry Agreement. Although the majority of the Terms and Conditions contained in the 2012 round were generally acceptable, the Work Track is considering proposing the following changes.	
2.5.5: Terms and Conditions (WT2)	Preliminary Recommendation	Section 3 of the 2012 Terms and Conditions states that ICANN may deny any new TLD application for any reason at its sole discretion. It also allows ICANN to reject any application based on applicable law. The Work Track believes: 2.5.5.c.2: Unless required under specific law or the ICANN Bylaws, ICANN should only be permitted to reject an application if done so in accordance with the Terms and Conditions of the Applicant Guidebook.	INTA agrees that ICANN should not be able to unilaterally reject an application for reasons other than specifically set out in the AGB, unless required to do so under specific law or the ICANN Bylaws. To allow otherwise would be inconsistent with ICANN's Bylaw obligations to apply policies consistently and neutrally (section 1.2(a)(v), of non-discriminatory treatment (section 2.3), and of openness and transparency (section 3.1).
2.5.5: Terms and Conditions (WT2)	Preliminary Recommendation	Section 3 of the 2012 Terms and Conditions states that ICANN may deny any new TLD application for any reason at its sole discretion. It also allows ICANN to reject any application based on applicable law. The Work Track believes: 2.5.5.c.3: In the event an application is rejected, the ICANN organization should be required to cite the reason in accordance with the Applicant Guidebook, or if applicable, the specific law and/or ICANN Bylaw for not allowing an application to proceed.	INTA agrees with this recommendation. A requirement for ICANN to give its grounds for rejecting an application complies with ICANN's Bylaws obligations, including the obligation of transparency. Therefore, ICANN should be obliged to give its reasons.
2.5.5: Terms and Conditions (WT2)	Preliminary Recommendation	2.5.5.c.4: Section 6 currently gives ICANN a broad disclaimer of representations and warranties, but also contains a covenant by the applicant that it will not sue ICANN for any breach of the Terms and Conditions by ICANN. In general, the Work Track was not comfortable with the breadth of this covenant to not sue and Work Track members disagreed with the covenant not to sue as a concept. However, if the covenant not to sue ICANN is maintained, there must be a challenge/appeal mechanism established above and beyond the general accountability provisions in the ICANN	INTA understands why ICANN might seek to limit its liability and exposure to claims from new gTLD applicants. Nevertheless, in the previous round it was decided not to allow appeals from most decisions. In practice, this resulted in extensive use of time consuming, complex and costly accountability mechanisms such as the request for reconsideration and the independent review process (IRP). Since these processes review only whether the standards set out in the Bylaws

		<p>Bylaws that allows for substantive review of the decision. This mechanism should look into whether ICANN (or its designees/contractors) acted inconsistently (or failed to act consistently) with the Applicant Guidebook (see section 2.8.2 on Accountability Mechanisms for further detail).</p>	<p>have been applied, and not whether a decision is wrong on the merits, then the lack of appeal coupled with an enforceable covenant not to sue could leave some applicants without recourse for wrong decisions. This is particularly problematic given that the terms and conditions, together with the terms of the AGB, are set by ICANN and non-negotiable for the other party to the contract.</p> <p>It is possible that ICANN's concerns about liability could be addressed by limiting that liability to a reasonable level. If it is intended to include a covenant not to sue, then an appeal process should be provided. Such an appeal process would be beneficial for applicants, in providing them with an avenue to challenge decisions on their merits. See also our responses to the Preliminary Recommendations on the Accountability Mechanisms (section 2.8.2).</p>
2.5.5: Terms and Conditions (WT2)	Preliminary Recommendation	<p>2.5.5.c.5: Section 14 allows ICANN to make reasonable updates to the Applicant Guidebook at its discretion. The Work Track generally agrees that to the extent that substantive changes are made to the Applicant Guidebook or program processes, applicants should be allowed some type of recourse, including if applicable, the right to withdraw an application from ICANN's consideration in exchange for a refund. A framework for ICANN to make transparent changes to the Applicant Guidebook as well as available recourse to change applications or withdraw for applicants should be laid out.</p>	<p>In this regard, it will be essential to determine which changes to the AGB or program process have a material impact on the applicant's situation and would allow the applicant a recourse. It will also be essential to determine the recourse mechanism and specify the extent to which the applicant may be refunded and if a full refund should apply.</p> <p>Please see our response to Preliminary Recommendation 2.2.2.2.c.1.</p>
2.5.5: Terms and Conditions (WT2)	Question	<p>2.5.5.e.2: Under what circumstances (including those arising relative to the sections referenced above) should an applicant be entitled to a full refund?</p>	<p>Applicants should be permitted to withdraw their applications with full refund, if the changes made to the Applicant Guidebook or program processes are such that it is no longer attractive to them to proceed with their application, and this should be a decision for the applicant alone, i.e. not at ICANN's discretion.</p>
2.5.5: Terms and Conditions (WT2)	Question	<p>2.5.5.e.3: Some in the Work Track have noted that even if a limited challenge/appeals process is established</p>	<p>If the covenant not to sue remains, it should be made clear that this does not cover cases of</p>

		(see preliminary recommendation 2 above), they believe the covenant to not sue the ICANN organization (i.e., Section 6 of the Terms and Conditions) should be removed. Others have noted the importance of the covenant not to sue, based on the ICANN organization’s non-profit status. Do you believe that the covenant not to sue should be removed whether or not an appeal process as proposed in section 2.8.2 on Accountability Mechanisms is instituted in the next round? Why or why not?	fraud, negligence or willful misconduct (which cannot be excluded at law).  See also our comments at 2.5.5.c.4.
2.6.1: Application Queuing (WT2)	Preliminary Recommendation	2.6.1.c.6: All applications submitted in the next round (regardless whether delegated or not) must have priority over applications submitted in any subsequent rounds/application windows even if the evaluation periods overlap.	INTA supports this recommendation, which is consistent with general principles of fairness, as well as obligations under the ICANN Bylaws for non-discriminatory treatment.  Indeed, this recommendation ought to go further, in the interests of both existing applicants for a string and any applicants in a future application window. Where a TLD has been applied for by one of more applicants in an earlier application window, but is not yet delegated, then it should not be possible for an applicant in a future application window to apply for that TLD string, or any string which would be considered confusingly similar. This would be consistent with the recommendations which have been made on string similarity, and would avoid the risk of multiple applicants, across more than one application window, being held in limbo for potentially protracted periods of time.
2.7.1: Reserved Names (WT2)	Preliminary Recommendation	2.7.1.c.3: The Work Track is also considering a proposal to remove the reservation of two-character strings at the top level that consist of one ASCII letter and one number (e.g., .O2 or .3M), but acknowledges that technical considerations may need to be taken into account on whether to lift the reservation requirements for those strings. In addition, some have expressed concern over two characters consisting of a number and an ASCII letter where the number closely resembles a letter (e.g., a “zero” looking like the letter “O” or the letter “L” in lowercase looking like the number “one”).	INTA notes that the 2007 policy recommendations on reserved names appear to have envisaged that combinations of letters and numbers, such as single-letter-single-number combinations would be permitted as TLDs, however these were excluded under the AGB. A number of brands consist of combinations of letters and numbers. Provided there are no technical concerns, INTA therefore supports removing the reservation of combinations of letters and numbers at the top level, including two-character or more letter-number

			<p>combinations.</p> <p>Regarding the concerns that some have raised about two characters consisting of a number and an ASCII letter where the number closely resembles a letter, we believe that these would generally appear sufficiently distinct when typed into a browser. However, if the working group reaches the conclusion that this is a risk, we would suggest that any continued reservation of single-letter-single-number combinations should be limited to those involving a zero (0) or one (1) in a position which corresponds to the letters “O” and “L” in an existing ccTLD string (for example “n0”, for the country code for Norway), since the reservation of 2-character TLDs has been expressed to be in order to safeguard ccTLDs.</p>
2.7.1: Reserved Names (WT2)	Question	2.7.1.e.1: The base Registry Agreement allows registry operators to voluntarily reserve (and activate) up to 100 strings at the second level which the registry deems necessary for the operation or the promotion of the TLD. Should this number of names be increased or decreased? Please explain. Are there any circumstances in which exceptions to limits should be approved? Please explain.	<p>INTA sees no reason to make any changes, save in the following respect. In a .Brand TLD all names are allocated by the registry to itself, and, at its option, to its affiliates and trademark licensees. The 100-name limit therefore seems meaningless for .Brand.</p> <p>However please also see our comments at 2.7.1.e.3.3, 2.10.1.e.2 and 2.12.e.2.</p>
2.7.1: Reserved Names (WT2)	Question	2.7.1.e.2: If there are no technical obstacles to the use of 2-character strings at the top level consisting of one letter and one digit (or digits more generally), should the reservation of those strings be removed? Why or why not? Do you believe that any additional analysis is needed to ensure that these types of strings will not pose harm or risk to security and stability? Please explain.	<p>We refer to our comments on Preliminary Recommendation 2.7.1.c.3.</p>
2.7.1: Reserved Names (WT2)	Question	2.7.1.e.3: In addition to the reservation of up to 100 domains at the second level, registry operators were allowed to reserve an unlimited amount of second level domain names and release those names at their discretion provided that they released those names through ICANN-accredited registrars.	



2.7.1: Reserved Names (WT2)	Question	2.7.1.e.3.1: Should there be any limit to the number of names reserved by a registry operator? Why or why not?	Although decisions as to the reservation of names could be considered a business decision by a registry, this raises some concerns for INTA and its members if names are subsequently released from reservation after the Sunrise has concluded. See our response to 2.7.1.e.3.3.
2.7.1: Reserved Names (WT2)	Question	2.7.1.e.3.2: Should the answer to the above question be dependent on the type of TLD for which the names are reserved (e.g., .Brand TLD, geographic TLD, community-based TLD and/or open)? Please explain.	No, subject to our comment at 2.7.1.e.1.
2.7.1: Reserved Names (WT2)	Question	2.7.1.e.3.3: During the 2012 round, there was no requirement to implement a Sunrise process for second-level domain names removed from a reserved names list and released by a registry operator if the release occurred after the general Sunrise period for the TLD. Should there be a requirement to implement a Sunrise for names released from the reserved names list regardless of when those names are released? Please explain.	<p>The ability to reserve an unlimited number of names and to release them later at the registry's discretion has the capacity to circumvent the rights protection mechanisms (RPMs) introduced for the New gTLD Program: where names are released after the registry sunrise period has ended there is currently no obligation to offer the names for sunrise registration, but only to run a 90-day trademark claims.</p> <p>The RPMs were introduced as a suite of measures intended to work together. Reserving trademarked terms and releasing them later denies access to one of the measures. INTA understands that there may be practical difficulties with the idea of a "second sunrise", particularly since names might be released from reservation at varying times. Nevertheless, INTA considers that measures should be developed to allow trademark owners who have recorded their trademarks in the TMCH a right of first-refusal (for example where a TMCH record existed during the original Sunrise and the trademark owner was prevented from registering the domain due to the term having been reserved) – including that they, and registrars, should be given sufficient notice to ensure that they are able to participate.</p>



			<p>There is precedent for how a right of first refusal might operate in the approach adopted when names-collision names were released from reservation.</p> <p>Please also see our comments on 2.10.1.e.2 and 2.12.e.2.</p>
2.7.1: Reserved Names (WT2)	Question	2.7.1.e.4: Some in the community object to the Measures for Letter/Letter Two-Character ASCII Labels to Avoid Confusion with Corresponding Country Codes, adopted by the ICANN Board on 8 November 2016. Is additional work needed in this regard?	<p>The measures seem to be complete, so no additional work seems to be necessary. However, it should be noted that in addition to these measures dealing with names corresponding to the country codes, ICANN had previously authorized the release of letter/number, number/letter and number/number combinations, and two-letter codes which did not correspond to country codes, all of which had previously been reserved at the second level. This should be formalized in the recommendations of this PDP and any Registry Agreement for future TLDs should reflect this.</p>
2.7.3: Closed Generics (WT2)	Preliminary Recommendation	2.7.3.c.1: The subject of Closed Generics has proved to be one of the most controversial issues tackled by Work Track 2 with strong arguments made by both those in favor of allowing Closed Generics in subsequent rounds and those opposing Closed Generics and in favor of keeping the current ban. Because this PDP was charged not only by the GNSO Council to analyze the impact of Closed Generics and consider future policy, a number of options emerged as potential paths forward with respect to Closed Generics, though the Work Track was not able to settle on any one of them. These options are presented in (d) below. The Work Track notes that there may be additional options that are not included in this list and welcomes suggested alternatives.	
2.7.3: Closed Generics (WT2)	Option	2.7.3.d.1: No Closed Generics: Formalize GNSO policy, making it consistent with the existing base Registry Agreement that Closed Generics should not be allowed.	<p>INTA opposes formalizing a no Closed Generics GNSO policy because the definition of a Closed Generic as defined in Specification 11.3.d of the Registry Agreement. There is potential for adverse effects on brands, consumer protection and choice.</p> <p>INTA's focus is the protection of</p>

			<p>brand owners, supporting trademarks and related IP rights to in order foster consumer trust, economic growth and innovation.</p> <p>The current definition of a generic string, as defined in Specification 11.3.d of the Registry Agreement, namely, “a string consisting of a word or term that denominates or describes a general class of goods, services, group, organization or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those of others,” is overly broad and potentially captures brand owners and captures TLDs that would not be used for a purpose that would otherwise be considered descriptive. Specifically, certain strings including words or terms that denominate a general class of goods or services, when used in association with unrelated goods or services, would potentially qualify as non-generic terms or .BRANDS under Specification 13 Paragraph 5.1 of the Registry Agreement. For example, the term “Internet” in association with a global computer network is generic, but in association with “food” is a strong trademark. Therefore, a prohibition on “closed generics,” as currently drafted, potentially harms brand owners and the consumers they are entrusted to protect. INTA notes that there are some mechanisms that already exist for brand owners to address this issue. However, it is too difficult, if not impossible, to determine what is “generic” and terms and words over time may acquire distinctiveness or lose it. Thus, INTA’s position is that ICANN should not be deciding what a generic string is and what it is not, as that is a legal determination and should be outside the purview of ICANN.</p> <p>Furthermore, although there might be circumstances where a brand owner might desire a</p>
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			<p>second level name in a TLD which has been allocated to a third party as a closed generic, it can also be envisaged that requiring public availability of second level names within a TLD reflecting a generic industry term can be disadvantageous, as adding to the cost of maintaining a portfolio of defensive registrations by those within the industry. This point was recognized by the panel in the Community Objection against the .HOTELS TLD.  <a href="https://docs.google.com/spreadsheets/d/1kua4x0sLOxy5ZStMkzqG3oYnbkzbxCNMMIGCFURKJO4/edit#gid=0">[https://docs.google.com/spreadsheets/d/1kua4x0sLOxy5ZStMkzqG3oYnbkzbxCNMMIGCFURKJO4/edit#gid=0]</a></p>
2.7.3: Closed Generics (WT2)	Option	<p>2.7.3.d.2: Closed Generics with Public Interest Application: As stated above, GAC Advice to the ICANN Board was not that all Closed Generics should be banned, but rather that they should be allowed if they serve a public interest goal. Thus, this option would allow Closed Generics but require that applicants demonstrate that the Closed Generic serves a public interest goal in the application. This would require the applicant to reveal details about the goals of the registry. Under this option, Work Track 2 discussed the potential of an objections process similar to that of community-based objections challenging whether an application served a public interest goal. The Work Track recognized how difficult it would be to define the criteria against which such an application would be evaluated.</p>	<p>INTA recognizes the difficulty in evaluating whether the operation of a particular Closed Generic serves the public interest, since this would (i) require the applicant to make up-front detailed commitments about its business model, which may be overly limiting to the applicant, since these may not have been completely worked out at the time of application, thus reducing the possibility for flexibility and innovation; and (ii) require the evaluators appointed by ICANN to be making value judgment assessments on individual applications, regardless of whether there is actually any third party concern or objection regarding a particular string.</p> <p>Possibly a more workable solution might be to have a challenge/objection process, whereby a party who thinks the particular closed generic is against the public interest could object. Where applying for a TLD string which might be considered a closed generic, and where the applicant envisages a risk of challenge, the applicant would have the option (but not the obligation) of trying to head this off in advance by giving assurances in the application which could be incorporated as contractual commitments. It would also be possible to allow an applicant to offer such contractual commitments in</p>

			<p>response to an objection, which the panel could take into consideration.</p> <p>Although some in the community have expressed concern about how to ensure compliance with such contractual commitments since “harm” occurs due to action taken with names at the second level, in the case of a closed generic, by definition, the second level names are being allocated only to a closed group which is controlled by the registry operator. The registry operator therefore has both the incentive to comply (to avoid a contractual breach) and the power to do so since all names, and who they are allocated to, are in its remit.</p>
2.7.3: Closed Generics (WT2)	Option	2.7.3.d.3: Closed Generics with Code of Conduct: This option would allow Closed Generics but require the applicant to commit to a code of conduct that addresses the concerns expressed by those not in favor of Closed Generics. This would not necessarily require the applicant to reveal details about the goals of the registry, but it would commit the applicant to comply with the Code of Conduct which could include annual self-audits. It also would establish an objections process for Closed Generics that is modelled on community objections.	<p>INTA believes this proposed process could be overly burdensome on a registry operator, and to single out Closed Generic operators with a different Code of Conduct that other operators could be problematic and unworkable.</p> <p>In any event, it is unclear what would be the benefit of a code of conduct over the incorporation of contractual commitments by means of PICs – if indeed there is intended to be a difference.</p>
2.7.3: Closed Generics (WT2)	Option	2.7.3.d.4: Allow Closed Generics: This option would allow Closed Generics with no additional conditions but establish an objections process for Closed Generics that is modelled on community objections.	<p>Unless a clearer definition for a “Closed Generic” is developed, INTA believes this solution may be the most workable as it allows for objections to a specific application without placing an undue burden on the RO or on ICANN to monitor the Registry. [See also our comments to 2.7.d.3.2.]</p>
2.7.3: Closed Generics (WT2)	Question	2.7.3.e.1: What are the benefits and drawbacks of the above outlined options?	See comments in 2.7.3.d.1 - 2.7.3.d.4 above
2.7.3: Closed Generics (WT2)	Question	2.7.3.e.2: Work Track 2 noted that it may be difficult to develop criteria to evaluate whether an application is in the public interest. For options 2 and 3 above, it may be more feasible to evaluate if an application does not serve the public interest. How could it be evaluated that a Closed Generic application does not serve the public interest? Please explain.	

2.7.3: Closed Generics (WT2)	Question	2.7.3.e.3: For option 2.7.3.d.4 above, how should a Code of Conduct for Closed Generics serving the public interest be implemented? The Work Track sees that adding this to the existing Code of Conduct may not make the most sense since the current Code of Conduct deals only with issues surrounding affiliated registries and registrars as opposed to Public Interest Commitments. The Work Track also believes that this could be in a separate Specification if Closed Generics are seen as a separate TLD category. Would it be better to modify the current Code of Conduct or have a separate Code of Conduct for Closed Generics? Please explain.	If the working group were to recommend the adoption of a code of conduct, then it makes sense for this to be separate code of conduct specifically relating to the operation of a closed generic. It would be unnecessarily complicated and confusing to try to amend the existing code of conduct since, as is pointed out in the Initial Report, this related to a different issue. Not all registry operators would need to be subject to the closed generic code of conduct, only those proposing to operate their TLD in that manner.
2.7.4: String Similarity (WT3)	Preliminary Recommendation	2.7.4.c.1: Work Track 3 recommends adding detailed guidance on the standard of confusing similarity as it applies to singular and plural versions of the same word, noting that this was an area where there was insufficient clarity in the 2012 round. Specifically, the Work Track recommends:	
2.7.4: String Similarity (WT3)	Preliminary Recommendation	2.7.4.c.1.1: Prohibiting plurals and singulars of the same word within the same language/script in order to reduce the risk of consumer confusion. For example, the TLDs .CAR and .CARS could not both be delegated because they would be considered confusingly similar.	<p>INTA supports the recommendation that singular and plural versions of the same word in the same language of the same type of string should be evaluated for string confusion, with the intent that where an applied for string is the singular/plural of an existing string the application will not proceed unless the applicant is also the registry operator (or an affiliate) of the prior blocking string. Further, where there are multiple applications for the same term and/or its singular/plural these should be placed into a single contention set.</p> <p>INTA has concerns that allowing further singulars and plurals of the same string to coexist at the top level will open the Internet community to potential abuse, consumer confusion, and the need for additional defensive registrations. Applicants may feel compelled to apply for additional strings, thereby unnecessarily increasing the cost for TLDs, complicating the launch process for Applicants, and crowding the root zone with largely unused or unwanted TLDs.</p>

			<p>We also support this applying to foreign equivalents.</p> <p>Where applicants are brands which co-exist in the real world, applying for a .Brand, it should not be assumed that one is a plural of another. The nature of the TLDs in this case should be taken into consideration in evaluating the string similarity.</p> <p>The mere addition of the letter “s” to an English word should not be assumed to indicate that it is a plural – it will depend on context. The word “news” is not the plural of “new”.</p>
2.7.4: String Similarity (WT3)	Preliminary Recommendation	2.7.4.c.1.2: Expanding the scope of the String Similarity Review to encompass singulars/plurals of TLDs on a per-language basis. If there is an application for the singular version of a word and an application for a plural version of the same word in the same language during the same application window, these applications would be placed in a contention set, because they are confusingly similar. An application for a single/plural variation of an existing TLD would not be permitted. Applications should not be automatically disqualified because of a single letter difference with an existing TLD. For example, .NEW and .NEWS should both be allowed, because they are not singular and plural versions of the same word.	INTA agrees with this standard as it allows for case-by-case determination. As is pointed out, the mere addition of the letter “s” to an English word should not be assumed to indicate that it is a plural – it will depend on context.
2.7.4: String Similarity (WT3)	Preliminary Recommendation	2.7.4.c.1.3: Using a dictionary to determine the singular and plural version of the string for the specific language.	INTA agrees with this proposal, subject to adoption of an agreed dictionary.
2.7.4: String Similarity (WT3)	Preliminary Recommendation	2.7.4.c.2: In addition, the Work Track recommends eliminating use of the SWORD Tool in subsequent procedures.	INTA agrees that the SWORD tool to assess string similarity should be eliminated as it uses proprietary algorithms that can be manipulated. Further, it was widely viewed as unsatisfactory and unhelpful in the 2012 round.
2.7.4: String Similarity (WT3)	Preliminary Recommendation	2.7.4.c.3: The Work Track also recommends that it should not be possible to apply for a string that is still being processed from a previous application opportunity.	INTA agrees with this proposal as allowing subsequent applications for pending word strings is likely to clog the application process. Presumably if an application is still pending from a previous application round then there is a broader issue with the application and/or it is contested. To facilitate the next round(s), INTA suggests ICANN publishes a list of pending applications, or

			implements a process during the application that will not permit an application to be made, so that applicants don't apply for the same strings.
2.7.4: String Similarity (WT3)	Question	2.7.4.e.1: Are Community Priority Evaluation and auctions of last resort appropriate methods of resolving contention in subsequent procedures? Please explain.	INTA does not believe that ICANN should “play favorites” based on a purported community interest, nor should gTLDs be sold to the highest bidder as the first measure. As with trademarks, priority as between two brands owners could be given to the senior user. As between non .brand owners, first come first/first serve may be a reasonable solution for rolling application periods or arbitration. Allowing applicants flexibility to amend applications – for example that for a small additional fee they could adopt an alternative string, could also reduce the need to resolve contention. Otherwise, as a last resort, auction may be the only option.
2.7.4: String Similarity (WT3)	Question	2.7.4.e.2: Do you think rules should be established to disincentivize “gaming” or abuse of private auctions? Why or why not? If you support such rules, do you have suggestions about how these rules should be structured or implemented?	We understand that further discussion is taking place regarding auctions and that a further initial report is intended.
2.7.4: String Similarity (WT3)	Question	2.7.4.e.3: Should synonyms (for example .DOCTOR and .PHYSICIAN) be included in the String Similarity Review? Why or why not? Do you think the String Similarity Review standard should be different when a string or synonym is associated with a highly-regulated sector or is a verified TLD? Please explain.	While .DOCTOR and .PHYSICIAN and related synonyms would be confusing in a trademark context, the strings themselves are not. The gTLDs are indexes, and the user typing each respective .TLD would know they are different and no typo would result in accessing the other. This would be no different than species/genus determinations, i.e. .BANANA versus .FRUIT.
2.8.1: Objections (WT3)	Preliminary Recommendation	2.8.1.c.1: A transparent process for ensuring that panelists, evaluators, and Independent Objectors are free from conflicts of interest must be developed as a supplement to the existing Code of Conduct Guidelines for Panelists and Conflict of Interest Guidelines for Panelists.	INTA supports this recommendation. Access to justice requires not just that there is a code of conduct but also that there is a process which allows for a party's concerns about panelist/evaluator/IO conflict of interest to be aired and adjudicated on, and where appropriate addressed, at the earliest opportunity.



2.8.1: Objections (WT3)	Preliminary Recommendation	2.8.1.c.2: For all types of objections, the parties to a proceeding should be given the opportunity to agree upon a single panelist or a three-person panel - bearing the costs accordingly.	INTA agrees with this recommendation. This is consistent with the options in relation to UDRP and ccDRP mechanisms.
2.8.1: Objections (WT3)	Preliminary Recommendation	2.8.1.c.3: ICANN must publish, for each type of objection, all supplemental rules as well as all criteria to be used by panelists for the filing of, response to, and evaluation of each objection. Such guidance for decision making by panelists must be more detailed than what was available prior to the 2012 round.	<p>INTA supports this recommendation. INTA agrees that more detailed information should be made available to panelists and that they should address the rules and criteria in their assessment of the objection so that applicants can be sure that the evaluation is fair and transparent. Publishing this information will also assist applicants in making comprehensive submissions on the objection and avoid delays and cost associated with supplementary RFIs.</p> <p>Regarding what should be provided in order that guidance is "more detailed" than in the 2012 Round, consideration could be given to providing case studies or specific examples of each of the criteria to assist panelists.</p>
2.8.1: Objections (WT3)	Preliminary Recommendation	2.8.1.c.4: Extension of the "quick look" mechanism, which currently applies to only the Limited Public Interest Objection, to all objection types. The "quick look" is designed to identify and eliminate frivolous and/or abusive objections.	<p>In principle INTA supports any policy changes that eliminate frivolous and/or abusive objections early in the process, since this has the capacity to save applicants significant time and money.</p> <p>It is however, clear that it is easier to objectively assess the Limited Public Interest Objection (based on "generally accepted" legal norms of morality and principles of international law) than it is to assess the other grounds of objection (String Confusion, Legal Rights Objection and Community Objections), all of which involve third party rights. In the event a "quick look" mechanism is to be applied to these other grounds of objection, ICANN should provide clear published guidance on what constitutes a frivolous or abusive claim in the context of third party rights and a review or appeal process made available to challenge dismissal on this ground.</p>

2.8.1: Objections (WT3)	Preliminary Recommendation	2.8.1.c.5: Provide applicants with the opportunity to amend an application or add Public Interest Commitments in response to concerns raised in an objection.	INTA supports policy change that allows Applicant's alternate methods to resolve objections to applications and reduce delay and cost by streamlining the application process. On this basis, INTA supports this proposal provided this is not a mandatory requirement that circumvents other options to overcome an objection.
2.8.1: Objections (WT3)	Option	2.8.1.d.1: GAC Advice must include clearly articulated rationale, including the national or international law upon which it is based.	<p>Transparency and predictability of this process is key to show trademark owners that investment in new gTLDs are worth the cost and risks. INTA supports a policy that requires GAC Advice to include the rationale and be based on national or international laws. This will provide a predictable framework within which all interested parties can operate.</p> <p>The requirement for a rationale also now reflects the new ICANN Bylaws section 12.3, requiring all Advisory Committees to ensure that all advice is "communicated in a clear and unambiguous written statement, including the rationale for such advice".</p>
2.8.1: Objections (WT3)	Option	2.8.1.d.2: Future GAC Advice, and Board action thereupon, for categories of gTLDs should be issued prior to the finalization of the next Applicant Guidebook. Any GAC Advice issued after the application period has begun must apply to individual strings only, based on the merits and details of the application, not on groups or classes of applications.	<p>INTA supports that any GAC advice issued during the next application period(s) must apply to specific strings and must provide details specific to the contested word string.</p> <p>We see no objection to advice being issued against groups of TLDs which share common factors, but the TLDs to which the advice relates ought to be identified to allow for certainty for all parties. There were many "category" type objections to groups of applications in the first round which included generic and abbreviated grounds for objection, which did not necessarily consider commitments made by the applicants for some strings falling within a category. This caused delay and expense to applicants caught up in "category" objections. There may also have been cases where, due to lack of specificity of the strings intended to be covered, a</p>

			<p>TLD sharing common factors was not subjected to the same treatment as others.</p> <p>Where GAC advice is issued and does apply to specific strings, such advice should identify the pre-existing national or international law on which it is based.</p> <p>INTA also suggests requiring that the GAC Advice nominate and provide contact details for an authorized GAC contact who is knowledgeable about the grounds for the objection and authorized to discuss solutions with a view to trying to reach a resolution. INTA is aware that applicants in the first round found it difficult to identify a local GAC representative authorized to discuss the objection and had to reach out through local counsel to facilitate this process. This process should be streamlined given the application process is otherwise largely conducted electronically and is accessible from anywhere in the world.</p>
2.8.1: Objections (WT3)	Option	2.8.1.d.3: Individual governments should not be allowed to use the GAC Advice mechanism absent full consensus support by the GAC. The objecting government should instead file a string objection utilizing the existing ICANN procedures (Community Objections/String Confusion Objections/Legal Rights Objections/Limited Public Interest Objections).	INTA strongly supports this recommendation. See comments in relation to GAC Advice at 2.8.1.d.1 and 2.8.1.d.2. The GAC Advice mechanism in the initial round effectively provided a separate objection mechanism for governments without any clear guidelines on the criteria for objection or how this would operate in an effective manner that did not disadvantage applicants. There was no identified guidance in relation to standing and some applicants faced multiple "category" type objections from different governments or related entities which required individual resolution.
2.8.1: Objections (WT3)	Option	2.8.1.d.4: The application process should define a specific time period during which GAC Early Warnings can be issued and require that the government(s) issuing such warning(s) include both a written rationale/basis and specific action requested of the applicant. The applicant should have an opportunity to engage in direct dialogue in response to such warning and amend the application	For the same reasons as at 2.8.1.d.1, INTA agrees with the proposal that GAC Early Warnings should be accompanied by a written rationale/basis and specific action requested of the applicant. The Early Warning can be a valuable mechanism as it provides early notice of a

		during a specified time period. Another option might be the inclusion of Public Interest Commitments (PICs) to address any outstanding concerns about the application.	problem to Applicants and allows the possibility of informal resolution before a formal objection is issued. As with any GAC interaction, INTA also suggests requiring any early warning notice nominate and provide contact details for an authorized GAC contact who is knowledgeable about the grounds for the potential objection and authorized to discuss solutions and settle the Early Warning notice
2.8.1: Objections (WT3)	Question	2.8.1.e.1: Role of the GAC: Some have stated that Section 3.1 of the Applicant Guidebook creates a "veto right" for the GAC to any new gTLD application or string. Is there any validity to this statement? Please explain.	<p>The provision which gives rise to the perception of a GAC veto is the following: "The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved." Subsequent IRPs challenging Board decisions based on such GAC advice have considered and rejected this "veto". See, for example para 104 of the Amazon IRP Final Declaration: "As we explain more fully below, the Board cannot simply accept GAC consensus advice as conclusive. The GAC has not been granted a veto under ICANN's governance documents. If the NGPC's only basis for rejecting the applications was the strong presumption flowing from GAC consensus advice, this would have the effect of converting the consensus advice into a conclusive presumption and, in reality, impermissibly shifting the Board's duty to make an independent and objective decision on the applications to the GAC." [https://www.icann.org/en/system/files/files/irp-amazon-final-declaration-11jul17-en.pdf].</p> <p>See INTA comments in relation to 2.8.1.d.2 above. INTA agrees that no one stakeholder should have a "veto" right in relation to word strings and all applicants and objectors should be able to participate equally in relation to the gTLD application process.</p>

			There may be merit in making it clear that GAC advice is exactly that - advice.
2.8.1: Objections (WT3)	Question	2.8.1.e.2: Role of the GAC: Given the changes to the ICANN Bylaws with respect to the Board's consideration of GAC Advice, is it still necessary to maintain the presumption that if the GAC provides Advice against a string (or an application) that such string or application should not proceed?	<p>INTA has been a strong supporter of, and participant in, the efforts to update the accountability mechanisms of ICANN to facilitate the IANA Transition. This included a cross-community effort to revise ICANN's Bylaws, the changes made having been the subject of extensive work by the whole ICANN community, including members of the GAC. The revised Bylaws now include a higher voting threshold for the Board to reject any GAC advice given under the Bylaws, and a requirement for a rationale from any advice of an Advisory Committee, including the GAC.</p> <p>The AGB, with its presumption against a string proceeding where the GAC has provided advice against it, belongs to the pre-Transition landscape and accountability framework. Having engaged extensively to review and revise that accountability framework, it is not appropriate for this presumption to remain, since it may be misinterpreted in a manner which contradicts the Bylaws. The Bylaws set out how advice from the GAC should be treated.</p>
2.8.1: Objections (WT3)	Question	2.8.1.e.3: Role of the GAC: Does the presumption that a "string will not proceed" limit ICANN's ability to facilitate a solution that both accepts GAC Advice but also allows for the delegation of a string if the underlying concerns that gave rise to the objection were addressed? Does that presumption unfairly prejudice other legitimate interests?	INTA does not believe that any one stakeholder's view should receive priority over those of other third-party rights holders. ICANN is tasked with the integrity, operation and maintenance of the DNS and should be free to consider remedial actions that remove the basis for a GAC Advice to allow string delegation in these circumstances.
2.8.1: Objections (WT3)	Question	2.8.1.e.4: Role of the Independent Objector: In the 2012 round, all funding for the Independent Objector came from ICANN. Should this continue to be the case? Should there be a limit to the number of objections filed by the Independent Objector?	INTA agrees that ICANN should continue to fund the IO role given the surplus of funds held post the first round. If the application costs are reduced in future rounds to a cost recovery basis then funding for the IO can be revisited at that stage. The funding requirements will also depend on whether there is a need for more than one IO and

			whether there are subsequent rounds or one continuous application process (see comments in relation to 2.8.1.e.7 below.
2.8.1: Objections (WT3)	Question	2.8.1.e.5: Role of the Independent Objector: In the 2012 round, the IO was permitted to file an objection to an application where an objection had already been filed on the same ground only in extraordinary circumstances. Should this extraordinary circumstances exception remain? If so, why and what constitutes extraordinary circumstances?	INTA notes it is difficult to conclusively define extraordinary circumstances as these would, by their nature, not be commonplace or of regular occurrence to lend themselves to easy definition. However, INTA agrees an attempt should be made to define these circumstances upfront and suggests some further policy work to review how this concept is treated under generally accepted international law, so the PDP WG can suggest a draft definition for public review and comment. For example, a likely gross miscarriage of justice may constitute an extraordinary circumstance (e.g. perhaps an objection filed on the same ground was fraudulently or incompetently filed to prevent another objection proceeding on the same grounds).
2.8.1: Objections (WT3)	Question	2.8.1.e.6: Role of the Independent Objector: Should the Independent Objector be limited to only filing objections based on the two grounds enumerated in the Applicant Guidebook?	Yes. This is an ICANN-funded safety net (with a goal of preserving the public interest of internet users generally) and so it is appropriate that it should be limited to Limited Public Interest or Community Objections. INTA does not support an expansion of the grounds for IO objection beyond these 2 grounds and notes the internal checks and balances in relation to the Community Objection which also perform a regulating function in relation to the scope of objections that can be filed, in particular, that the community can be clearly defined, and that the objection is supported by a substantial community support.
2.8.1: Objections (WT3)	Question	2.8.1.e.7: Role of the Independent Objector: In the 2012 round, there was only one Independent Objector appointed by ICANN. For future rounds, should there be additional Independent Objectors appointed? If so, how would such Independent Objectors divide up their work? Should it be by various subject matter experts?	The IO himself, in his report into his activities in round 1 suggested that this should be considered, to address circumstances where there was an issue of conflict of interest: "ICANN should maybe provide for the appointment of an alternate IO. Another solution would be the provision of a list of substitutes, to which the IO, or

			<p>the Expert Panel could refer to in case they deem it necessary" [<a href="https://www.independent-objector-newgtlds.org/home/final-activity-report/">https://www.independent-objector-newgtlds.org/home/final-activity-report/</a>].</p> <p>INTA suggests that perhaps there could be a small standing panel, so that in case of a conflict of interest (or circumstances which might give rise to a perception of conflict) a panelist could step aside and an alternative panelist could be appointed.</p>
2.8.1: Objections (WT3)	Question	2.8.1.e.8: Some members of the ICANN community believe that some objections were filed with the specific intent to delay the processing of applications for a particular string. Do you believe that this was the case? If so, please provide specific details and what you believe can be done to address this issue.	Whether there is a legitimate objection or an intent to delay the processing of a specific string somewhat depends on perspective. It is important not to deny access to justice. Quick look mechanisms and perhaps processes which would allow for summary judgments and costs awards in clear cut non-cases could help to minimize frivolous or malicious objections. Clear application guidelines for applicants and very clear methods for preventing (and dealing with) conflicts of interest from panelists / IO are also key.
2.8.1: Objections (WT3)	Question	2.8.1.e.11: Should applicants have the opportunity to take remediation measures in response to objections about the application under certain circumstances? If so, under what circumstances? Should this apply to all types of objections or only certain types?	<p>Yes. INTA agrees that applicants should be given an opportunity to take remediation steps to resolve disputes at the objection stage. Once the basis for the objection is known, the Applicant may have suggestions on how to usefully address these concerns. This should apply to LROs and Community Objections but there is no reason this couldn't also apply in relation to Limited Public Interest Objections or String Confusion Objections as well. However, this must be at the discretion of the applicant - the applicant should not suffer punishment for failing to take advantage of early remediation measures and instead going through the full dispute process.</p> <p>Remediation measures might include the voluntary adoption of contractual provisions such as PICs. They might also include the possibility of adopting an alternative string - current rules</p>



			do not permit this even if an applicant were willing to do so.
2.8.1: Objections (WT3)	Question	2.8.1.e.12: Who should be responsible for administering a transparent process for ensuring that panelists, evaluators, and independent objectors are free from conflicts of interest?	<p>The UDRP process, which relies on select trustworthy third-party arbitration providers, would seem to be a good model for this. Ultimately it is ICANN's responsibility to evaluate the fitness of the arbitration entities, but the entities themselves ensure that their panelists meet the requirements. There should certainly be an established method of challenging a panelist / IO / evaluator's presence based on conflict of interest, but it would need to have a reasonably high initial bar to discourage abuse.</p> <p>In terms of evaluating the fitness of the relevant providers, this is clearly ICANN's role, and should be funded out of application fees.</p>
2.8.1: Objections (WT3)	Question	2.8.1.e.15: Community Objections: In the Work Track, there was a proposal to allow those filing a Community Objection to specify Public Interest Commitments (PICs) they want to apply to the string. If the objector prevails, these PICs become mandatory for any applicant that wins the contention set. What is your view of this proposal?	<p>INTA would not support imposing mandatory PIC commitments on Applicants at the suggestion of Community Objectors as some of the PIC grounds may be unfair, onerous or not commercially acceptable to the Applicant and the CO may not prevail on all the grounds of objection. Instead, INTA suggests that COs could include some PIC suggestions and the parties could use these as a starting point for discussions to resolve the objection by way of negotiated settlement. (see comments in relation to 2.8.1.e.11 above)</p>

<p>2.8.1: Objections (WT3)</p>	<p>Question</p>	<p>2.8.1.e.16: String Confusion Objections: The RySG put forward a proposal to allow a single String Confusion Objection to be filed against all applicants for a particular string, rather than requiring a unique objection to be filed against each application. Under the proposal:</p> <ul style="list-style-type: none"> <li>- An objector could file a single objection that would extend to all applications for an identical string.</li> <li>- Given that an objection that encompassed several applications would still require greater work to process and review, the string confusion panel could introduce a tiered pricing structure for these sets. Each applicant for that identical string would still prepare a response to the objection.</li> <li>- The same panel would review all documentation associated with the objection. Each response would be reviewed on its own merits to determine whether it was confusingly similar.</li> <li>- The panel would issue a single determination that identified which applications would be in contention. Any outcome that resulted in an indirect contention would be explained as part of the response.</li> </ul> <p>Do you support this proposal? Why or why not? Would this approach be an effective way to reduce the risk of inconsistent outcomes?</p>	<p>INTA supports this proposal as it would stream line the process and create consistent outcomes.</p>
<p>2.8.1: Objections (WT3)</p>	<p>Question</p>	<p>2.8.1.e.17: String Confusion Objections: Some Work Track members have proposed that there should be grounds for a String Confusion Objection if an applied-for string is an exact translation of existing string that is in a highly regulated sector, and the applied-for string would not employ the same safeguards as the existing string. Do you support this proposal? Please explain.</p>	<p>INTA supports string similarity assessment applying also to foreign equivalents. See comments at 2.7.4.c.1.1.</p>
<p>2.8.1: Objections (WT3)</p>	<p>Question</p>	<p>2.8.1.e.18: Legal Rights Objections: Should the standard for the Legal Rights Objection remain the same as in the 2012 round? Please explain.</p>	<p>INTA presumes the reference to "standard" is a reference to the standard of proof. If so, INTA recommends that the AGB be amended to be more precise in relation to the definitions of trademark rights as they apply to the LRO. This should include fundamental principles of international TM law (TM fame/well-known status; doctrine of foreign equivalents etc.). INTA notes that most of the LROs failed due to objector failing to satisfy the standard of proof in circumstances where there was no actual use of the objected to string at the time of the objection,</p>

			<p>or information provided on proposed use was insufficient to allow for the standard to be met (albeit that there would be no guarantee about how the TLD would actually be used once delegated).</p> <p>INTA suggests amending the standard of proof to: whether the potential use of the applied-for gTLD by the applicant takes (or will once used) unfair advantage of the distinctive character or the reputation of the objector's mark; or creates (or will once used) actual confusion with the objector's mark or a high likelihood of such confusion.</p> <p>INTA also recommends that additional factors be developed that would guide applicants and LRO panels on concepts of bad faith including, but not limited to the history of the applicant and the individuals behind the applicant, and whether underlying trademark rights acquired by the applicant were filed solely with respect to supporting the business of the application.</p>
2.8.1: Objections (WT3)	Question	2.8.1.e.19: A Work Track member submitted a strawman redline edit of AGB section 3.2.2.2. What is your view of these proposed edits and why?	INTA notes that the suggested changes are a useful starting point for discussion. They go a long way to addressing concerns that the legal rights relevant to the operation of the LROs be more clearly defined.
2.8.2: Accountability Mechanisms (WT3)	Preliminary Recommendation	2.8.2.c.1: ICANN should create a new substantive appeal mechanism specific to the New gTLD Program. Such an appeals process will not only look into whether ICANN violated the Bylaws by making (or not making) a certain decision, but will also evaluate whether the original action or action was done in accordance with the Applicant Guidebook.	INTA supports this recommendation. The decision not to allow appeals in the previous round resulted in extensive use of time consuming, complex and costly accountability mechanisms such as the request for reconsideration and the independent review process (IRP). Since these processes review only whether the standards set out in the Bylaws have been applied, and not whether a decision is wrong on the merits they risked leaving an applicant without effective recourse for decisions which are wrong on their merits.

2.8.2: Accountability Mechanisms (WT3)	Preliminary Recommendation	2.8.2.c.2: The process must be transparent and ensure that panelists, evaluators, and independent objectors are free from conflicts of interest.	INTA supports. See 2.8.1.c.1
2.8.2: Accountability Mechanisms (WT3)	Preliminary Recommendation	2.8.2.c.3: post-delegation dispute resolution procedures: The parties to a proceeding should be given the opportunity to agree upon a single panelist or a three-person panel - bearing the costs accordingly.	INTA agrees with this recommendation. This is consistent with the options in relation to UDRP and ccDRP mechanisms.
2.8.2: Accountability Mechanisms (WT3)	Preliminary Recommendation	2.8.2.c.4: post-delegation dispute resolution procedures: Clearer, more detailed, and better-defined guidance on scope and adjudication process of proceedings and the role of all parties must be available to participants and panelists prior to the initiation of any post-delegation dispute resolution procedures.	INTA supports.
2.8.2: Accountability Mechanisms (WT3)	Question	2.8.2.e.1: Limited Appeals Process: What are the types of actions or inactions that should be subject to this new limited appeals process? Should it include both substantive and procedural appeals? Should all decisions made by ICANN, evaluators, dispute panels, etc. be subject to such an Appeals process. Please explain.	This should apply to decisions of the ICANN Board or Staff, and to decisions of evaluators and DRP panelists appointed to act on ICANN's behalf. Principles of natural justice require that a party who is disadvantaged by an incorrect decision should have recourse to an avenue of appeal. Being forced to rely on the ICANN Accountability mechanisms leaves applicants without such recourse. While there is, of course, a risk of applications being tied-up by pending third party appeals, this does not outweigh the right to justice.
2.8.2: Accountability Mechanisms (WT3)	Question	2.8.2.e.2: Limited Appeals Process: Who should have standing to file an appeal? Does this depend on the particular action or inaction?	Directly impacted parties should have a right to file an appeal. In some contexts, this may include an applicant not directly a party to the original decision (for example because they are in a contention set).
2.8.2: Accountability Mechanisms (WT3)	Question	2.8.2.e.3: Limited Appeals Process: What measures can be employed to ensure that frivolous appeals are not filed? What would be considered a frivolous appeal?	Incorporation of a summary judgment process could stem frivolous suits.
2.8.2: Accountability Mechanisms (WT3)	Question	2.8.2.e.4: Limited Appeals Process: If there is an appeals process, how can we ensure that we do not have a system which allows multiple appeals?	Within judicial systems there is a court of final appeal. A comparable approach could be taken - for example by designating that there is only one round of appeal on any decision. This of course requires the independence of any such appeal process.
2.8.2: Accountability	Question	2.8.2.e.5: Limited Appeals Process: Who should bear the costs of an appeal? Should it be a "loser-pays" model?	A loser pays option could be studied. Advantages and

Mechanisms (WT3)			disadvantages of loser pays should be evaluated.
2.8.2: Accountability Mechanisms (WT3)	Question	2.8.2.e.6: Limited Appeals Process: What are the possible remedies for a successful appellant?	The possible remedies must surely depend on the circumstances of the appeal. If, for example, the appeal is against a decision on evaluation which rejected an application, then an appropriate remedy would be the reinstatement of the application. If the appeal was against a decision that two applications are confusingly similar (therefore placing them in contention) then the appropriate remedy would be to take the applications out of contention.
2.8.2: Accountability Mechanisms (WT3)	Question	2.8.2.e.7: Limited Appeals Process: Who would be the arbiter of such an appeal?	It is essential that appeals be independent, particularly if imposing a single round of appeal on any decision. It would be appropriate therefore that these be handled by a third-party dispute resolution provider, in the same way that IRPs are, but provided that the same party making the original decision is not also deciding the appeal.
2.8.2: Accountability Mechanisms (WT3)	Question	2.8.2.e.8: Limited Appeals Process: In utilizing a limited appeal process, what should be the impact, if any, on an applicant's ability to pursue any accountability mechanisms made available in the ICANN Bylaws?	These processes are independent. The accountability mechanisms deal with whether actions have been taken in breach of the Bylaws. While having pursued an appeal should not remove an applicant's recourse to the accountability mechanisms, it seems likely that an unsuccessful appeal would substantially reduce the likelihood of successfully pursuing these other mechanisms.
2.10.1: Base Registry Agreement (WT2)	Question	The Public Interest Commitment (PIC) Standing Panel Evaluation Report dated March 17, 2017 in the case of Adobe Systems Incorporated et al. v. Top Level Spectrum, Inc., d/b/a/ Fegistry, LLC et al., states the following: Second, the Panel notes that PIC (3)(a) of Specification 11 imposes no obligation on Respondent as the Registry Operator itself to avoid fraudulent and deceptive practices. Third, the Panel finds that Respondent's Registry Operator Agreement contains no covenant by the Respondent to not engage in fraudulent and deceptive practices. 2.10.1.e.2: Should this Work Track recommend that ICANN include a covenant in the RA that the registry	We note the conclusion of the panel in the FEEDBACK PICDRP that "Respondent's Registry Operator Agreement contains no covenant by the Respondent to not engage in fraudulent and deceptive practices". This brings ICANN and the new gTLD Program into disrepute and a suitable amendment to the contract must be adopted. Our preferred option would be that this should be addressed by means of an additional PIC, since that could be enforced by ICANN Compliance itself, but would also give recourse to an aggrieved third party via the PICDRP.

		operator not engage in fraudulent and deceptive practices? Please explain.	ICANN Legal should address this as a matter of the utmost importance, both for any future TLD releases but also for the existing RA.
2.12.3: Contractual Compliance (WT2)	Preliminary Recommendation	2.12.3.c.1: The Work Track believes that the foundational elements of the Contractual Compliance program put into place by ICANN as well as the relevant provisions in the base Registry Agreement have satisfied the requirements set forth in Recommendation 17. That said, members of the Work Track believe that ICANN's Contractual Compliance department should publish more detailed data on the activities of the department and the nature of the complaints handled.	INTA supports this recommendation. We note that steps are being taken by the Contractual Compliance team to provide more detailed information; these are positive developments, but more can still be done. INTA, and its members, have long called for greater transparency from Contractual Compliance – both the need for more granular and meaningful data on the activities of the department and the nature of the complaints dealt with; and better communication with complainants about the steps taken in response to complaints reported to the department.
2.12.3: Contractual Compliance (WT2)	Question	2.12.3.e.1: The Work Track noted that with the exception of a generic representation and warranty in Section 1.3(a)(i) of the Registry Agreement, Specification 12 (for Communities) and voluntary Public Interest Commitments in Specification 11 of the Registry Agreement (if any), there were no mechanisms in place to specifically include other application statements made by Registry Operators in their applications for the TLDs. Should other statements, such as representations and/or commitments, made by applicants be included in the Registry Operator's Agreements? If so, please explain why you think these statements should be included? Would adherence to such statements be enforced by ICANN Contractual Compliance?	INTA considers that Registries should be held to the commitments made in their applications, particularly if those commitments had the effect of influencing a third party's decision on whether to file an objection (for example by causing them to believe that the operation of the TLD would not infringe their rights, or that they had little or no prospect of bringing a successful challenge), or impacted the decision of the panel on any objection brought. If incorporating an entire application into the registry agreement is considered likely to unduly constrain registry innovation or other legitimate amendment considerations, the following potential options could be considered:  (i) incorporating into the agreement any commitments made in application which relate to the manner of use of the TLD, or any safeguards proposed to respect third party rights, and limit any bad faith departure from such commitments; or  (ii) Require applicants to identify in their application the commitments that they intend to

			<p>carry through into their contract. Where an applicant does not intend to be contractually bound, then objection panels should not give weight to the commitment when reaching their decisions. This will allow third parties to make an informed decision about making any potential objection.</p>
<p>2.12.3: Contractual Compliance (WT2)</p>	<p>Question</p>	<p>2.12.3.e.2: A concern was raised in the CC2 comment from INTA about operational practices, specifically, “arbitrary and abusive pricing for premium domains targeting trademarks; use of reserved names to circumvent Sunrise; and operating launch programs that differed materially from what was approved by ICANN.” What evidence is there to support this assertion? If this was happening, what are some proposed mechanisms for addressing these issues? How will the proposed mechanisms effectively address these issues?</p>	<p>In 2017 INTA commissioned an impact study on the cost of new gTLDs to brand owners, conducted by Neilson and organized in part at the request of ICANN’s Competition, Consumer Trust and Consumer Choice (CCT) Review Team, to whom the study has been submitted.</p> <p>In this impact study (hereby incorporated into our response) INTA’s brand owner members referred in particular to experiences of:</p> <p>(1) Premium Pricing – see in particular slides 14, 48, 49;</p> <p>(2) Discriminatory and Unfair Pricing Practices – see in particular slides 50, 58.</p> <p>Other examples of unacceptable registry practices have been submitted by members of the RPMs PDP working group. The submission should be considered in full, and some of the issues highlighted can be summarized as:</p> <p>Registry Tactics:</p> <p>(1).xyz “cramming” domain names into registrant’s accounts without authorization;</p> <p>(2) .feedback conflicting stated use of domain names; (3) misuse of brand and brand infringement;</p> <p>(4) registries not complying with their own registration requirements (e.g.film);</p> <p>(5)Reservation of domain names that match famous brands at the second level.</p> <p>Pricing issues:</p> <p>(1) premium pricing for domain names that match famous brands at the second level. For example .top increasing the sunrise fee for Facebook.top</p>



			<p>because Facebook is a famous trademark; .love, .yoga, .voting, .site, .rent;  (2) The so-called “Brand Protection Tier” of Famous Four Media.</p> <p>Failing to run a proper sunrise: e.g. .ovh  Releasing previously ICANN-required reserved terms without notifying registrars: e.g. .ooo</p> <p>INTA has been raising concerns about pricing and other practices which appear calculated to circumvent the RPMs, and for which little or no action appears to be taken by ICANN Compliance, since 2015. We refer, by way of additional example, to the letter from Lori S. Schulman of INTA to Allen Grogan of 22 June 2015, which appears not to have been published (a copy of which is attached and hereby incorporated).</p> <p>It is extremely disappointing to us that having been in contact with ICANN Compliance since at least 2015, RPM working group members having submitted examples of bad practices to that PDP effort in 2016, and INTA having submitted the impact study findings to the CCT-RT in 2017 none of this information appears to have been considered by the working group prior to its Initial Report.</p> <p>1.  <a href="https://community.icann.org/display/CCT/Studies%2C+Research%2C+and+Background+Materials?preview=/56135378/64949779/INTA%20Cost%20Impact%20Report%20revised%204-13-17%20v2.1.pdf">https://community.icann.org/display/CCT/Studies%2C+Research%2C+and+Background+Materials?preview=/56135378/64949779/INTA%20Cost%20Impact%20Report%20revised%204-13-17%20v2.1.pdf</a> and  <a href="https://community.icann.org/display/CCT/Studies%2C+Research%2C+and+Background+Materials?preview=/56135378/69277015/ICANN%20New%20gTLD%20Survey%20Update%2010May%20Final%20Corrected%208-11-17.pdf">https://community.icann.org/display/CCT/Studies%2C+Research%2C+and+Background+Materials?preview=/56135378/69277015/ICANN%20New%20gTLD%20Survey%20Update%2010May%20Final%20Corrected%208-11-17.pdf</a></p> <p>2.  <a href="https://community.icann.org/displ">https://community.icann.org/displ</a></p>
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June 22, 2015

Mr. Allen Grogan  
Chief Compliance Officer  
Internet Corporation for Assigned Names and Numbers  
12025 Waterfront Drive  
Los Angeles, CA 90094

**RE: Registry Operator Abuses Targeting Trademark Owners**

Dear Mr. Grogan:

Thank you for meeting with members of the International Trademark Association (INTA)<sup>1</sup> who have spoken with you and the ICANN Board about their concerns about ongoing practices by new gTLD registry operators that appear to contravene the letter and spirit of the new gTLD program policies and agreements. Per your suggestion and that of ICANN Board members, we are writing to provide you with the specific evidence you requested substantiating these concerns. As discussed below, these registry practices appear to be in violation of the carefully crafted and negotiated Rights Protection Mechanisms (RPMs) outlined in the new gTLD Applicant Guidebook (AGB), the Trademark Clearinghouse Rights Protection Mechanism Requirements (Final RPM Requirements), and the new gTLD Registry Agreement (RA). In particular, INTA members are concerned with a number of marketing practices, including various pre-registration programs that improperly allocate domain names prior to sunrise periods, or circumvent trademark claims notice requirements, unjustifiable sunrise fees that are calculated to render sunrise protection meaningless, extortionate “premium” name pricing targeting well known trademarks,<sup>2</sup> reserved registry “premium”

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<sup>1</sup> INTA is a global association of trademark owners and professionals dedicated to supporting trademarks and related intellectual property in order to protect consumers and to promote fair and effective commerce. INTA members are more than 6,400 organizations from over 190 countries. INTA member organizations represent some 30,000 trademark professionals and include brand owners from major corporations as well as small-and-medium-sized enterprises, law firms and nonprofit organizations.

<sup>2</sup> A trademark is generally defined as any recognizable sign, design, symbol, or expression which identifies products or services of a particular source and distinguishes them from those of other sources. See, e.g., United States Patent & Trademark Office, “Trademark, Patent, or Copyright?,” <http://www.uspto.gov/trademarks-getting-started/trademark-basics/trademark-patent-or-copyright> (last visited Apr. 28, 2015). A symbol or sign can only be considered a trademark if it is distinctive. Thus, “trademarks” are generally categorized in terms of distinctiveness as being either “fanciful,” arbitrary,” “suggestive,” “descriptive,” or “generic.” Devices that are the generic term for a good or service (e.g. escalator, cellophane) or merely descriptive of the goods or services themselves (e.g. bed & breakfast, registry of medical pathologists) cannot function as a trademark. On the other end of the scale, fanciful marks are considered inherently distinctive, as they are comprised of words created solely to serve as a source-identifier (e.g. EXXON, KODAK).



names that include coined (i.e. fanciful) or arbitrary trademarks, affiliated registry entities that improperly monetize domain names corresponding to world famous trademarks, practices that circumvent trademark claims notice requirements, and registry promotional practices confusing consumers and encouraging cybersquatting.

ICANN's stated purpose in introducing new gTLDs was to promote competition, consumer choice, and innovation.<sup>3</sup> As explained to the public, "one of the reasons ICANN is opening the top-level space is to allow for competition and innovation in the marketplace. ICANN recognizes that business models may evolve as the market matures. ICANN will only hold TLD operators responsible for complying with the terms of the registry agreement." The practices outlined below are anti-competitive, harmful to consumers and clearly run contrary to the pro-competitive, consumer-focused rationale for ICANN's new gTLD program. Further, they are contrary to the RPM policies ICANN developed specifically to protect trademark owners from cybersquatting, fraud and abuse. The practices, in some instances, could well violate the commitments registries made in their applications and in their registry agreements with ICANN.

Please note that we have attempted to include several illustrative examples from more than one trademark owner showing each type of abusive practice. Although the list is illustrative, the abuses are targeting a much larger number of brands around the world. INTA continues to compile additional examples and evidence of the practices outlined below. In the meantime, INTA would like to convene a dialog to assist the Compliance Office, the New gTLD Program Committee, the Board, and the Global Domains Division to discuss these issues. INTA would be happy to provide additional details about its experiences with the practices described below during these discussions.

### **Registry Abusive Practices.**

#### ***Pre-Registration Programs and Allocation of Domain Names Prior To Trademark Sunrise.***

Registry operators continue to circumvent trademark sunrise protection through deceptive and misleading "pre-registration offers" made by their ICANN-accredited registrar partners prior to the conclusion of the sunrise periods. Such programs and offers often incorporate domain names corresponding to fanciful and/or world famous trademarks already registered in the Trademark Clearinghouse. For example, pre-registration for the fanciful trademark VERIZON has been offered in the .RICH, .LUXURY, and .CLUB gTLDs for \$2,974.99 USD, \$500.00 USD and \$355.00 USD respectively. In addition, certain registry operators, including Luxury Partners in operating its .LUXURY gTLD, further bifurcate their pre-registration periods on a priority basis, charging brand owners extortionate inflated amounts during artificially devised "pre-registration" and "priority pre-registration" phases.

As you are aware, the sunrise period is a minimum mandatory rights protection mechanism, which allows eligible rights holders an early opportunity to register names matching their trademarks in a new TLD prior

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"Arbitrary" marks are those that utilize a common word but in connection with goods or services with no relation to the word itself (e.g. APPLE for computers, LOTUS for automobiles). Suggestive marks suggest a quality or characteristic of the goods or services but require some additional imagination by the consumer to make the connection and as such are not merely descriptive (e.g. SNO-RAKE for snow-removal hand tools, TINT TONE for hair coloring).

<sup>3</sup> See <http://newgtlds.icann.org/en/applicants/customer-service/faqs/faqs-en>.

to domains becoming “generally ... available to all registrants that are qualified to register domain names within the TLD.”<sup>4</sup> With only a few very minor exceptions, “registry operator[s] MUST NOT allow a domain name to be allocated or registered in the TLD to a registrant that is not a sunrise-eligible rights holder ... prior to the allocation or registration of all sunrise registrations.”<sup>5</sup>

Irrespective of whether allocation during these pre-registration programs is being expressly conditioned upon sunrise claims, or whether sunrise claims are ultimately made, any pre-selection, pre-registration or pre-designation to third parties prior to the end of the sunrise period constitutes an improper allocation. It is clear that consumers and brand owners are being targeted by these schemes, which seek to exploit the general confusion around new gTLD introduction and create a false demand for new gTLDs that should be subject to clear sunrise periods. Consolidated and illustrative evidence capturing such pre-registration programs and offers is presented in Exhibit A.

### ***Pricing Targeting Famous Trademarks During Sunrise Periods.***

Several registry operators continue to charge excessive and unjustifiable sunrise registration fees. INTA members have been presented with sunrise registration fees so excessive and out of proportion in comparison to base registration costs, as to simultaneously and *intentionally* render sunrise protection both impractical and meaningless. Indeed, no brand owner interested in a single defensive sunrise registration should be forced to pay as high as \$25,000 USD.

The issues surrounding Vox Populi and .sucks have dominated the discussion in recent months. However, it is important to note that many other ICANN registries are engaged in equally harmful marketing practices. Indeed, other registries have announced similar approaches, charging significantly higher fees during sunrise than during general availability. For instance, both .TIROL and .WIEN, where the cost of a single domain name registration during general availability is €29,00, while the cost of a single domain name registration matching an entry in the Trademark Clearinghouse during the Sunrise Registration period is € 1392,00. The intention of the Trademark Clearinghouse was to create a repository that enables trademark rights holders the ability to prevent or take corrective action against potentially infringing domain name registrations. It was not intended to serve as a premium product list for registries.

In addition, some registries participating in “exclusive registration periods” pursuant to the Name Collision Occurrence Assessment addendum<sup>6</sup> have taken a similar approach, charging significantly higher fees during the period than they did even during the registry’s normal sunrise period, and charging significantly higher fees to register names being released from the name collision SLD block list that match well-known trademarks compared to non-trademarked names. For example, .TOP indicated the cost to register a single name matching a well-known trademark during its exclusive registration period would be RMB 180,000 (approximately USD \$30,000).<sup>7</sup>

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<sup>4</sup> See Final RPM Requirements §2 (September 30, 2013); see also AGB Module 5 §5.4.1 and Trademark Clearinghouse (June 4, 2012).

<sup>5</sup> See [Final RPM Requirements](#) §2.2.4 (September 30, 2013).

<sup>6</sup> See ICANN, [Name Collision Occurrence Assessment Addendum](#) (November 14, 2014).

<sup>7</sup> See Domain Incite, [New gTLD extortion? Registry asks Facebook for \\$35,000 to register its brand](#) (January 16, 2015). An executive for .TOP has since indicated that the alleged fee was a typographical error, and that the actual fee is equivalent to its normal sunrise fee of RMB 18,000 (approximately USD \$3,000). See Domain Incite, [top says](#)

While INTA understands that ICANN does not actively regulate domain name pricing per se, the activities described above and elaborated in Exhibit B, demonstrate that this kind of behavior is bad faith and deceptive conduct, exploits the larger ICANN community and vitiates the remedies afforded under sunrise protection. Illustrative evidence capturing such bad faith intent is presented in Exhibit B.

***Pricing Targeting Famous Trademarks As Part of Premium Names Programs.***

Several registry operators continue to circumvent trademark sunrise protection through so-called “premium” names programs, self-selected by registries and registrars and incorporating well-known trademarks, including arbitrary and fanciful marks (see footnote 2, above, for a discussion regarding trademark categorization). Premium names lists created as part an approved or qualified launch program, continue to wholly remove trademark names from sunrise registration periods. However, approved or qualified launch programs are not supposed to “contribute to consumer confusion or the infringement of intellectual property rights.” [Final RPM Requirements](#) §4.5.2 (September 30, 2013).

It is evident that certain registry operators have formulated their premium names lists in bad faith by targeting high-value trademarks, while claiming the potential for legitimate third party use. Again, while INTA understands that ICANN does not actively regulate domain name pricing, excessive pricing for such premium names runs contrary to the RPMs, including the sunrise periods, which were created to protect, rather than to exploit, brand owners. Moreover, there are simply no legitimate or good faith reasons for any registry operator to include coined or fanciful trademarks on their premium name lists. For example, the world famous BARBIE trademark was wrongly set aside as a premium name in the .GLOBAL new gTLD by the registry operator. Illustrative evidence capturing extortionate premium name programs is presented in Exhibit C.

***Coined (Fanciful) And Arbitrary Trademarks Reserved And Unavailable During Trademark Sunrise.***

Numerous INTA members have reported that their trademarks are being withheld from registration by new gTLD registry operators and placed on “reserved lists” and therefore are unavailable for registration during sunrise registration. The same trademarks are recorded in the Trademark Clearinghouse, qualify for all pertinent TLD eligibility criteria, and are not generally on any name collision block list.

Again, there are no legitimate or good faith reasons for any registry operator to withhold these trademark names from registration as a registry “reserved” name other than the opportunity to extort additional money from the trademark owner.<sup>8</sup> Illustrative evidence capturing this type of trademark sunrise circumvention is presented in Exhibit D.

***Bulk Premium Name Allocation to Affiliated Monetization Platforms.***

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[Facebook shakedown was just a typo](#) (January 16, 2015). This fee is still extraordinarily high compared to average sunrise registration prices, and brand owners remain skeptical of .TOP’s claim that the alleged \$30,000 fee was a miscommunication.

<sup>8</sup> One limited exception might be in the event an arbitrary trademark is reserved because the mark is also a common dictionary word when not used specifically in connection with the goods or services sold under the trademark.

Registry operators continue to cherry pick and reserve premium domain names confusingly similar to well-known trademarks, and then monetize these domain names using affiliated monetization platforms, thereby exploiting the famous trademarks for their own financial benefit. In other words, some registry operators are ostensibly reserving, withholding from sunrise, and monetizing domain names for themselves that are confusingly similar to famous trademarks. For example, Uniregistry received attention from industry press for reserving tens of thousands of domain names, a number of which correspond to famous brand names, in new gTLDs including .LINK, .TATTOO, .SEXY, .PICS, .PHOTO and .GIFT only to shift them over to an affiliated company and monetize them through another affiliated pay-per-click parking company. Illustrative evidence capturing this type of trademark sunrise circumvention is presented in Exhibit E.

### ***Circumventing Trademark Claims Notice Requirements.***

Some registrars are providing “early notice” of pending trademark claims in connection with domain pre-registrations that do not adhere to several basic Trademark Claims service requirements. These pre-registrations later mature into actual registrations without the registrar providing proper trademark claims notice at the time of registration, thereby altogether circumventing Trademark Claims requirements.

Under the Registry Agreement, all registry operators must “implement and adhere to the rights protection mechanisms (“RPMs”) specified in [Specification 7],” including “the mandatory RPMs set forth in the Trademark Clearinghouse.”<sup>9</sup> Registry operators “must provide the Claims Services for at least the first ninety (90) calendar days of General Registration...”<sup>10</sup> And under their agreements with registry operators, registrars must:

[C]learly and conspicuously display the Claims Notice, containing the Claims Notice Information, to the potential domain name registrant and inquire as to whether the potential domain name registrant wishes to continue with the registration. The Claims Notice MUST be provided by the registrar at the time of potential registration in real time, without cost to the prospective domain name registrant, and MUST be in the form specified in the Claims Notice Form. The Claims Notice MUST require an affirmative confirmation by the potential domain name registrant to continue with the registration i.e., acceptance box MUST NOT be pre---checked).<sup>11</sup>

However, some registrars allowing pre-registration of a domain are providing improper “early notices” of trademark claims at the time of pre-registration, which do not conform to the Claims Notice requirements set forth in the Final RPM Requirements. Worse yet, these registrars are not providing proper Claims Notice if and when the pre-registration matures into an actual registration. First, these pre-registration notices do not conform to the proper wording for Claims Notices as presented in Exhibit A to the Final RPM Requirements. They also do not require affirmative confirmation by the potential registrant to continue with the registration; rather, these notices explicitly allow the pre-registrant not to respond to the claim notice, and allow the registrar to proceed to register the name later, if it is still available, creating an improper opt-out regime. Finally, by nature, these pre-registration notices are not provided at the time of actual registration, nor are they provided during the first ninety days of General Registration of the TLD.

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<sup>9</sup> New gTLD Registry Agreement, Specification 7(1) (Jan. 9, 2014).

<sup>10</sup> See [Final RPM Requirements](#) §3.2.1 (September 30, 2013).

<sup>11</sup> See [Final RPM Requirements](#) §3.3.1.2 (September 30, 2013).



As a result, this practice circumvents nearly all of the basic requirements of Trademark Claims service. Illustrative evidence capturing this type of trademark claims circumvention is presented in Exhibit F.

***Promotional Practices Confusing Consumers and Encouraging Cybersquatting.***

Some new gTLD registries are engaging in aggressive, often misleading or deceptive advertising or promotional practices engendering consumer confusion and encouraging cybersquatting.

For example, in connection with its planned release of previously-blocked name collision domains, .XYZ issued a press release touting the availability of “short, marketable keyword domain names including rare three letter and three number .xyz domains, as well as trademarked names such as NIKE, HULU, NETFLIX, SKYPE, PEPSI, AUDI, and DELOITTE.”<sup>12</sup> Thus, unsurprisingly, .XYZ is currently among the new gTLDs with the most UDRP and URS claims resulting in transfers or suspensions of infringing domains.<sup>13</sup>

Illustrative evidence capturing this kind of activity harmful to consumers and brand owners is presented in Exhibit G.

***Recommendations.***

Certainly, none of these practices comports with the intention of the ICANN new gTLD program in expanding the availability of new gTLDs to promote competition, choice, and trust for the benefit of consumers and the Internet community. These marketing practices are anticompetitive and harm consumers and ICANN as a whole. INTA continues to compile additional examples and evidence of the practices outlined below, as additional new gTLDs go live in the DNS. In the meantime, INTA urges the ICANN New gTLD Program Committee and the Board, along with the ICANN Contractual Compliance Department and the Global Domains Division, to engage in dialogue with intellectual property rights holders and the entire ICANN community on these issues so that reasonable remedies may be developed. INTA would be happy to provide additional details about its experiences with the practices described above during these discussions.

INTA trusts that ICANN will take these recommended steps as a matter of urgency to uphold the letter and spirit of the carefully crafted and negotiated RPMs.

Sincerely,



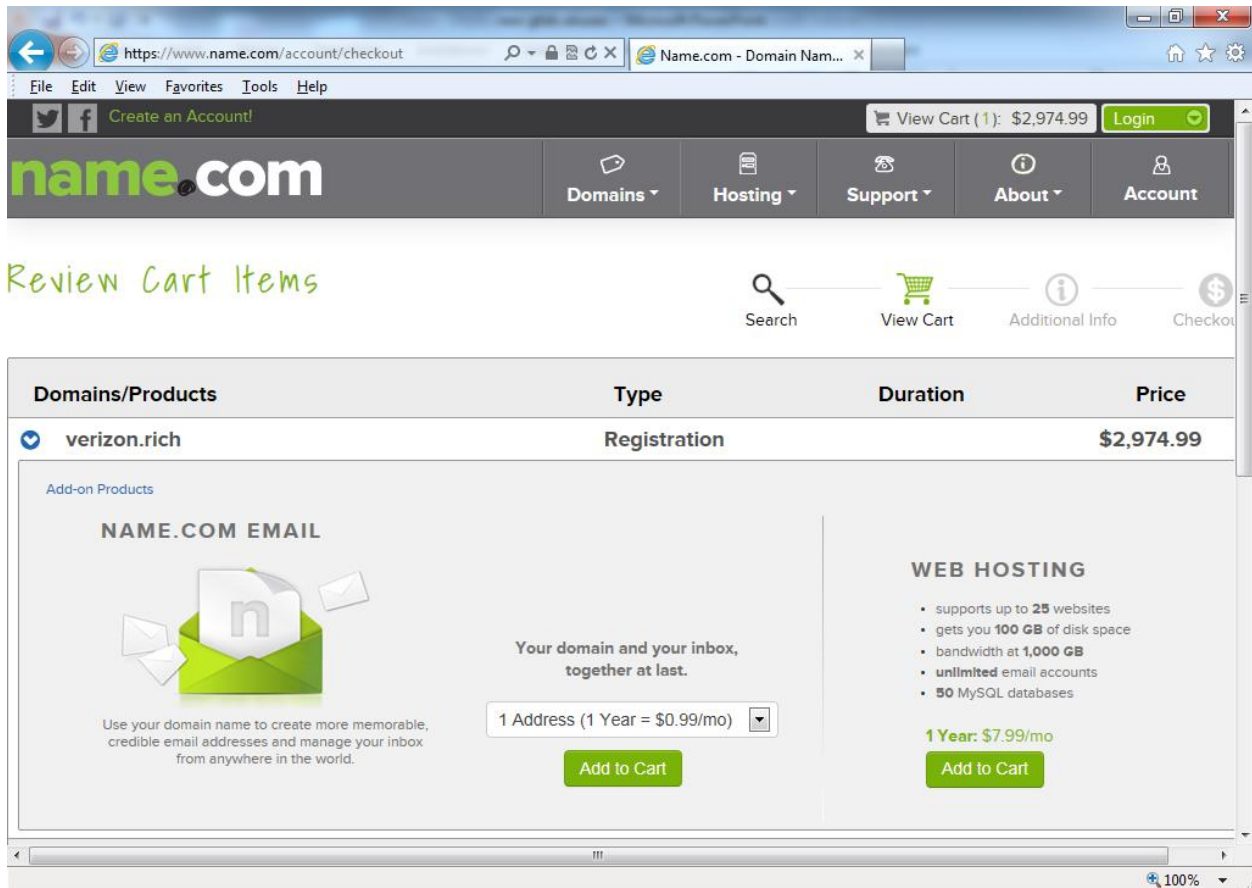
Lori S. Schulman  
Senior Director, Internet Policy

---

<sup>12</sup> See Hawaii News Now (via ReleaseWire), [Over 18,000 .xyz Domain Names Released to the Public](#) (December 3, 2014).

<sup>13</sup> See, e.g., The Domains, [Guess I Was Wrong There Is A Lot Of Cybersquatting Going On In The New gTLD's: 15X As Much?](#) (December 15, 2014). See additional evidence in Exhibit G, below.

# EXHIBIT A




Review Cart Items

Domains/Products	Type	Duration	Price
<input checked="" type="checkbox"/> verizon.rich	Registration		\$2,974.99

Add-on Products

### NAME.COM EMAIL



Your domain and your inbox, together at last.

1 Address (1 Year = \$0.99/mo)

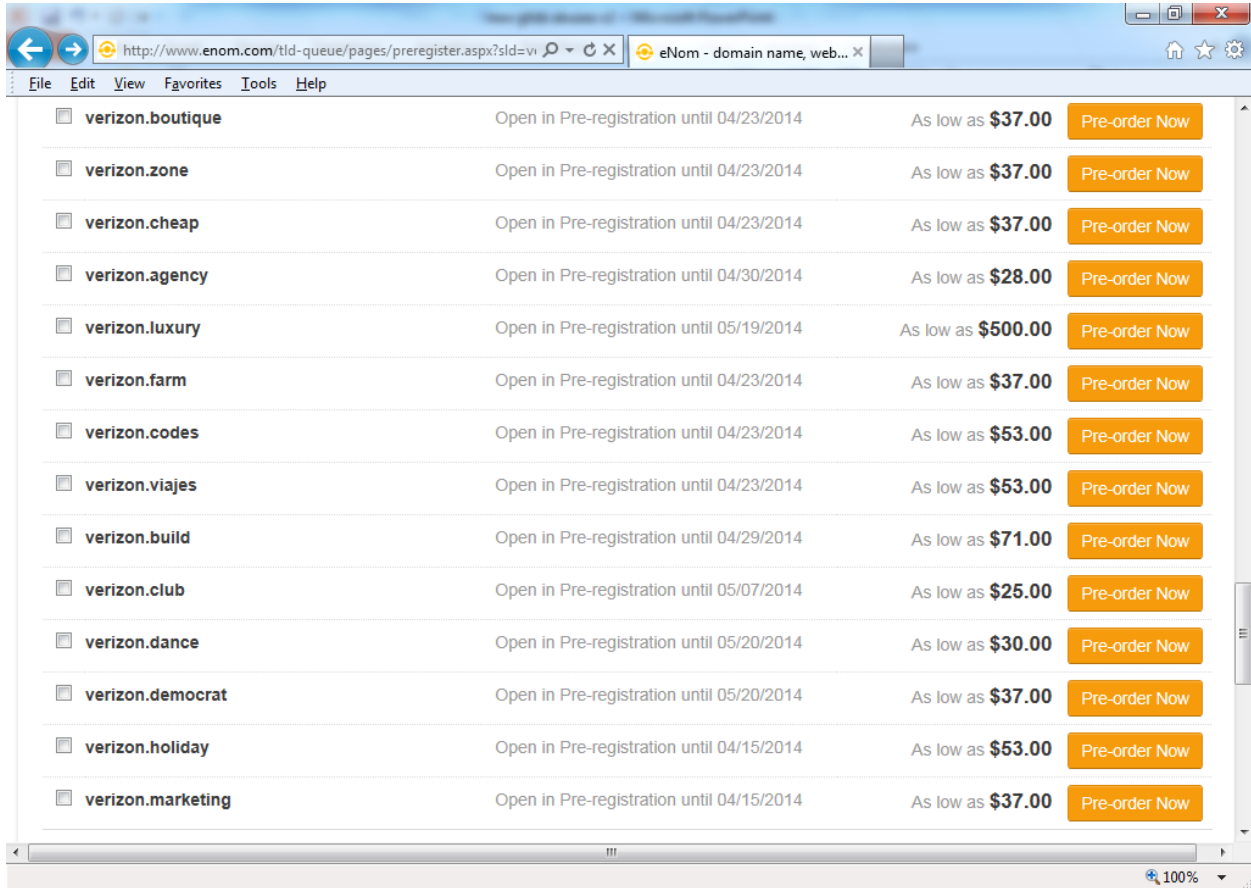
[Add to Cart](#)

### WEB HOSTING

- supports up to **25** websites
- gets you **100 GB** of disk space
- bandwidth at **1,000 GB**
- **unlimited** email accounts
- **50** MySQL databases

**1 Year: \$7.99/mo**

[Add to Cart](#)



The screenshot shows a web browser window with the address bar displaying <http://www.enom.com/tld-queue/pages/preregister.aspx?sld=vi>. The browser's menu bar includes File, Edit, View, Favorites, Tools, and Help. The main content area displays a table of domain names available for pre-order, each with a checkbox, a registration status, a price, and a 'Pre-order Now' button.

Domain Name	Registration Status	Price	Action
<input type="checkbox"/> verizon.boutique	Open in Pre-registration until 04/23/2014	As low as \$37.00	Pre-order Now
<input type="checkbox"/> verizon.zone	Open in Pre-registration until 04/23/2014	As low as \$37.00	Pre-order Now
<input type="checkbox"/> verizon.cheap	Open in Pre-registration until 04/23/2014	As low as \$37.00	Pre-order Now
<input type="checkbox"/> verizon.agency	Open in Pre-registration until 04/30/2014	As low as \$28.00	Pre-order Now
<input type="checkbox"/> verizon.luxury	Open in Pre-registration until 05/19/2014	As low as \$500.00	Pre-order Now
<input type="checkbox"/> verizon.farm	Open in Pre-registration until 04/23/2014	As low as \$37.00	Pre-order Now
<input type="checkbox"/> verizon.codes	Open in Pre-registration until 04/23/2014	As low as \$53.00	Pre-order Now
<input type="checkbox"/> verizon.viajes	Open in Pre-registration until 04/23/2014	As low as \$53.00	Pre-order Now
<input type="checkbox"/> verizon.build	Open in Pre-registration until 04/29/2014	As low as \$71.00	Pre-order Now
<input type="checkbox"/> verizon.club	Open in Pre-registration until 05/07/2014	As low as \$25.00	Pre-order Now
<input type="checkbox"/> verizon.dance	Open in Pre-registration until 05/20/2014	As low as \$30.00	Pre-order Now
<input type="checkbox"/> verizon.democrat	Open in Pre-registration until 05/20/2014	As low as \$37.00	Pre-order Now
<input type="checkbox"/> verizon.holiday	Open in Pre-registration until 04/15/2014	As low as \$53.00	Pre-order Now
<input type="checkbox"/> verizon.marketing	Open in Pre-registration until 04/15/2014	As low as \$37.00	Pre-order Now

The screenshot shows a web browser window with the URL <https://www.melbourneit.com.au/cc/order>. The browser's address bar shows the site is identified by a browser. The page header includes a navigation menu with links for [24/7 Customer Support 1300 554 861](#), [MY ACCOUNT](#), and [CART](#), along with a search box. The Melbourne IT logo and tagline "Trusted for Online Success" are displayed. A main navigation bar lists services: [DOMAIN NAMES](#), [HOSTING & SSL](#), [WEBSITE DESIGN](#), [SEO](#), [ECOMMERCE](#), [ENTERPRISE SERVICES](#), and [PARTNERS & AFFILIATES](#).

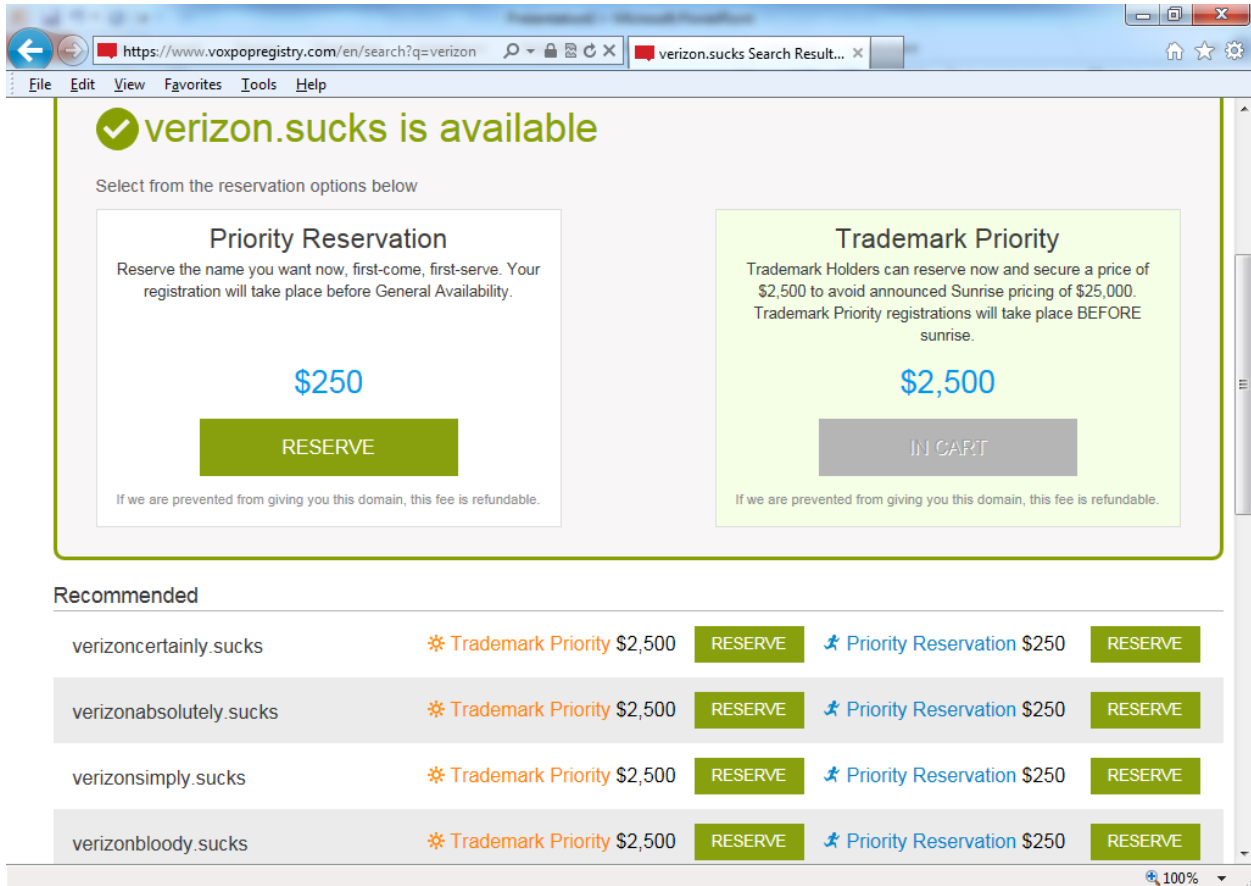
The main content area is titled "Confirm Selection" and features a progress indicator with three steps: **1 SELECTION**, 2 REQUIRED DETAILS, and 3 PAYMENT. A "Clear All" link is present. A single item is listed in the cart: "Priority Pre-Registration (.club) for verizon.club" with a "Remove" link and a price of "\$355.00".

To the right, a "Your order summary" box displays the following details:

Subtotal	\$355.00
GST	\$0.00
<b>Total</b>	<b>\$355.00</b>

Below the summary is a red "Login" button and an "OR" option.

# EXHIBIT B



The screenshot shows a web browser window with the URL <https://www.foxpopregistry.com/en/search?q=verizon>. The page title is "verizon.sucks Search Result...". The main content area displays a green checkmark and the text "verizon.sucks is available". Below this, there are two reservation options:

- Priority Reservation:** Reserve the name you want now, first-come, first-serve. Your registration will take place before General Availability. Price: \$250. Button: RESERVE.
- Trademark Priority:** Trademark Holders can reserve now and secure a price of \$2,500 to avoid announced Sunrise pricing of \$25,000. Trademark Priority registrations will take place BEFORE sunrise. Price: \$2,500. Button: IN CART.

Below the reservation options, there is a "Recommended" section with a table of domain suggestions:

Domain	Trademark Priority	Priority Reservation
verizoncertainly.sucks	✳️ Trademark Priority \$2,500	🚀 Priority Reservation \$250
verizonabsolutely.sucks	✳️ Trademark Priority \$2,500	🚀 Priority Reservation \$250
verizonsimply.sucks	✳️ Trademark Priority \$2,500	🚀 Priority Reservation \$250
verizonbloody.sucks	✳️ Trademark Priority \$2,500	🚀 Priority Reservation \$250

https://www.woxpathregistry.com/en/search?q=woxpathreg | voxpathregistry.sucks Search...

File Edit View Favorites Tools Help

**.SUCKS** Find a .Sucks FAQ Support

WWW.  .SUCKS

**✘ Sorry, voxpathregistry.sucks is already taken**

Option	Price	Status
Priority Reserve	\$250	SOLD
Trademark Priority	\$2,500	SOLD

If we are prevented from giving you this domain, this fee is refundable.

100%

WWW. momentous | .SUCKS Search

**✘ Sorry, momentous.sucks is already taken**

**Priority Reserve**  
Reserve the name you want now, first-come, first-served. Your registration will take place before General Availability.  
**\$250**  
RESERVE  
If we are prevented from giving you this domain, this fee is refundable.

**Trademark Priority**  
Trademark Holders can reserve now and secure the domain for \$2,500 to avoid announced Sunrise pricing. Trademark Priority registrations will take place before sunrise.  
**\$2,500**  
RESERVE  
If we are prevented from giving you this domain, this fee is refundable.

**Recommended**

momentoussimply.sucks	✳ Trademark Priority \$2,500	RESERVE	✳ Priority Reservation \$250	RESERVE
momentoustotally.sucks	✳ Trademark Priority \$2,500	RESERVE	✳ Priority Reservation \$250	RESERVE

100%



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- [Brand Protection](#)
  - [Domain Name Recovery](#)
  - [Domain Name Disputes](#)
  - [Watch Services](#)
  - [Strategic Domain Name Advice](#)
  - [Domain Name Audits](#)
  - [Website Take Down](#)
- [New gTLDs](#)
  - [Launch Timetable](#)
  - [General Information](#)
  - [Trademark Clearinghouse](#)
  - [Domains Protected Marks List \(DPML\)](#)
  - [Mark Validation System \(MVS\)](#)
  - [FAQ](#)
  - [New gTLD Seminar](#)
- [More Services](#)
  - [In-house Domain Training](#)
  - [Local Presence](#)
  - [TLD Regulations](#)
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  - [Director Profiles](#)
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Domain name search

[Domain Name Recovery Service](#)

## Newsletter

Sign up for our newsletter that covers domain name and trade mark issues.

Your email

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[Prefer to talk? Give us a call or request a call back](#)

## .tirol



The new domain name extension .TIROL is for the Austrian federal State of Tyrol.

If you do business within the EU, Tyrol or Austria it is essential that you secure your .TIROL domain name.

### **Nexus and Use Requirement**

The requirement applies to all the periods listed below and provides that any natural person, legal person, organisation or association intending to show an economic, cultural, tourist, historical, social or other affinity with the Austrian federal State of Tyrol can register a domain name.

No verification procedure will be carried out at the time of Registration to verify whether the Applicant has the required interests in or relation to Tyrol, but fulfillment of the nexus conditions can be reviewed by initiating alternative dispute resolution.

### **TMCH Sunrise Period 25 November 2014 – 4 March 2015**

Allocation will occur at the end of the Sunrise Period. If more than one application is received for a domain name it will be resolved via auction.

### **Fees**

Application fee (including a 1 year registration) = **£1200**

Payment can also be made in US\$ (\$2040), Euros (€1392) and South African Rands (R22800).

### **Eligibility**

SMD file issued by the Trademark Clearinghouse (TMCH) required.

If you have not verified your trademark with the TMCH we can submit it on your behalf. Read more about the TMCH and pricing [here](#).

### **Local Sunrise Period (25 November 2014 – 4 March 2015)**

In the event that an applicant does not have a validated TMCH mark, they can still secure their domain name provided they meet the Nexus and Use Requirement and can prove rights to one of the signs listed below.

11/17/2014

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The documentary proof required below will be validated by the registry.

- \* registered Austrian trademark
- \* Community trade mark
- \* international trademark extended to Austria
- \* geographical indications or designations of origin
- \* non-registered trademark with a secondary meaning
- \* the Business Name (Section 17 of the Austrian Business Code [UGB])
- \* the specific name of a business within the scope of application of Section 9 of the Austrian Federal Statute against Unfair Trade Practices [UWG]
- \* names or pseudonyms/aliases (Section 43 of the Austrian General Civil Code [ABGB])
- \* titles that are protected pursuant to Section 80 of the Austrian Copyright Act [UrhG] or Section 9 UWG.
- \*Names of monuments, churches, etc.

#### **Fees**

Application fee (including a 1 year registration) = **£1200**

Payment can also be made in US\$ (\$2040), Euros (€1392) and South African Rands (R22800).

**THE TMCH SUNRISE PERIOD WILL HAVE PRIORITY OVER THE LOCAL SUNRISE PERIOD.**

#### **Domain Format**

- A .TIROL domain name may only consist of numbers (0-9), hyphens and small letters (a- z).
- It must neither begin nor end with a hyphen.
- IDNs under .TIROL may use the characters of Latin script.

#### **Landrush 13 April 2015 – 13 May 2015**

Domain names will be sold at a premium during this period.

#### **Fees**

Application fee (including a 1 year registration) = **£190**

Payment can also be made in US\$ (\$323), Euros (€220) and South African Rands (R3610).

#### **Auction**

In the event that two or more Landrush applications for the same domain name are received, the Registry will hold a closed auction allocating the domain name to the highest bidder.

11/17/2014

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General Availability 1 June 2015 onward

Registrations are processed on a first come, first served basis.

There are no restrictions.

**Fees**

Registration price per year = **£25**

Payment can also be made in US\$ (\$43), Euros (€29) and South African Rands (R475).

Certain domain names have been classified as Premium and will be sold at higher prices. If you wish to apply for a Premium domain name please email [support@lexsynergy.com](mailto:support@lexsynergy.com) to process your application.

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- 
- [International Trademark Association](#)
- [Clearing House Agent](#)

This is Google's cache of <http://www.lexsynergy.com/wien>. It is a snapshot of the page as it appeared on Oct 1, 2014 09:09:25 GMT. The [current page](#) could have changed in the meantime. [Learn more](#)  
Tip: To quickly find your search term on this page, press **Ctrl+F** or **⌘-F** (Mac) and use the find bar.

[Text-only version](#)

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  - Watch Services
  - Strategic Domain Name Advice
  - Domain Name Audits
  - Website Take Down
- New gTLDs
  - Launch Timetable
  - General Information
  - Trademark Clearinghouse
  - Domains Protected Marks List (DPML)
  - Mark Validation System (MVS)
  - FAQ
  - New gTLD Seminar
- More Services
  - In-house Domain Training
  - Local Presence
  - TLD Regulations
- News
- Blog
- About Us
  - Giving Back
- Contact

Domain name search

[Domain Name Recovery Service](#)



11/17/2014

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In the event that an applicant does not have a validated TMCH mark, they can still secure their domain name provided they meet the Nexus and Use requirement and can prove rights to one of the signs listed below.

The documentary proof required below will be validated by the registry.

- \* registered Austrian trademark
- \* Community trade mark
- \* international trademark extended to Austria
- \* geographical indications or designations of origin
- \* non-registered trademark with a secondary meaning
- \* the Business Name (Section 17 of the Austrian Business Code [UGB])
- \* the specific name of a business within the scope of application of Section 9 of the Austrian Federal Statute against Unfair Trade Practices [UWG]
- \* names or pseudonyms/aliases (Section 43 of the Austrian General Civil Code [ABGB])
- \* titles that are protected pursuant to Section 80 of the Austrian Copyright Act [UrhG] or Section 9 UWG.
- \*Names of monuments, churches, etc.

#### **Fees**

Application fee (including a 1 year registration) = **£1200**

Payment can also be made in US\$ (\$2040), Euros (€1392) and South African Rands (R22800).

**THE TMCH SUNRISE PERIOD WILL HAVE PRIORITY OVER THE LOCAL SUNRISE PERIOD.**

#### **Landrush (2 June 2014 - 2 July 2014)**

Domain names will be sold at a premium during this period.

#### **Fees**

Application fee (including a 1 year registration) = **£190**

Payment can also be made in US\$ (\$323), Euros (€220) and South African Rands (R3610).

#### **Auction**

In the event that two or more Landrush applications for the same domain name are received, the Registry will hold a closed auction allocating the domain name to the highest bidder.

#### **General Availability Period (15 July 2014 - onwards)**

11/17/2014

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Registrations are processed on a first come, first served basis.

There are no restrictions.

### **Fees**

Registration price per year = **£25**

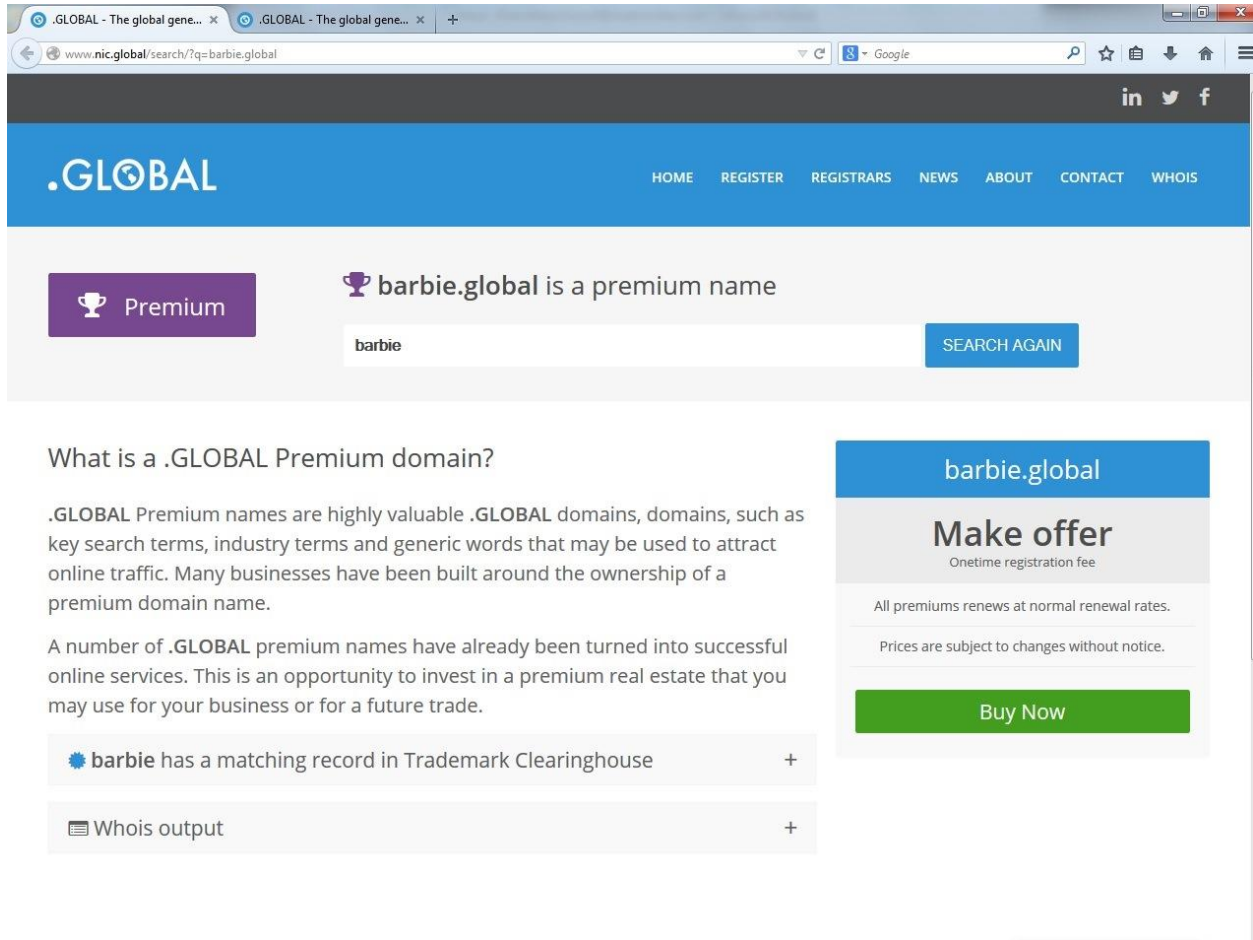
Payment can also be made in US\$ (\$43), Euros (€29) and South African Rands (R475).

Certain domain names have been classified as Premium and will be sold at higher prices. If you wish to apply for a Premium domain name please email [support@lexsynergy.com](mailto:support@lexsynergy.com) to process your application.

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# EXHIBIT C



The screenshot shows a web browser window with the URL [www.nic.global/search/?q=barbie.global](http://www.nic.global/search/?q=barbie.global). The page features a blue header with the ".GLOBAL" logo and navigation links: HOME, REGISTER, REGISTRARS, NEWS, ABOUT, CONTACT, WHOIS. A search bar contains the text "barbie" and a "SEARCH AGAIN" button. A purple "Premium" badge is visible. The main content area includes a section titled "What is a .GLOBAL Premium domain?" with explanatory text. A sidebar on the right displays "barbie.global" with a "Make offer" button and a "Buy Now" button. Below the main text, there are expandable sections for "barbie has a matching record in Trademark Clearinghouse" and "Whois output".

**.GLOBAL** HOME REGISTER REGISTRARS NEWS ABOUT CONTACT WHOIS

**Premium** **barbie.global** is a premium name

barbie **SEARCH AGAIN**

### What is a .GLOBAL Premium domain?

.GLOBAL Premium names are highly valuable .GLOBAL domains, domains, such as key search terms, industry terms and generic words that may be used to attract online traffic. Many businesses have been built around the ownership of a premium domain name.

A number of .GLOBAL premium names have already been turned into successful online services. This is an opportunity to invest in a premium real estate that you may use for your business or for a future trade.

- barbie** has a matching record in Trademark Clearinghouse +
- Whois output +

**barbie.global**

**Make offer**  
Onetime registration fee

All premiums renews at normal renewal rates.

Prices are subject to changes without notice.

**Buy Now**

## EXHIBIT D

Domain Name	Premium Registration Fee
Tweet. Party	\$3250.00
Vine.party	\$3250.00

## EXHIBIT E

Susan Kawaguchi:From: Chang Su [<mailto:overseas@nic.top>] Sent: Wednesday, December 31, 2014 2:27 AMSubject: exclusive registration day Dear registrars Thank you for participating .top domains. We are so glad to announce that 16th of Jan 2015 is being selected to be Exclusive Registration Date of .top. We will release those names but not limit to: Included on the Second-level Domain Block List provided in the registry operator's Alternate Path to Delegation Report. Recorded in the Trademark Clearinghouse. Withheld from allocation by a registry operator during its Sunrise Period or Claims Period. The price of those names will be tagged on 180000RMB(approx 30000 USD) More information, please click <https://www.icann.org/news/announcement-2-2014-11-07-en> Best Regards Chang Su

## **EXHIBIT F**

Chris Chaplow, important information inside regarding a trademark claim and your domain.

## Early notice: Pending trademark claim

Dear Chris Chaplow,

Thank you for pre-registering XXXXXXXX. Your domain matches at least one trademark record submitted to the Trademark Clearinghouse.

In the coming days, we'll send you another notice explaining how to acknowledge the trademark claim.

If you choose not to respond to the claim check, GoDaddy will send in the registration after May 06, 2014, if the domain name is still available.

### Questions? Take a look at this FAQ:

- 1. Why am I getting a claim check notification?**  
You pre-registered a domain name that is a trademarked name. A claim check is a process that protects trademark holders and notifies them of potential domain names registered with their mark.
- 2. What is a trademark?**  
A trademark is a recognizable sign, design or expression that identifies products or services of a particular source from those of others.
- 3. What happens next?**  
Approximately 48 hours before February 12, 2014, you will be asked to acknowledge the claim check in a separate email.

If you choose not to respond to the claim check, GoDaddy will send in the registration after May 06, 2014, if the domain name is still available.

If you are not awarded the domain name due to a trademark violation, we will issue you a refund, less any application fees.

## EXHIBIT G

---

nike.xyz

Lookup

*Showing results for: NIKE.XYZ*

Original Query: nike.xyz

### Contact Information

#### Registrant Contact

Name: zhou yuan hua

Organization: zhou yuan hua

Mailing Address: su zhou da xue dong xiao qu dong ba 5 0 2, su zhou su zhou shi  
BJ 215000 CN

Phone: +86.13451526148

Ext:

Fax: +86.13451526148

Fax Ext:

Email: 914485479@qq.com

hulu.xyz

Lookup

*Showing results for: HULU.XYZ*

Original Query: hulu.xyz

## Contact Information

### Registrant Contact

Name: xu xinrong

Organization:

Mailing Address: wujiang, suzhou jiangsu 215000 CN

Phone: +86.63118098

Ext:

Fax: +86.

Fax Ext:

Email: igusu@qq.com



*Showing results for: NETFLIX.XYZ*

Original Query: netflix.xyz

## Contact Information

### Registrant Contact

Name: Zeng Zhao Hui

Organization: Zeng Zhao Hui

Mailing Address: Maluan Road, Jimei District, Xiamen City, Fujian Province, Xiamen  
FJ 361022 CN

Phone: +86.05926071355

Ext:

Fax: +86.05926071355

Fax Ext:

Email: dot\_zeng@163.com

audi.xyz

Lookup

*Showing results for: AUDI.XYZ*

Original Query: audi.xyz

## Contact Information

### Registrant Contact

Name: lilijie

Organization: lilijie

Mailing Address: youailu118hao, nanningshi guangxizhuangzuzizhiqu 530000 CN

Phone: +400.1005678910

Ext:

Fax: +400.1005678910

Fax Ext:

Email:370106434@qq.com



ONLINE TOOLS

Home / Case Search

I Received a Complaint...

The Domain Name Dispute Process

Policies: Rules, Forms and Filing

Fees

Search Panelists

Searchable Case Database

Domain Name Disputes Newsroom

Download Reader Software

## Domain Name Dispute Proceedings and Decisions

To search database of cases: Enter the appropriate information in any of the fields below and click on the Search Cases button.

<input type="button" value="Search Cases"/> <input type="button" value="Clear Fields"/>	
Full Text Search	<input type="text" value=".xyz"/>
Case Number	<input type="text"/> Enter only the final 7 digits (e.g., enter "0091324", not "FA070100091234")
Case Name	<input type="text"/> Full or Partial
Domain	<input type="text"/> Enter one only, or partial
Commencement Date	<input type="text"/> MM/DD/YYYY
Decision Date	<input type="text"/> MM/DD/YYYY
Arbitrator	<input type="text"/> Full or Partial
Complainant	<input type="text"/> Full or Partial
Respondent	<input type="text"/> Full or Partial
Status	<input type="text"/> Select status or leave blank
Ruleset	<input type="text"/>
URS finding of abuse	<input type="checkbox"/>
At least one gTLD	<input type="checkbox"/>

Select the checkboxes that pertain to the appropriate categories. you may check multiple boxes and/or enter text into the fields above to further narrow your search. Click [here](#) for more information on this database.

**THIS INDEX OF DECISIONS DOES NOT INCLUDE URS DETERMINATIONS**

[Expand All](#) | [Collapse All](#) | [Clear All](#)

- TOP-LEVEL DOMAIN(S) AT ISSUE
- POLICY AT ISSUE
- PRELIMINARY AND PROCEDURAL ISSUES
- IDENTICAL OR CONFUSINGLY SIMILAR TO A MARK IN WHICH COMPLAINANT HAS RIGHTS
- RIGHTS OR LEGITIMATE INTERESTS (Policy Para. 4(a)(i))
- BAD FAITH REGISTRATION AND USE OF THE DOMAIN NAME (Policy Para. 4(a)(ii))
- TOTALITY OF THE CIRCUMSTANCES (USED TO FIND RIGHTS OR LEGITIMATE INTERESTS OR GOOD/BAD FAITH)
- REVERSE DOMAIN NAME HIJACKING (UDRP Rule 15(e))

1 2 3	Page size: 20	48 items in 3 pages				
CaseNo	Domains	CaseName	Ruleset	Commenced	Status	DecisionDate
1278310	coffeeberrymask.com	VDF FutureCeuticals, Inc. v Private c/o Michael Anderson	UDRP	08/19/2009	<u>Transferred</u>	09/29/2009
1280654	missoulafederalcreditunion.com	Missoula Federal Credit Union v Whois Watchdog c/o Domain Administrator	UDRP	09/02/2009	<u>Transferred</u>	10/08/2009

1/16/2015

		National Arbitration Forum				
1290319	katehudson.com	Kate Hudson v Fei Zhu	UDRP	10/23/2009	<a href="#">Transferred</a>	12/08/2009
1298869	princeofpersia.com	Ubisoft Entertainment S.A. v Oakwood Services Inc.- N/A N/A	UDRP	12/16/2009	<a href="#">Transferred</a>	01/28/2010
1305562	charletterusse.com, charlotterousse.com	Charlotte Russe Merchandising, Inc. v Venkateshwara Distributor Private Limited. c/o Caas Serviced Office solutions	UDRP	02/05/2010	<a href="#">Transferred</a>	03/17/2010
1313077	kingsolver.com	Barbara Kingsolver v Kingsolver Computer Solutions	UDRP	03/17/2010	<a href="#">Transferred</a>	04/13/2010
1323075	duovisc.com	Alcon, Inc., and Alcon Research, Ltd. v I-MED Pharma Inc. c/o Ilan Hofmann	UDRP	05/07/2010	<a href="#">Transferred</a>	06/14/2010
1324672	xboxonline.com	Microsoft Corporation v Bingo Holdings c/o Shun Wang	UDRP	05/19/2010	<a href="#">Transferred</a>	06/18/2010
1325675	victoriasecretperfume.net	Victoria's Secret Stores Brand Management, Inc. v Miss S Tobin	UDRP	05/24/2010	<a href="#">Transferred</a>	07/05/2010
1330909	trxfitnessanywhere.com, trxfitnessanywhere.com	Fitness Anywhere, Inc. v Fitness Angwhere	UDRP	06/23/2010	<a href="#">Transferred</a>	07/20/2010
1333690	soft82.com	S.C. Solutions and Consulting S.R.L. v Domain cellejesus409@gmail.com +40.65363636	UDRP	07/15/2010	<a href="#">Transferred</a>	08/20/2010
1335299	accion.com	Accion International v eHorizon.com	UDRP	07/20/2010	<a href="#">Transferred</a>	08/30/2010
1368643	di-noc.com	3M Company v Paperboy and Co. / Domain Management Representative	UDRP	01/28/2011	<a href="#">Transferred</a>	03/15/2011
1441706	7littlewords.com	Blue Ox Technologies Ltd. v Asians, Inc. / Richard L. Young, Esq.	UDRP	05/08/2012	<a href="#">Claim Denied</a>	06/10/2012
1560028	ancestry.pro	Ancestry.com Operations, Inc. v Kerry Shahan	UDRP	05/20/2014	<a href="#">Transferred</a>	07/06/2014
1565523	aeo.xyz	Retail Royalty Company, and AE Direct Co LLC v Patrick Hipskind	UDRP	06/25/2014	<a href="#">Transferred</a>	07/17/2014
1565698	ged.xyz	American Council on Education et al. v. Information Services Inc	URS	06/23/2014	<a href="#">Suspended Default</a>	07/09/2014
1573046	huffingtonpost.xyz	AOL Inc. v Michael Alibakhsh	UDRP	08/04/2014	<a href="#">Transferred</a>	09/11/2014
1577119	eos.xyz	Canon Kabushiki Kaisha v. Domains By Proxy, LLC et al.	URS	08/27/2014	<a href="#">Suspended Final</a>	09/01/2014
1582246	morganstanley.xyz	Morgan Stanley v. yang yi	URS	09/29/2014	<a href="#">Suspended Default</a>	10/20/2014
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<b>Case Name</b>	<input type="text"/> Full or Partial
<b>Domain</b>	<input type="text"/> Enter one only, or partial
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<b>Complainant</b>	<input type="text"/> Full or Partial
<b>Respondent</b>	<input type="text"/> Full or Partial
<b>Status</b>	<input type="text"/> ▼ Select status or leave blank
<b>Ruleset</b>	<input type="text"/> ▼
<b>URS finding of abuse</b>	<input type="checkbox"/>
<b>At least one gTLD</b>	<input type="checkbox"/>

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**THIS INDEX OF DECISIONS DOES NOT INCLUDE URS DETERMINATIONS**

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- POLICY AT ISSUE
- PRELIMINARY AND PROCEDURAL ISSUES
- IDENTICAL OR CONFUSINGLY SIMILAR TO A MARK IN WHICH COMPLAINANT HAS RIGHTS
- RIGHTS OR LEGITIMATE INTERESTS (Policy Para. 4(a)(ii))
- BAD FAITH REGISTRATION AND USE OF THE DOMAIN NAME (Policy Para. 4(a)(iii))
- TOTALITY OF THE CIRCUMSTANCES (USED TO FIND RIGHTS OR LEGITIMATE INTERESTS OR GOOD/BAD FAITH)
- REVERSE DOMAIN NAME HIJACKING (UDRP Rule 15(e))

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CaseNo	Domains	CaseName	Ruleset	Commenced	Status	DecisionDate
	virgin-	Virgin Enterprises Limited v.			Suspended	

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1585312	atlantic.xyz	Domains By Proxy, LLC et al.	URS	10/17/2014	<u>Default</u>	11/06/2014
1585480	homedepot.xyz	Homer TLC, Inc. v Issac Portis	UDRP	10/21/2014	<u>Transferred</u>	12/01/2014
1588702	lanxess.xyz	LANXESS DEUTSCHLAND GMBH v. yang yi et al.	URS	11/06/2014	Suspended <u>Final</u>	11/16/2014
1589047	engadget.xyz	AOL Inc. v Lahoti Vinay	UDRP	11/10/2014	<u>Transferred</u>	12/12/2014
1589985	lufthansa.xyz	Deutsche Lufthansa AG v. Domain Proxy et al.	URS	11/14/2014	Suspended <u>Default</u> <u>Final</u>	12/08/2014
1591890	everbank.xyz	EVERBANK v. hu deng xiao	URS	11/25/2014	Suspended <u>Default</u>	12/12/2014
1592005	rackspace.xyz	Rackspace US, Inc. v Russell Harrower	UDRP	11/25/2014	<u>Transferred</u>	01/05/2015
1596032	europcar.xyz	Europcar International S.A.S.U. v. Private Registration	URS	12/19/2014	Suspended <u>Default</u>	01/08/2015
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nsMail N/A Jul 23, 2015 The table above lists renewal information for your services. Click  
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business. Using a professional email address is one of the most effective ways to present  
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