



March 20, 2014

Akram Atallah  
President  
ICANN Global Domains Division  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094-2536

Dear Mr. Atallah:

Thank you for your letter dated February 12, 2014 responding to our concerns regarding the New gTLD Registry Agreement. We appreciate you taking the time to address our December 2, 2013 letter and provide a response on behalf of ICANN's Global Domains Division. However, we write to express our disagreement on two points you have raised and to clarify our concerns.

First, the Intellectual Property Owners Association's (IPO) concerns are not solely "focused around the possible later release of reserved names for registration." We are equally concerned with a TLD's ability to reserve a particular domain name, *regardless of whether or not that domain name is later released*. The act of reservation itself can remove the ability of a brand owner to register its brand on a new gTLD and prevent the brand owner from competing with others whose names have not been reserved. This ability to reserve names provides TLD operators a powerful opportunity to exploit the reservation process in that they may reserve names of brands they find pose a competitive threat to their own interests. TLD operators may also leverage the ability to reserve names to attract certain brands to their domain at premium prices, guaranteeing that those brands' competitors will be unable to register. Thus, even an open gTLD may become effectively closed to certain brand holders.

Second, we disagree with the assertion that the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) is an adequate remedy to contest name reservations and releases. The PDDRP requires a significantly high burden of proof. Complainants are required to show a pattern or practice of specific bad faith intent on the part of a registry operator. Further, the PDDRP excuses registry operators from liability "for any domain name registration that: (i) is registered by a person or entity that is unaffiliated with the registry operator; (ii) is registered without the direct or indirect encouragement, inducement, initiation, or direction of any person or entity affiliated with the registry operator; and (iii) provides no direct or indirect benefit to the registry operator other than the typical registration fee...."

There is no logical reason brand owners should be required to demonstrate such a stringent burden of proof in order to protect their brand names from abuse by registry operators. No other rights protection mechanism provided through ICANN or the U.S. courts requires complainants to demonstrate such systemic bad faith intent on part of the

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INTELLECTUAL PROPERTY OWNERS ASSOCIATION

infringer. The burden for brand owners objecting to the reservation, self-allocation or release of a domain name identical or confusingly similar to a brand owner's mark should be no more stringent than the burden in the Uniform Domain Name Dispute Resolution Procedure.

On behalf of IPO, we appreciate your attention to our concerns and look forward to continued dialogue on brand protection issues as the New gTLD Program moves into operation. In this regard, we would appreciate the opportunity to meet with representatives at ICANN to further discuss this issue. David Einhorn will be representing IPO at ICANN meetings in Singapore. Please contact him at [deinhorn@bakerlaw.com](mailto:deinhorn@bakerlaw.com) if you or one of your colleagues will have time to meet with him during the course of the conference.

Sincerely,

A handwritten signature in black ink that reads "Herbert C. Wamsley". The signature is written in a cursive style with a large initial 'H'.

Herbert C. Wamsley  
Executive Director