

From: Fadi Chehade [<mailto:fadi.chehade@icann.org>]
Sent: 04 December 2012 22:47
To: Jonathan Robinson
Cc: Margie Milam; David Olive
Subject: TMCH

Dear Jonathan,

As reported in my recent blog on the Trademark Clearinghouse (see: <http://blog.icann.org/2012/11/a-follow-up-to-our-trademark-clearinghouse-meetings/>), the recent implementation TMCH related discussions led to the development of a strawman model to address some of the proposed improvements requested by the BC/IPC. I am very pleased with the efforts shown by the participants in these discussions, as they reflect a willingness to explore improvements to the TMCH and the rights protection mechanisms available in new GTLDs.

I am seeking policy guidance from the GNSO Council on two items as part of the next steps for the implementation of the TMCH, namely, the Strawman Proposal and the IPC/BC proposal for limited defensive registrations. Each of these documents are posted for public comment (see: <http://www.icann.org/en/news/public-comment/tmch-strawman-30nov12-en.htm>) to allow the ICANN community the opportunity to comment on these proposals. Specifically, policy guidance is sought on the portion that pertains to the expansion of the scope of the trademark claims, although comments on any aspect of the Strawman Model is welcome in the event the Council is interested in broadening its response. The specific proposal is that:

Where there are domain labels that have been found to be the subject of previous abusive registrations (e.g., as a result of a UDRP or court proceeding), a limited number (up to 50) of these may be added to a Clearinghouse record (i.e., these names would be mapped to an existing record for which the trademark has already been verified by the Clearinghouse). Attempts to register these as domain names will generate the Claims notices as well as the notices to the rights holder.

Not included in the Strawman Model is the IPC/BC proposal for a limited preventative registrations. In general, there was not support among non-IPC/BC participants for solutions to the issue of second level defensive registrations among the participants in the TMCH meetings. After hearing concerns regarding this issue, members of the IPC/BC provided a description of a preventative mechanism, the "Limited Preventative Registration," which has also been published for public comment. As this issue is relevant to a request from the New GTLD Program Committee's April resolution where it requested "the GNSO to consider whether additional work on defensive registrations at the second level should be undertaken"(2012.04.10.NG2), I am seeking GNSO Council feedback on this IPC/BC proposal as well.

It would be ideal if the GNSO Council could take up these issues at its December meeting.

Finally, addressing some of the criticisms on the process used by Staff in convening these meetings, I hope that you can appreciate that Staff is not circumventing the GNSO processes. The Strawman Model and my blog posting always clarified that this request to the GNSO Council was coming. One of my goals as CEO is to enhance collaboration in the ICANN community as it tackles difficult issues. I truly believe that the development of strawman

proposals on this and other issues can be a useful tool to inform policy and implementation discussions. I hope that you will consider this request in that light.

We look forward to the Council's reply to this request.

Best Personal Regards,

Fadi Chehade
President and CEO
ICANN