

## Intellectual Property Interests Constituency

### Comments on Draft AGP Limits Policy and Draft Implementation Plan

November 20, 2008

Pursuant to the RFC posted on the ICANN website on October 20, 2008, the Intellectual Property Interests Constituency (“IPC”) hereby submits the following comments.

As repeatedly stated, the IPC strongly believes that the practice of domain name tasting harms intellectual property rights holders, Internet users and the domain name system in general. While the IPC cautiously supports the implementation of the AGP Limits Policy, the IPC continues to have reservations about the proposed policy and the draft implementation notes.

The IPC notes that the text of the AGP Limits Policy is merely a wholesale adoption of the Domain Name Tasting motion adopted by the GNSO on April 17, 2008 (“the Motion”). The IPC pointed out several ambiguities in the language of the Motion in its Constituency Statement on Domain Name Tasting which is appended to the GNSO Final Report on Domain Name Tasting dated April 4, 2008.<sup>1</sup> Specifically, the IPC believes that the AGP Limits Policy and/or the implementation notes need to be revised in order to provide greater certainty to Internet stakeholders. None of the IPC’s concerns were addressed prior to posting of the draft AGP Limits Policy and Implementation Plan.

In paragraph a, the term “may” should be changed to “shall” or “will” in order to make it clear that any registry operator that offers the AGP is bound by the terms of the AGP Limits Policy. In addition, the implementation notes should be revised to provide greater clarity around some of the more ambiguous language found in the text of the policy. First, the implementation notes should provide further delineation around the term “extraordinary circumstances” found in paragraph b of the policy. Second, the implementation notes should be revised to provide greater clarity around the concept of what is meant by the phrase “reoccur regularly” found in paragraph b of the AGP Limits Policy. At a minimum, the implementation notes should set a threshold by clearly stating that any circumstance which occurs more than once in any 12-month period will not be deemed an “extraordinary circumstance” under the policy.

Lastly, the IPC believes that the implementation notes must be amended to specifically provide a mechanism whereby the information collected by registry operators pursuant to paragraph c of the AGP Limits Policy will be made publicly available. Given the wide berth of interpretation that each registry operator will have in determining when a registrar has demonstrated “extraordinary circumstances,”<sup>2</sup> it is imperative that a public disclosure system be put into place to discourage gaming of the AGP Limits Policy.

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<sup>1</sup> See, <http://gns0.icann.org/issues/domain-tasting/gns0-final-report-domain-tasting-04apr08.pdf> at pp. 77 - 79.

<sup>2</sup> The IPC believes that even if the language in paragraph b of the AGP Limits Policy is clarified, registry operators will continue to have a considerable amount of discretion in granting exceptions to the policy.