



## COMMENT OF THE INTELLECTUAL PROPERTY CONSTITUENCY ON THE PROPOSED RENEWAL OF THE .MOBI REGISTRY AGREEMENT

February 1, 2017

The Intellectual Property Constituency (IPC) appreciates the opportunity to provide comments regarding proposed amendments to the .mobi Registry Agreement. *See* <https://www.icann.org/public-comments/mobi-renewal-2016-12-23-en>.

The IPC continues to support the initiative of Registry Operators that undertake to exceed ICANN's minimum requirements for rights protection. The decision among Registry Operators to proactively address registration abuse promises to create new tools that will benefit the whole ICANN community. The Global Domains Division of ICANN should encourage innovation by engaging with Registry Operators during the amendment process and affording them the opportunity to adopt practices that suit their circumstances. Furthermore, that process should also be more open and transparent, because it can have potentially wide-ranging consequences for the broader community.

The IPC applauds Afiliias (the .mobi Registry Operator) and other Registry Operators that choose to implement enhanced rights protection mechanisms for third party trademark owners, and to take on enhanced responsibilities for the Registry Operator to prevent use of registrations for abusive purposes, including but not limited to violations of intellectual property rights. These enhanced Rights Protection Mechanisms include, but are by no means limited to, those contained in the base New gTLD Registry Agreement, including the Uniform Rapid Suspension (URS) procedure. The IPC also encourages Registry Operators to voluntarily adopt industry best practices beyond the minimum rights protections required by ICANN, such as adding new restrictions against abusive registrations, additional suspension mechanisms, implementing blocking prior to registration, and creating new dispute procedures. Specification 7 of the proposed .mobi renewal Registry Agreement appears to fully accommodate the implementation of such voluntary best practices. (We are puzzled, however, by the provision in the Addendum to the proposed renewal agreement that wipes out the registry's obligations under Section 1 of Specification 7 to "implement and adhere to" URS and other RPMs, and limits the obligation to the Section 2 provision that the registry operator "comply" with them.) The IPC also encourages ICANN to educate Registry Operators that the required RPMs are not a "ceiling" but a "floor" – the minimum required – and the Internet community is best served by Registry Operators that strive to go above and beyond the minimum by innovating and adopting industry best practices. We strongly believe that ICANN is not required to and should not undertake a policy development process for Registry Operators to voluntarily implement new RPMs.

We also commend other features of the proposed .mobi Registry Agreement renewal, such as the adoption of Specification 11, incorporating the standard Public Interest Commitments (PICs) that have already been taken on by the vast majority of gTLD registries. Most notably, this includes the Section 3(a) obligation to pass through via registrars the prohibition on registrants using their .mobi domain names to engage in a list of abusive activities, including piracy, trademark or copyright infringement, or counterfeiting. COA urges Afilias to actively enforce these obligations, and urges ICANN to use its contract compliance authority to correct any pattern that might arise out of the registry operator's failure to do so.

We are pleased to see that among the PICs that Afilias will be taking on is commitment #1 involving the obligation only to accept registrations sponsored by accredited registrars that have signed up to the 2013 edition of the Registrar Accreditation Agreement. However, we urge the parties to review whether the specific language employed in Section 1 of Specification 11 is sufficiently future-proofed. It seems to lock the registry into accepting registrations only from registrar adhering to the RAA as approved by the Board in 2013, regardless of whether this version of the RAA is succeeded by a subsequent version, or even regardless of whether the 2013 RAA is amended in the future. IPC cherishes the hope that the 2013 RAA, which has many flaws and shortcomings, will be improved upon in the future; thus, it would be shortsighted to prohibit the .mobi registry operator from doing business with responsible registrars that contractually commit themselves to future improved RAA provisions, or to require the registry operator to seek a contractual modification in order to do so.

The inclusion of both URS and the PICs in yet another gTLD registry agreement underscores the glaring omission of these minimum safeguards for right holders and the public from the registry agreements for the largest legacy gTLD registries, including the dominant competitors, .com and .net. IPC reiterates its previously expressed position that this omission demands prompt correction, including during the two-year "future amendments" window provided in the recent extension of the registry agreement for Verisign to operate .com. *See* <https://forum.icann.org/lists/comments-com-amendment-30jun16/msg00078.html>.

Respectfully Submitted,

Intellectual Property Constituency