

COALITION FOR ONLINE ACCOUNTABILITY

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1818 N STREET N.W., 8TH FLOOR • WASHINGTON, D.C. 20036-2406 • TEL: (202) 355-7906 • FAX: (202) 355-7899 • E-MAIL: INFO@ONLINEACCOUNTABILITY.NET

Submitted to <http://www.regulations.gov>

Docket: USTR-2009-0041

United States – Trans-Pacific Partnership Trade Agreement

January 25, 2010

Ms. Carmen Suro-Bredie
Chairman, Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th Street NW
Washington, DC 20508

Re: Public Comment Concerning the Proposed Trans-Pacific Partnership Free Trade Agreement with Singapore, Chile, New Zealand, Brunei Darussalam, Australia, Peru and Vietnam (74 Fed. Reg. 66,720, Dec. 16, 2009)

Dear Madam Chairman:

The Coalition for Online Accountability (COA) appreciates this opportunity to comment, in response to the above-captioned Federal Register notice, on U.S. negotiating objectives in the proposed Trans-Pacific Partnership Free Trade Agreement (TPP-FTA), and specifically on a “relevant trade-related intellectual property right issue that should be addressed in the negotiation.” 74 Fed. Reg. at 66,721.

COA consists of eight leading copyright industry companies, trade associations and member organizations of copyright owners. These are the American Society of Composers, Authors and Publishers (ASCAP); Broadcast Music, Inc. (BMI); the Entertainment Software Association (ESA); the Motion Picture Association of America (MPAA); the Recording Industry Association of America (RIAA); the Software and Information Industry Association (SIIA); Time Warner Inc.; and the Walt Disney Company. The Coalition’s main goal is to preserve and enhance online transparency and accountability, including by ensuring continued public access to accurate and reliable data on domain name registrants. This access is a key tool against online infringement of copyright, as well as to combat trademark infringement, cybersquatting, phishing, and other criminal or fraudulent behavior online.

The Free Trade Agreements already in force with four of the seven identified TPP-FTA partners contain important provisions that help to facilitate enforcement against online

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Time Warner Inc.

Recording Industry Association of America (RIAA)

The Walt Disney Company

Counsel: Steven J. Metalitz (met@msk.com)

misconduct, including but by no means limited to copyright and trademark infringement.¹ These provisions set baseline standards that our trading partners pledge to maintain in the country code Top Level Domains (ccTLDs) allocated to each country.² These standards include (1) providing public access to reliable and accurate contact information on domain name registrants (often referred to as “Whois service”), and (2) providing a method for resolving disputes about abusive domain name registrations (i.e., claims of cybersquatting) that is modeled on the Uniform Dispute Resolution Procedure (UDRP) adopted by the Internet Corporation for Assigned Names and Numbers (ICANN).³

These two requirements are important to prevent ccTLDs from becoming havens for online misconduct or criminal behavior. Public access to Whois facilitates the investigation and prompt resolution of matters ranging from copyright piracy and online trademark counterfeiting to phishing, distribution of malware, network attacks, and online frauds. This data is critical to law enforcement, of course, but also to private parties such as copyright and trademark owners, whose independent enforcement of their rights allows law enforcement to conserve scarce resources. Indeed, virtually every Internet user benefits: Whois provides greater transparency, so that end users know more about the parties with whom they – or their children – are interacting online. Similarly, the UDRP, or other dispute resolution systems modeled on it, enable efficient and expeditious action against cybersquatters. Both publicly accessible Whois and the UDRP promote the healthy growth of e-commerce, and U.S. companies and consumers have benefitted from these provisions in their online business dealings with companies and individuals in all four of the TPP countries currently subject to these FTA obligations.

COA encourages USTR and its USG colleagues to ensure that these important provisions of the Australia, Chile, Peru and Singapore FTAs remain in force under an expanded TPP-FTA, and that the new participants – Brunei Darussalam, New Zealand and Vietnam for now, and perhaps more in the future – take on similar obligations as well. The TPP-FTA may also provide a vehicle for strengthening the existing baseline standards applicable to ccTLDs, to address the need for stronger security against domain name hijacking or other malicious exploits within or launched from these domains. Finally, consideration could be given to harmonizing, at an appropriately high level, the legal tools provided by TPP-FTA countries in their national laws for dealing with cybersquatting and other wrongs taking place within the generic Top Level Domains (gTLDs).

¹ See Australia FTA, Art. 17.3; Chile FTA, Art. 17.3; Peru FTA, Art. 16.4; Singapore FTA, Art. 16.3. Texts are accessible via <http://www.ustr.gov/trade-agreements/free-trade-agreements>.

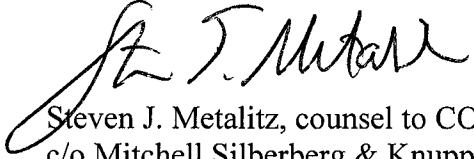
² A Top Level Domain corresponds to the code immediately to the right of the “dot” in a domain name, website address, e-mail address, or similar Internet resource. ccTLDs are two-letter codes allocated to countries or territories whose names appear on a UN database. For example, the ccTLD for Australia is .au.

³ See <http://www.icann.org/en/udrp/#udrp>. Under ICANN rules, all registrations in the generic Top Level Domains (or gTLDs), such as .com, .net or .org, are subject to the UDRP, an arbitration procedure that is intended to be faster and cheaper than formal litigation. However, ICANN does not generally prescribe mandatory standards for the operation of ccTLDs.

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COA appreciates your consideration of our views. We would be glad to provide further information that would assist US negotiators in the TPP-FTA.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "S. J. Metalitz", is written over the typed name.

Steven J. Metalitz, counsel to COA
c/o Mitchell Silberberg & Knupp LLP
1818 N Street, NW, 8th Floor
Washington, DC 20036 U.S.A.
Tel: (202) 355-7902
Fax: (202) 355-7899
E-mail: met@msk.com