

IPC POSITION PAPER ON ccTLD ISSUES

The rapid increase in Internet use around the world is leading to explosive increases in the use of the country code Top Level Domains (ccTLDs). As a whole, these 250 or so two-letter TLDs are growing at a faster rate than the generic TLDs (.com, .net, etc.).

Of course, most activity occurring on sites identified by ccTLDs is legitimate and raises no concern from an intellectual property perspective. Unfortunately, however, as ccTLDs gain increasing importance in the Domain Name System, unacceptable practices such as piracy, cybersquatting, and infringements of intellectual property rights are also becoming more prevalent in ccTLD space. There is a real and present danger that certain ccTLDs will become magnets for this behavior or will even seek to attract it. While most ccTLDs are administered by responsible parties in a responsible fashion, this is not always the case. When it is not, the opportunities for piracy, cybersquatting and the like increase, while the ability of intellectual property right holders or their representatives to combat it diminishes.

The delegation and administration policies for ccTLDs (i.e., deciding who can operate a ccTLD and how it must be operated) are topics of increasing discussion within ICANN, and will be among the topics discussed at the Cairo meetings. A paper prepared by ICANN staff, and posted at <http://www.icann.org/cairo2000/cctld-topic.htm>, summarizes the issues under discussion as follows:

1. Delegation issues. Under what circumstances should the designated manager of a ccTLD be changed? What principles should be applied in deciding what substitute manager to appoint? What is the role of the government of the affected country or territory in redelegation issues?
2. Allocation of global and local policy responsibility. As recognized in ICP-1, the operation of a ccTLD has effects on all parts of the Internet, yet the local community has a special interest in the manner in which a ccTLD is operated. The global interest suggests that certain topics (those concerning interoperability, for example) should be the subject of uniform, global policies. The local interest, on the other hand, can sometimes be served best by locally established policies that suit the economic, cultural, and linguistic circumstances of the country or territory involved. What policies for the operation of ccTLDs should be established globally, and what policies should be set locally? What is the relevance of laws of the country or territory associated with the country code to this allocation of policy-making responsibility?
3. ccTLD relationship to ICANN/IANA. What services should the IANA (and ICANN) provide to support the operation of ccTLDs? How can ICANN best work with ccTLD managers to promote the stable operation of the Internet?
4. Participation in ICANN funding. The White Paper indicates that ICANN should be funded by name and address registries. What role responsibilities should ccTLD managers have to assist in ICANN's funding? What should be done if a manager does not meet these responsibilities?

While members of the DNSO's Intellectual Property Constituency (IPC) will follow the discussion of all these issues with interest, and will participate as appropriate, our primary

concern is with an issue not specifically identified in this list, although it is implicit in issue #2 (allocation of global and local policy responsibility). All ccTLD managers should be required to operate their TLD in accordance with a set of guidelines or best practices that are aimed at promoting the stability and integrity of the Domain Name System of which all ccTLDs are a part. These guidelines or best practices must include policies aimed at minimizing the use of the ccTLD to carry out infringements of intellectual property rights (including piracy and cybersquatting), and at enabling the detection of infringers and the expeditious resolution of disputes. These policies will also discourage the use of ccTLDs to carry out consumer fraud and other illegal activity.

Specifically, the following features should be incorporated in the management and operation of all ccTLDs:

1. Registrant contact data: all registrants of Second Level Domains (SLDs) within any ccTLD should be required to provide complete and accurate contact data, and to keep it current. Failure to fulfill this obligation should result in termination or cancellation of the SLD.
2. Whois. Managers of each ccTLD must provide free, real-time access, via the World Wide Web, to a current database of contact data on its registrants. This data should be fully searchable and should be available to the public without substantial restrictions on use (other than those restrictions required to protect the integrity and availability of the database or its exploitation for purposes such as inappropriate mass commercial solicitations).
3. Dispute Resolution. Each ccTLD registrant must agree to submit to an equitable, efficient, and independent dispute resolution policy governing claims that SLDs have been registered or used in bad faith to the prejudice of holders of intellectual property rights. The dispute resolution policy must be implemented according to publicly available standards and procedures, and must operate on-line and be readily available to claimants.
4. Famous Marks. The operation of each ccTLD must provide adequate safeguards to prevent the registration of domain names confusingly similar to famous marks without the authorization of the mark's owner, as well as a procedure for promptly obtaining the cancellation of such marks registered in violation of these safeguards. Automatic screening of registrations against an exclusion list of internationally famous marks generated by WIPO would fulfill this criterion, so long as other disputes involving domain names that are identical or confusingly similar to famous marks can be dealt with in the dispute resolution process.
5. Transparency and Compliance Review. All Internet users should be able to identify and contact the ccTLD administrator, and its policies in fulfillment of the guidelines or best practices should be readily available online. There must be an effective mechanism whereby ICANN, IANA, or a comparable body can verify ccTLD compliance with these best practices, including a mechanism for receiving and resolving complaints that a specific ccTLD manager is not complying with these best practices.

The IPC recognizes that most major ccTLDs already operate under procedures and policies that provide at least some of these features. We urge these responsible ccTLDs to take the lead in

codifying these best practices and encouraging compliance by all ccTLDs. We know that this will be a complex task. In some cases, the policies already adopted for the gTLD sector provide a good model or starting point, although in most areas these policies are relatively new and must be evaluated in practice.

We are also sensitive to the concerns of some ccTLDs about issues of sovereignty and local control. We believe that best practices or guidelines can be crafted that preserve local control, and that accommodate national rules on issues such as data protection, within an overall framework that includes the features listed above. We urge ICANN, in consultation with ccTLDs and with input from other interested parties, including the IPC, to establish a target date within the next year for the adoption of such best practices or guidelines.

Adoption and implementation of ccTLD best practices or guidelines as described above is required in order to level the playing field, increase confidence in the ccTLD sector as a whole, promote the stability and integrity of the DNS, and enhance the healthy growth of the Internet in the interests of all consumers and legitimate businesses. The IPC urges ICANN to give this initiative high priority, and we stand ready to assist in any way appropriate to advance this goal.

[The preceding paper was prepared in anticipation of the ICANN meeting in Cairo in March 2000. A draft of the paper was distributed to all organizations and individual members of the DNSO's Intellectual Property Constituency (IPC), and then discussed in detail at the IPC's business meeting in Arlington, Virginia, USA on February 25-26, 2000. The final version of this paper, which was also circulated to the IPC membership prior to posting, represents the author's best efforts to reflect those discussions. It has not been formally adopted by the IPC membership.]

Submitted by Steve Metalitz

Copyright Coalition on Domain Names/International Intellectual Property Alliance

Metalitz@iipa.com

3/1/00