

## Draft 8/17/06

The Intellectual Property Constituency (IPC) is pleased to offer this submission in response to the request for comments on the “GNSO Initial Report Introduction of New Generic Top-Level Domains,” which is dated July 28, 2006.

1. After reading the Initial Report, are there any other selection criteria which may be helpful for a new top level domain application round?

**Response:** The IPC is generally satisfied with the selection criteria listed in the initial report, especially the requirement that applicants (1) comply with ICANN consensus policies, (2) offer a clearly differentiated domain name space with mechanisms in place to ensure compliance with the purpose of a chartered or sponsored TLD and to address domain name registration violations, and (3) show that they have the financial and operational resources to execute their plans. As we noted previously, market differentiation will create a taxonomic or directory-style domain name structure, ensuring that certainty and confidence are part of the user experience and that registrants will find a unique name space where they want to be and in which they can easily be located. While the IPC believes the list of selection criteria is complete, it urges ICANN to ensure that its review of applications continues to be vigorous such that applicants are held to a high standard of establishing that they meet the selection criteria.

2. Thinking about the issue of application fees for any new top level domain application, is there merit in graduated application fees to assist applicants?

**Response:** The IPC does not object *per se* to the use of a graduated fee structure; but is skeptical that the positive effect of a reduced application fee (*i.e.*, more competition among applicants) will outweigh the negative impact of an underfunded applicant’s inability to meet the selection criteria set forth above. As a result, we strongly recommend that any graduated fee structure be viable and significant enough to ensure compliance with the selection criteria set forth above, as well as eliminate bad-faith actors who might seek to pay a minimal entry fee and then conduct unscrupulous activities (*e.g.*, cybersquatting, which would be aided through a registry’s access to the root).

3. Taking into account the experiences from the 2000 and 2004 round of new top level domains, do you have further comments to make about streamlining the application process?

**Response:** The IPC is open to considering the streamlining of the application process, but will withhold final comment until presented with a specific proposal. We urge caution, however, in presenting any proposal that would eliminate those aspects of the gTLD application process that provide for the security and stability of the DNS. Included in this concept are not only technical matters, but those aspects of the Internet DNS and registry operation that are designed to safeguard users and the general public, including, for example, the examination of proposals to protect intellectual property.

4. Thinking about ICANN's responsibility to ensure competition in registry services operation, do you have any additional comments about how to encourage applications which would serve needs which are not met by the existing top level domains?

**Response:** The IPC does not believe that ICANN needs to encourage applications that would serve needs not met by the existing top level domains. Instead, we believe that the market-driven approach we suggest in response to Question 1, along with the popularity of the Internet, has and will continue to motivate applicants to approach ICANN. Without such marketplace support, the motivation for registering any such new TLD will be primarily for defensive purposes (as has largely been the case with .info and .biz), which provides no value to consumers and which unnecessarily drains ICANN's already limited resources.

5. Looking closely at the technical selection criteria section of the Report, are there any further comments which would assist with identifying appropriate base line technical criteria for new applications?

**Response:** The IPC has no additional comments in response to this question.

6. Do you have any further comment to make on the use of the first come first served system for processing applications and then whether auctions or lotteries are appropriate ways of resolving competition between applications?

**Response:** As stated in our January response, "Based on experience with the 'land rush' effect in domain name registration, it is apparent that first-come first-served simply does not work when many valid applications are received at the same time." Instead, we endorse the use of comparative evaluation methods to allocate new gTLDs.

We strongly advise against the use of auctions or lotteries to resolve competition between applicants. As we explained previously, "The selection of a new gTLD is an important decision with far-reaching consequences. Swiftiness in the process is not a particularly critical criterion for success. ICANN should not leave the allocation process to chance." We refer the GNSO to our comments made earlier on the problems associated with auctions and lotteries:

- How to control for dominance? If slots are auctioned among bidders who met the selection process, the playing field would be tilted toward the best-financed prospective registries and would disadvantage prospective registries that met the financial selection criteria but did not have the deepest pockets.
- How to control for bias? Similarly, if the gTLDs were proposed by the first potential registry and then bid on by others, the latter bidders would be handicapped regarding preparedness and their ability to calculate an appropriate bid – in essence, they would be betting against the "house."
- Does the auction process add value? An auction model has no inherent ability to add value, and leaves ICANN open to criticisms regarding profiteering.

- Could an auction become a lottery? Auctions have the potential, depending on how they are structured and what is auctioned, to become lotteries, and lotteries are highly regulated - if not entirely prohibited - in many countries.
- Would “market hype” distort the market? If prospective bidders grossly overbid due to hype, this could undermine the winners’ finances, create unrealistic expectations regarding return on investment, and ultimately hamper the ability to operate and succeed with the new gTLD.

7. Do you have any further views on the kinds of new TLDs that might be encouraged? Specifically, do members of the community expect the existing differentiation between sponsored, generic, chartered and open TLDs to remain?

**Response:** As previously noted, the IPC encourages new TLDs that are focused on communities that can be defined in absolute terms, and specifically tailored to a discrete and identifiable group of Internet users. These types of TLDs have traditionally been referred to as “sponsored.” Whatever they are called, their rules and regulations, particularly for eligibility, must be clearly defined and strictly enforced. In addition, ICANN must regularly monitor and evaluate the enforcement activities of the registries to ensure that the sponsored TLD does not *de facto* become an otherwise “open” TLD.