

IPC Initial Comments on the GNSO Recommendation Summary regarding the Introduction of New Generic Top Level Domains

The Intellectual Property Constituency (IPC) is pleased to submit its initial comments on the GNSO Recommendation Summary regarding the Introduction of New Generic Top-Level Domains dated September 14, 2006.

Upon reviewing the recommendations, the IPC identified four key areas of concern. First, the selection criteria must include an inquiry into the level of support for the string and in particular, whether the string is likely to be primarily a magnet for defensive registrations. Second, ICANN must (rather than "may") establish a new dispute resolution process, using independent arbitrators, where existing trademark holders could challenge an ICANN decision regarding a string. Third, the contractual conditions must include pre-registration mechanisms to prevent conflict with trademark owners. Fourth, the recommendations must mandate the maintenance of a robust database, publicly accessible in real-time and without cost to those querying it, of contact details of registrants in new TLDs.

1. Selection criteria.

We note with concern that the Selection Criteria discussed in Section 2 of the GNSO Recommendation Summary does not require the consideration of the level of support for the new TLD, and in particular, the likelihood that the new TLD will become primarily a magnet for defensive registrations. Research has shown that an overwhelming percentage of registrations for recently introduced TLDs were defensive in nature, and not based on true demand. In a Summit Strategies' survey, 52% of .biz registrants indicated that they had registered for defensive purposes, 41% of .info registrants were defensive registrants, and 34% of .name registrants were defensive registrants. The only ones that benefit from such a practice are registrars and registries, and new TLDs should not be added solely to fill their pocketbooks. Surely, this is not what ICANN had in mind in fulfilling one of its core values, namely to introduce and promote competition in the registration of domain names where practicable and beneficial. Moreover, it is irresponsible that ICANN will generally abstain from considering the criterion of the level of support of the community of potential registrants for a TLD, using this only as an additional factor to resolve a contention among competing applications for the same string. ICANN's resources are already significantly strained and should not be further drained to review applications for TLDs that fail to have a certain level of support (i.e., excluding defensive registration support). In sum, we encourage ICANN to adopt selection criteria that will bring about TLDs for which there is legitimate demand from communities that are not well served by the current TLDs, and prevent a proliferation of TLDs that are likely to simply lie fallow, or to depend for their viability upon unproductive defensive registrations.

2. New dispute resolution process for trademark owners.

The IPC notes that the recommendations require ICANN to establish a dispute resolution process, using independent arbitrators, where existing registry operators could challenge a decision made by ICANN regarding whether a new TLD string is confusingly similar to an existing TLD string. However, the recommendations give ICANN discretion whether to establish a similar dispute resolution process for trademark owners who believe a new TLD string conflicts with their mark. We trust that this was an oversight as we can see no reason to differentiate between registry operators and trademark owners. We agree that the UDRP could provide a model for such a process, but note that there are important differences too; for example, to reject a proposed string on these grounds should not require a showing of bad faith.

3. Pre-registration mechanisms to prevent conflicts with trademarks.

Given that the recommendations do not adopt the IPC recommendation that new TLDs be introduced in a slow and controlled manner, they must include the requirement for each TLD registry to establish mechanisms to prevent conflicts with trademarks up front (i.e., prior to the roll-out of the new TLD), since there remains a strong likelihood that the rapid rollout of new gTLDs will lead to increases in cybersquatting and other similar bad-faith activity.

4. Contractual conditions - Whols.

The recommendations must mandate the maintenance of a robust database, publicly accessible in real-time and without cost to those querying it, of contact details of registrants in new TLDs. Personal data collected by the registry should be used in ways that are not incompatible with the purposes for which it was collected, taking into account the full range of public policy considerations (see <http://www.ipconstituency.org/PDFs/IPC%20Position%20Statement%20on%20Registry%20Contracts%20PDP%20Feb%2006%20050506.pdf>, point 5a; and http://www.ipconstituency.org/PDFs/2006-Jan31_IPC%20Response%20to%20New%20gTLD%20Terms%20of%20Reference.pdf, page 5).

Finally, the IPC notes that the ICANN Board adopted a resolution this week to commission an independent study by a reputable economic consulting firm or organization to deliver findings on economic questions relating to the domain registration market. This raises the question whether it would make sense for the implementation of any new TLD process to await the outcome of the study. At the very least, it seems advisable for any such study to address the issue of defensive registrations.

Respectfully Submitted,

Caroline G. Chicoine
Vice-President of the IPC