

IPC POSITION PAPER ON THE ADDITION OF NEW gTLDs

ICANN is charged with the management of the domain name system (DNS). Domain names represent the "user friendly" addresses of websites on the information superhighway. As with any "construction" project, proper planning must go into its detailed design taking into account a variety of concerns including technical feasibility, costs (including any indirect "costs" to the public), and most importantly, safety. The IPC expects no less consideration from ICANN regarding the issue of the addition of new gTLDs. The IPC presumes that ICANN will confirm the technical feasibility of the addition of new gTLDs, and thus focuses this paper on the issues of costs and safety.

The current charter for Working Group C identifies several questions to be discussed, including:

- (1) How many new gTLDs and how fast?
- (2) How to select TLD strings and Registries?
- (3) Should Registries be for-profit or non-profit?
- (4) Should ICANN require sharing?

While the IPC will follow and is interested in these questions, our primary concern relates to when and in what environment new gTLDs should be introduced. In other words, the primary focus for us is not if new gTLDs should be introduced, but rather under what conditions. All gTLDs should be required to operate in accordance with a set of policies that are aimed at promoting the stability and integrity of the DNS. These policies must be aimed at minimizing the use of gTLDs 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 must also discourage the use of gTLDs to carry out consumer fraud and other illegal activity.

Specifically, we believe the following safeguards should be in place before new gTLDs should be introduced:

- (1) Improved domain name registration procedures,
- (2) Effective dispute resolution policy, and
- (3) Protection for famous and well-known trademarks.

(1) Improved domain name registration procedures

We strongly support WIPO's conclusion that there is a need for improvement of the registration practices in the DNS. The lack of reliable and complete information about domain names and their owners dramatically increases the amount of time and money expended by intellectual

property owners in defending their intellectual property against abusive domain name registrations. Such limitations only serve to encourage abuse of intellectual property rights, frustrate the effective enforcement of legitimate intellectual property rights and, inevitably, increase the costs of doing business over the Internet for the end user, as well as reducing their confidence in same.

Specifically, the primary concern of the intellectual property community is with the clear cases of abuses. However, the intellectual property community also has a strong secondary concern in resolving disputes between owners of competing, legitimate interests in domain names and trademarks. As a result, we believe the UDRP must adequately address situations where owners of legitimate trademark rights in the real world marketplace come into conflict within the DNS of the virtual world marketplace.

(a) Registrant contact data

All registrants of Second Level Domains (SLDs) 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.

(b) Whois

Managers of each gTLD 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).

(c) Compliance Review

There must be an effective mechanism whereby ICANN, IANA, or a comparable body can verify gTLD compliance with these policies, including a mechanism for receiving and resolving complaints that a specific gTLD manager is not complying with these policies.

(2) *Effective Dispute Resolution Policy*

To begin with, the IPC applauds the efforts of ICANN for its development of a Uniform Dispute Resolution Procedure (UDRP). We are also pleased to learn that the Names Council is in the process of developing a task force for monitoring and reviewing the implementation of the UDRP so as to determine what, if any, revisions are necessary to properly protect the interests of domain name holders, trademark owners and users of the Internet. However, as we are all aware, the UDRP is in its infancy stage both in terms of the number of cases decided, and the global nature of the problem the UDRP seeks to address. For example, in the case of WIPO, the majority of the cases involve U.S. participants; of the handful of decisions rendered, the majority are default judgments; and the issue regarding mutual jurisdiction has not yet been

tested. We therefore believe there is a need to confirm, through a proper review and analysis of the implementation of the UDRP, that it provides speedy and effective resolution of the disputes within its purview.

(3) Protection for famous and well-known trademarks

We agree with the WIPO recommendation that ICANN implement a procedure designed to protect famous and well-known trademarks. The operation of each gTLD 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 domain names 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 confusingly similar to famous marks can be dealt with in the dispute resolution process.

We believe that once these safeguards are in place, the stability and integrity of the DNS and the healthy growth of the Internet in the interests of all consumers and legitimate businesses can be achieved. 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 prior 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 represents the author's best efforts to reflect those discussions. It has not been formally adopted by the IPC membership.]

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