The IPC is pleased to provide these preliminary reactions to the revised draft final report on introduction of new gTLDs, see http://www.gnso.icann.org/drafts/GNSO-PDP-Dec05-FR-14Nov06.pdf, as well as to the accompanying ICANN Staff Discussion Points, see http://www.gnso.icann.org/drafts/GNSO-PDP-Dec05-StaffMemo-14Nov06.pdf. We reserve the right to supplement or modify these comments at a later time.

Upon reviewing the initial recommendations, the IPC identified four key areas of concern and submitted these to ICANN staff on October 20, 2006. We believe that these concerns remain largely applicable to the revised draft final report as well. (The October 20 submission is at http://www.ipconstituency.org/PDFs/IPC%20Initial%20Comments%20on%20GNSO%20Recomm%20re%20Intro%20of%20New%20gTLDs.PDF and we incorporate it by reference.)

1.	In our October submission we stated: " 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." The revised recommendations do not squarely address this issue.

There really are two related issues here. First, when a proposed new string is clearly targeted at a particular industry or economic sector, the revised draft final report (like the earlier recommendations) lacks any requirement to consider whether there is support or demand for the string from the relevant industry or economic sector, except in the circumstance in which two or more applicants seek an identical string. Consider, for example, the possibility of a .bank TLD. Although ICANN's CEO has publicly "invite[d] the financial sector to make its case" for such a string,(see http://technology.guardian.co.uk/weekly/story/0,,1965235,00.html) , under the revised draft final report, there is no provision for inquiring of a sole applicant for .bank whether there is any support for it among banks, other financial institutions, etc. More than one speaker at the Sao Paulo public forum identified this as a concern.

The second problem – admittedly a more difficult one to tackle – follows from the rejection of the proposal (supported by IPC) that new TLDs be limited to sponsored TLDs. If a proposed new TLD is not targeted to any particular defined sector, ICANN should be in a position to inquire whether it will depend for its financial viability on defensive registrations, and if so to withhold approval of it. The current proposal denies ICANN this capability. The community is not well served by this result.

2.	"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." In the draft revised final report, item 2.5.3.2 still makes it optional for ICANN to establish such a process. IPC still believes there must be some mechanism to challenge the eligibility for consideration of strings that are confusingly similar to trademarks. We are prepared to work on developing more detailed criteria that must be satisfied for a successful challenge, and procedures for such a mechanism (and reiterate that some deviations from the UDRP model will be required, notably that proof of bad faith should not be required for a

successful challenge). We also note (with regard to item 2.5.2.1) that, regardless of how existing TLD strings are treated, proposed new TLD strings which are phonetically confusingly similar to trademarks should be subject to challenge under the new dispute resolution procedure.

3.   "Third, the contractual conditions must include pre-registration mechanisms to prevent conflict with trademark owners." This is not included in the revised draft final report. Some preventative mechanism should be required, especially if new strings are not to be excluded on the grounds that they are likely to attract cybersquatting rather than more constructive activities. Of course, to the extent that a new TLD is truly a sponsored TLD in which the sponsor or its agent undertakes a gatekeeping or validation function before accepting a registration, the need for a separate dedicated preventative mechanism is correspondingly lessened.

4.   "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." The revised draft final report remains silent on this point, though IPC would note that the ICANN board is publicly committed to enforcement of such a policy in its Affirmation of Responsibilities adopted September 25, 2006.

Finally IPC offers comments on a few of the issues raised in the "ICANN Staff Discussion Points" document.

7.6: The introduction of a grants scheme to assist applicants would add considerable complexity to the new gTLD consideration process, would significantly burden already taxed ICANN staff resources, and would also undercut the effort to impose meaningful financial criteria on new TLD applicants. IPC believes ICANN should not pursue such a scheme at this time.

7.8: IPC supports a requirement for public posting of string applications in internationally recognized publications.

7.11: IPC supports limiting the number of applications in the next cycle to a limited and pre-determined number, with an eye toward expanding that number in future rounds if the new mechanisms prove to be efficient and effective.

7.13: IPC believes the IDN applications should be considered in the next round of new gTLD designations. This will give everyone an incentive to work together to resolve technical and policy issues surrounding IDNs in a prompt fashion. In this regard, it may be appropriate to limit IDN applications in this round to those that are not visually, phonetically or semantically similar to existing ASCII TLD strings.