

IPC position statement on proposed .asia registry agreement

This is the submission of the Intellectual Property Constituency of the GNSO in relation to the proposed registry agreement for designation of the .asia registry (See <http://www.icann.org/announcements/announcements-28jul06.htm>).

1 .asia as a sTLD

We refer to our comments on the terms of reference for the new gTLDs dated 31 January 2006 (see http://www.ipconstituency.org/PDFs/2006-Jan31_IPC%20Response%20to%20New%20gTLD%20Terms%20of%20Reference.pdf) in which we cautioned that ICANN must be careful not to allow gTLDs to masquerade as sponsored gTLDs. We stated that sponsored gTLDs must represent communities that can be defined in absolute terms and must be specifically tailored to a discrete and unidentifiable group of internet users.

That is not the case with the proposed .asia community.

We stated:

“Sponsorship will create gTLDs that set registrants apart from the confusion associated with current gTLDs – users will know exactly what can be found there. The requirement for a well-defined community to be associated with a sponsored gTLD ensures that registrants will be accurately authenticated as being a part of the community and users will have confidence in the legitimacy of the participants. The size of the community should be reasonable to make certain that strict enforcement of registrant eligibility is present ... In addition, if a community is too large and the registration requirements too easily met, the name space will by default become unsponsored and divert from the principals suggested herein. ICANN must reject any application that does not meet the conditions for a genuine sponsor from a well-defined sponsoring community.”

The “charter” for the .asia registry is to serve the Pan-Asia and Asia Pacific community, the only proposed eligibility criteria for registration in this name space apparently being (although even this is unclear) location of the registrant within that geographic region. This region includes over half the world’s population and countries with such diverse political, cultural and religious heritages as Iran, New Zealand, Taiwan and Armenia. The “community” which .asia would serve is defined even more vaguely as “all self-identified participants that have a stake in the charter.” Objective verification of membership in this “community” is virtually impossible. The proposed agreement contains no sufficiently defined “community” to adequately satisfy the sponsorship/community selection criteria for the evaluation of proposed new sTLDs set out in ICANN’s RFP for sTLDs dated 15 December 2003. These criteria included providing a definition of the sTLD community,

demonstrating a level of support from the community and some community value in the addition of the proposed new sTLD.

In truth, no specific community would be served by the proposed .asia sTLD. Rather, any .asia registry would likely suffer a similar fate as the .biz and .info gTLDs given its lack of real differentiation from other unsponsored gTLDs.

Furthermore, establishing .asia as a sponsored TLD, thereby endorsing a delegated policy-formulation responsibility would be tantamount to creating an unsponsored gTLD but without relevant policies being established by the global internet community directly through the ICANN process.

Regrettably, a new .asia sponsored TLD will do nothing to mitigate the need for defensive registrations by trade mark owners since the .asia name space is not proposed to be exclusively reserved for members of a particular industry or community.

The Board of ICANN should decline to enter into the proposed .asia registry agreement.

2 Specific comments on proposed .asia registry agreement

Notwithstanding our position stated above, the IPC's specific observations on the provisions of the proposed registry agreement are as follows and are limited to dealing with only those aspects particularly affecting members of the IPC.

Appendix S, Part 4 describes the intended start up plan and accommodates sunrise provisions for intellectual property rights owners to apply for domains based upon their names. For domains that receive more than one valid application during the sunrise period, closed auctions are proposed to be held for competing applicants.

No further detail is provided and such scant indication of the way in which trade mark owners' rights will be protected is to be contrasted with the comparative detail provided in the registry agreements in respect of the .jobs, .travel or .mobi sTLDs.

The IPC's position is that holding closed auctions is an undesirable way of resolving competing intellectual property rights and is likely only to increase the costs to the firms involved, in some cases possibly significantly. It is not clear why the familiar "first come, first served" method of allocating domain names is being departed from. The IPC has previously expressed its hope that processes such as the UDRP can be expanded to accommodate disputes between parties both of whom have legitimate claims to a particular domain name. We suggest that adopting an appropriate dispute resolution process in respect of domain names receiving multiple valid applications during the sunrise period would be less costly and would achieve outcomes more satisfactory to the participants.

Further, the proposed agreement does not make clear what criteria will be used to determine whether an application made during the sunrise period is valid.

No detail is provided in the agreement as to the resolution of any disputes involving country names or IGO names and, in this respect, we again refer to our comments on new TLD terms of reference.

If, despite our comments above, a .asia registry agreement is still to be entered into, a further draft of Appendix S addressing these issues should be made available for comment.

Regarding Whois (Appendix S, part 6), IPC is pleased to note that the proposed agreement would require registrars to designate contact points for reports of false contact data and to speedily investigate and resolve such reports. We urge the operators of .asia to expand this “compliance review policy” to include steps designed to ensure that contact information collected at the time of registration is accurate.

There are several references in Part 6 to “applicable privacy policies” that could impact Whois services. These references are ambiguous and should be clarified. It should also be clarified that the “publicly accessible database” described on page 51 of the appendices document will be operated at the registry level (or at least that it will encompass all registrations made in .asia).

IPC appreciates the Board’s consideration of its views.

Respectfully submitted,

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