

The Intellectual Property Constituency Impact Statement Regarding the Introduction of New gTLDs

IMPLEMENTATION PRINCIPLES

	PRINCIPLE	IPC IMPACT
A	<p>New generic top-level domains (gTLDs) must be introduced in an orderly, timely and predictable way.</p>	<p>To the extent that new gTLDs are introduced, the IPC strongly agrees with this principle, especially with respect to the need for an orderly introduction. However, the IPC still takes issue with the notion that new gTLDs must be introduced. Based on past experience, the addition of new gTLDs will likely result in numerous defensive registrations of otherwise unnecessary domain names by IP owners (which we note include all trademark owners such as Registrars, Registries, ISPs, etc.). Such an introduction not only places a significant burden and cost to IP owners, it results in absolutely no value whatsoever to IP owners, not to mention Internet users in general. In fact, while arguments are made that the introduction of new gTLDs will increase competition and thus lower registration costs for domain name owners, this is not the case. In October of 2007, Verisign will increase the registry fee for registering domain names for .com, .org and .net domain names. To the extent that there has been any rise in the registration of domain names, the IPC submits that this is not as a result of increased demand, but rather represents in large part the practice of defensive registrations or the abusive practices of domain name tasting, parking, kiting and the like. Finally, it is critical that appropriate mechanisms be in place to address conflicts that may arise between any proposed new gTLD and the IP rights of others.</p> <p>The IPC believes that many of these concerns may be minimized by limiting any new gTLDs to those that offer a clearly differentiated domain name space with mechanisms in place to ensure compliance with the purposes of a</p>

		<p>chartered or sponsored TLD. 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.</p>
B	<p>Some new generic top-level domains should be internationalised domain names (IDNs) subject to the approval of IDNs being available in the root.</p>	<p>As mentioned above, appropriate mechanisms must be in place to address conflicts that may arise between any proposed new gTLD and the IP rights of others.</p>
C	<p>The reasons for introducing new top-level domains include that there is demand from potential applicants for new top-level domains in both ASCII and IDN formats. In addition the introduction of new top-level domain application process has the potential to promote competition in the provision of registry services, to add to consumer choice, market differentiation and geographical and service-provider diversity. [Consistent with GAC Principle 2.6]</p>	<p>To begin with, there has been little empirical evidence that the introduction of new gTLDs has, in fact, promoted competition, or added to consumer choice or market differentiation, even though it might have the potential to do so. Any proposed new gTLD must be clearly targeted at a particular industry, economic sector, or cultural or language community, with a requirement that there is sufficient support or demand the relevant industry, economic, cultural or language sector to minimize the concerns set forth with respect to Principal A above. The mere introduction of competition for registry services must be outweighed by the burdens and costs to IP owners and Internet users et forth with respect t Principal A above. ICANN does not need to and should not encourage registry competition in the absence of a clear need for a new gTLD, without which will only create a gTLD replete with defensive registrations and no added value to consumers.</p>
D	<p>A set of technical criteria must be used for assessing a new gTLD registry applicant to minimise the risk of harming the operational stability, security and global interoperability of the Internet.</p>	<p>IPC agrees that technical and operational stability are imperative to any new gTLD introduction.</p>
E	<p>A set of capability criteria for a new gTLD registry applicant must be used to provide an assurance that an applicant has the capability to meets its obligations under the terms of ICANN's registry agreement.</p>	<p>ICANN should be in a position to inquire whether a registry applicant will depend for its financial viability on defensive registrations, and if so to withhold approval of such applicant.</p>
F	<p>A set of operational criteria must be set out in contractual conditions in the registry agreement to ensure compliance with ICANN policies.</p>	<p>To be feasible, the terms of registry agreements should be aligned with policies adopted by ICANN and allow enforcement by ICANN of any non-compliance. The impact of the absence of such criteria or the lack of enforcement thereof on the IPC and Internet users in</p>

		<p>general is evidenced in ICANN's 2006 Consumer Complaint Analysis (see, http://www.icann.org/compliance/pie-problem-reports-2006.html) In particular, the lack of access to Whois data, or the false or inaccurate submission thereof, significantly impacts the time and resources of and costs to IP owners vis-à-vis the handling of infringements on the Internet.</p>
--	--	--

PROPOSED RECOMMENDATIONS

NUMBER	RECOMMENDATION	IPC Comment
1	<p>ICANN must implement a process that allows the introduction of new top-level domains.</p> <p>The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.</p> <p>[GAC2.5]</p>	<p>See comments with respect to Principle A.</p>
2	<p>Strings must not be confusingly similar to an existing top-level domain.</p> <p>In the interests of consumer confidence and security, new gTLDs should not be confusingly similar to existing TLDs. To avoid confusion with country-code Top Level Domains no two letter gTLDs should be introduced. [GAC2.4]</p>	<p>Agreed.</p>

3	<p>Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.</p> <p>The process for introducing new gTLDs must make proper allowance for prior third party rights, in particular trademark rights as well as rights in the names and acronyms of inter-governmental organizations (IGOs). [GAC2.3]</p>	<p>Agreed, and as stated before, appropriate mechanisms must be in place to address conflicts that may arise between any proposed new string and the IP rights of others.</p> <p>While the IPC notes that GAC has made a specific reference to trademark rights, the IPC agrees with NCUC that such rights could include “freedom of expression” rights to the extent they are recognized and enforceable under generally accepted and internationally recognized principles of law provided that such rights do not infringe the existing legal rights of others as set forth in the first paragraph.</p>
4	<p>Strings must not cause any technical instability.</p>	<p>IPC agrees that technical and operational stability are imperative to any new gTLD introduction.</p>
5	<p>Strings must not be a Reserved Word.</p> <p>ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities. [GAC2.2]</p>	<p>Agreed, to the extent that a Reserved Word is such that its use could cause technical or operational instability to the DNS.</p>
6	<p>Strings must not be contrary to generally accepted legal norms relating to morality and public order.</p> <p>New gTLDs should respect:</p> <p>a) The provisions of the Universal Declaration of Human Rights which seek to affirm "fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women".</p> <p>b) The sensitivities regarding terms with national, cultural, geographic and religious significance. [GAC2.1]</p>	<p>The IPC simply concurs with NCUC regarding the implementation issues raised by such a recommendation.</p>
7	<p>Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.</p>	<p>IPC supports this recommendation.</p>

8	<p>Applicants must be able to demonstrate their financial and organisational operational capability.</p> <p>An application will be rejected or otherwise deferred if it is determined, based on public comments or otherwise, that there is substantial opposition to it from among significant established institutions of the economic sector, or cultural or language community, to which it is targeted or which it is intended to support.</p>	<p>ICANN should be in a position, through various mechanisms, to determine that adequate resources exist to ensure that the applicant will not be dependent on defensive registrations for financial viability.</p> <p>Moreover, the IPC believes that the ability to reject an application as set forth in the second provision of this recommendation is an important feature for many members of the IPC (if there is substantial opposition, this raises the concerns set forth in our comments with respect to Principle A) and thus specifically and wholeheartedly endorses it.</p>
9	<p>There must be a clear and pre-published application process using objective and measurable criteria.</p>	<p>IPC supports this recommendation.</p>
10	<p>There must be a base contract provided to applicants at the beginning of the application process.</p>	<p>IPC supports this recommendation.</p>
11	<p>Staff Evaluators will be used to make preliminary determinations about applications as part of a process which includes the use of expert panels to make decisions.</p>	<p>IPC supports this recommendation, and in doing so stresses the need for ICANN to continue to increase its staffing resources to maintain the security and stability of the DNS.</p>
12	<p>Dispute resolution and challenge processes must be established prior to the start of the process.</p>	<p>IPC supports this recommendation.</p>
13	<p>Applications must initially be assessed in rounds until the scale of demand is clear.</p>	<p>IPC supports this recommendation</p>
14	<p>The initial registry agreement term must be of a commercially reasonable length.</p>	<p>IPC supports this recommendation.</p>
15	<p>There must be renewal expectancy.</p>	<p>IPC supports this recommendation.</p>
16	<p>Registries must apply existing Consensus Policies and adopt new Consensus Polices as they are approved.</p>	<p>IPC supports this recommendation.</p>
17	<p>A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination.</p>	<p>IPC supports this recommendation assuming the process will have “teeth” and assuming ICANN’s continued monitoring and enforcement of registry contractual obligations.</p>

18	If an applicant offers an IDN service, then ICANN's IDN guidelines must be followed.	IPC supports this recommendation.
19	Registries must use ICANN accredited registrars.	IPC supports this recommendation, assuming accreditation of registrars is held to high standards to avoid a "Register Fly" situation.

IMPLEMENTATION GUIDELINES

	Implementation Guideline	IPC Comments
IG A	The application process will provide a pre-defined roadmap for applicants that encourages the submission of applications for new top-level domains.	To the extent that the submission of applications is encouraged, it should be because of the clear need for a new TLD.
IG B	Application fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process. Application fees may differ for applicants.	ICANN should be a position, through various mechanisms, to determine that adequate resources exist at an applicant to ensure that the applicant will not be dependent on defensive registrations for financial viability.
IG C	ICANN will provide frequent communications with applicants and the public including comment forums which will be used to inform evaluation panels.	IPC supports a requirement for public posting of string applications in internationally recognized publications and comment forums on applicants.
IG D	A first come first served processing schedule within the application round will be implemented and will continue for an ongoing process, if necessary. Applications will be time and date stamped on receipt.	Based on experience with the 'land rush' effect in domain name registration, it is apparent that first-come, first-serve simply does not work when many valid applications are received at the same time. IPC endorses the use of comparative evaluation methods to allocate new gTLDs. IPC strongly advises against the use of auctions or lotteries (that have nothing to do with the competence and financial viability of an applicant) to resolve competition between applicants.
IG E	The application submission date will be at least four months after the issue of the Request for Proposal and ICANN will promote the opening of the application round.	Given the potential impact any new gTLD will have on the IPC, ICANN must ensure that there will also be an adequate time period for public comment once applications are submitted.

IG F	<p>If there is contention for strings, applicants may:</p> <ul style="list-style-type: none"> i) resolve contention between them within a pre-established timeframe ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application iii) If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and; iv) the ICANN Board may be used to make a final decision, using advice from staff and expert panels. 	<ul style="list-style-type: none"> i) Yes. ii) Yes. IPC prefers the market driven approach and encourages the sponsorship by a well defined community. However, the “priority” for a claimed community support should be subject to Recommendation 8, second paragraph). iii) Yes. iv) Yes. IPC urges ICANN to ensure that its review of applications continues to be vigorous to keep a high standard to meet the selection criteria. IPC urges caution in presenting any proposal that would eliminate those aspects of the gTLD application process providing for the security and stability of the DNS. This concerns not only technical matters, but those aspects of the Internet DNS and registry operation designed to safeguard users and the general public, including, e.g. the examination of proposals to protect intellectual property.
IG G	<p>Where an applicant lays any claim that the TLD is intended to support a particular community such as a sponsored TLD, or any other TLD intended for a specified community, that claim will be taken on trust with the following exception:</p> <ul style="list-style-type: none"> i) the claim relates to a string that is also subject to another application and the claim to support a community is being used to gain priority for the application <p>Under this exception, Staff Evaluators will devise criteria and procedures to investigate the claim.</p>	<p>Yes, again subject to Recommendation 8, second paragraph. IPC again strongly advises against the use of auctions or lotteries to resolve competition between applicants.</p> <p>A comparative evaluation process will best meet ICANN's goals of fostering competition in registration services and encouraging a diverse range of registry service providers.</p>
IG I	<p>External dispute providers will give decisions on complaints.</p>	<p>IPC supports the use of external dispute providers in the same manner as existing UDRP mechanisms, but simply notes that this should not be necessarily to the exclusion of the ICANN Board. There may be decisions that only the ICANN Board can resolve and such issues should not be overlooked or not dealt with simply because there is no external dispute provider available to resolve it.</p>

IG J	An applicant granted a TLD string must use it within a fixed timeframe which will be specified in the application process.	IPC does not support the warehousing of TLD strings and supports a timeframe after applicant grant by which the TLD string must be operational.
IG K	The base contract should balance market certainty and flexibility for ICANN to accommodate a rapidly changing market place.	No comment
IG L	ICANN should take a consistent approach to the establishment of registry fees.	No comment
IG M	The use of personal data must be limited to the purpose for which it is collected.	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.
IG N	ICANN may establish a capacity building and support mechanism aiming at facilitating effective communication on important and technical Internet governance functions in a way which no longer requires all participants in the conversation to be able to read and write English.	IPC support multilingual effective communication on important Internet governance functions.
IG O	ICANN may put in place a fee reduction scheme for gTLD applicants from economies classified by the UN as least developed.	The IPC does not object <i>per se</i> to the use of a reduced fee scheme, but is skeptical that the positive effect of such a scheme will outweigh the negative impact of an underfunded applicant's inability to meet the selection criteria set by ICANN. We strongly recommend that any graduated fee structure be viable and significant enough to ensure compliance with appropriate registry selection criteria, as well as eliminate bad-faith actors who might seek to pay a minimal entry fee and then conduct unscrupulous activities.
IG P	ICANN may put in place systems that could provide information about the gTLD process in major languages other than English, for example, in the six working languages of the United Nations.	IPC supports the dissemination of information about the process in multiple languages.