

## Comments of the Intellectual Property Constituency

Re: <http://www.icann.org/en/public-comment/new-gtld-applicant-support-handbook-20dec11-en.htm>

January 10, 2012

The Intellectual Property Constituency (“IPC”) has reviewed the posting for public comment entitled *New gTLD Applicant Support Program: Financial Assistance* (the “Request”). The IPC notes that the Request was posted on December 20, 2011, during a holiday season for many of the IPC’s participants and much of the ICANN community. The IPC also notes that the Request’s deadline is January 10, 2012, a mere two days before the opening of the new gTLD application window.

The Request states that “Support candidates able to apply for fee reduction as soon as the new gTLD Program launches – 12 January 2012.” The IPC does not believe that ICANN has the ability to review, consider, and act upon the comments of the community within the time period between January 10, 2012 and January 12, 2012 when ICANN will begin accepting fee reduction requests. Further, the required response period is far longer than two days.

The only conclusion that can be drawn from ICANN’s timing of the Request is that ICANN has already substantially finalized the Applicant Support Program. In so doing, ICANN has made the initial public comment process irrelevant, and has failed to provide an adequate response period. In so doing, ICANN has failed to fulfill its pledge, in the Affirmation of Commitments, to employ “responsive consultation procedures that provide detailed explanations of the basis for decisions, including how comments have influenced the development of policy consideration,” and to “continually assess[] and improv[e] the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale thereof).”

<http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>, paragraphs 7 and 9.1.c.

Given this disregard for the public comment process, in violation of ICANN’s promises to the community to the contrary, the IPC sees no value in participating. The IPC hopes that someday ICANN will take the public comment process seriously. Until such time, the decisions taken by ICANN under a broken public comment process lack legitimacy.

Respectfully submitted,

GNSO Intellectual Property Constituency