**D R A F T [6]**

Below, the BC describes improvements in the new gTLD Implementation Program:

1)     **Ensure that ICANN can enforce all registry restrictions and commitments made to potential objectors**.

A key commitment that  ICANN made to GAC members was to allow early warnings and objections to proposed TLDs that may offend cultural, religious or national sensibilities.  However, the BC is concerned that the Implementation approach in the Guidebook won't empower ICANN to deliver on that commitment.

While ICANN is asking governments and other stakeholders to base their response to proposed strings on the proposed commitments in the application, those terms won't actually be enforceable unless they are included as part of the formal Registry Agreement. For ICANN to enforce such restrictions, they must be included in the TLD registry agreements, and ICANN Compliance and Enforcement must accept responsibility for enforcement of said commitments.

ICANN needs to require that commitments included in the application are included as measurable and enforceable elements in the gTLD registry agreement. This loophole should be closed before the first applications are accepted, or ICANN risks breaking a commitment made to governments and other users.

2)      **Ensure that this gTLD expansion includes TLDs serving multiple languages and scripts**.

Internationalized domain names (IDNs) are the major benefit ICANN has described to global Internet users, as required in the *Affirmation of Commitments*. IDNs have great potential to reach the next billion global Internet users, most of whom don't use the Latin alphabet as their primary script for reading and writing.

However, based on current activity in the new gTLD applicant community, it appears that IDN applications will represent only a small fraction of the total applicant pool, thereby leaving underserved linguistic groups behind.

The BC and other ICANN stakeholders have offered proposals to increase IDNs in this round, but ICANN’s Board and management have thus far shown little interest.

ICANN should include incentives and other ways to encourage applicants to offer additional versions of their gTLD in underserved scripts and languages.   ICANN staff has already acknowledged costs savings of consolidating the applicant and technical evaluations for applicants who propose multiple versions of their gTLD.  To encourage the applicants of ASCII and IDN strings to offer additional scripts for their string, those cost savings could be passed along to the applicant as an incentive to serve smaller linguistic communities that might not otherwise be served.

Furthermore, applicants who propose multiple language and IDN strings should not be penalized by strict string similarity tests that prevent additional linguistic versions of their gTLD; linked gTLD strings should be kept together if ICANN processes applications in separate batches.

ICANN must take seriously its commitment to serve global Internet users, and IDN prioritization is essential to meet that commitment.

3) **Rights protection mechanisms (RPMs) must be monitored for effectiveness. If an RPM is working effectively, it should be extended; if an RPM is not effective, ICANN must be prepared to adjust or expand the mechanism.**

The issue of rights protection and fraud prevention has been a centerpiece of the new gTLD debate, and still dominates discussion about the program outside of the ICANN community.  The Internet ecosystem includes businesses – large and small – that are actually driving e-commerce and online services. Those businesses *should* be supporting an expansion of domains to serve global registrants and users. But today, many businesses are not supportive of the new gTLD program, or are calling for Guidebook improvements not previously addressed. And some want to stop the new gTLD program altogether.

The ICANN community developed a suite of rights protections mechanisms (RPMs) to minimize costs of defensive registrations and mitigate the risk of fraud and abuse in new gTLDs.  But most of these new RPMs are untested and must therefore be closely monitored and adjusted to achieve their intended effect.

The BC recommends that ICANN make the following adjustments to RPMs:

**A. Protect consumers and registrants by requiring TM claims notices *beyond* the first 60 days of each gTLD debut**.

In the present approach, trademark claims notices — based on names accepted in the Trademark Clearinghouse database – are only required for 60 days after the launch of each new gTLD.

If TM notices are effective at reducing abusive registrations, it makes no sense to stop giving these notices once a gTLD is 60 days old.  If TM claims are working as expected, ICANN should require them to continue indefinitely.  Moreover, ICANN should embrace its responsibility to provide access to a centralized TM clearinghouse database at minimal cost to registrars and registries.

If TM claims notices are not effective in preventing cybersquatting and fraudulent registrations in new gTLDs, ICANN should be ready to implement additional RPMs based on the TM Clearinghouse database.

**B. Extend Sunrise Periods to a minimum of 60 days.**

Even if the Sunrise Registration Process is highly effective, it may not be possible for TM owners to use the process effectively if dozens of new gTLDs are conducting their Sunrise simultaneously for just the required minimum of 30 days.   ICANN should extend the length of Sunrise services to a standard period of 60 days required by all new gTLDs. A standardized approach in process will minimize confusion for those who seek to use such services.

**C. The Uniform Rapid Suspension (URS) process should be centralized under ICANN supervision.**

For the URS to have its intended effect, ICANN should initiate URS with a single, proven provider such as WIPO, at least for an initial two year period. Other vendors could later be approved to provide URS services, but only after ICANN has compiled a record of experience, effectiveness, and reasonable costs.

Moreover, the disposition of URS cases must be monitored for effectiveness.   If it turns out that most domains subject to a URS take-down are quickly re-registered by others, the URS disposition should be adjusted to allow a transfer of the domain to the TM holder, for an additional fee.

4)     **Amend the Registrar Accreditation Agreement for registrars distributing names in new gTLDS**.

**T**he new gTLD program offers a unique opportunity to strengthen ICANN's contractual agreements with registrars who will sell and manage names in new TLDs.  When millions of new registrants enter the market, it is the registrars — not registries — they will be dealing with. New TLDs are just as important for registrars as for registries, especially now that cross-ownership and vertical integration are permitted.

Citing urgency to address law enforcement issues, ICANN’s Board adopted a resolution in the ICANN meeting in Dakar, in October 2011, directing RAA negotiations to commence immediately.   While ICANN has a prolonged process for amending *existing* contracts like the RAA, these negotiations can quickly generate a *new* RAA covering new gTLDs.

Ideally, ICANN should require registrars to comply with an improved RAA in order to gain accreditation to distribute names in the new gTLDs.  At a minimum, ICANN should encourage each new gTLD registry to require this improved RAA for any registrar distributing or managing domain names in the new gTLDs.

**Improve the Communications Plan for new gTLDs:**

The adjustments described above are achievable within the present implementation plan for new gTLDs.   And these improvements should also be featured in ICANN’s new gTLD communications plan – which is still significantly lacking in detail, despite its critical importance to global Internet users.  The BC remains concerned that the Communications Plan does not sufficiently inform Internet users about the implications of this massive expansion of the domain space.

**Commit to a Second Round of new gTLDs:**

ICANN should also commit to open a second round for new gTLDs at a date certain, based upon evaluations and improvements to conditions for a second round.   The dates can be contingent on first round milestones and adjustments, but the commitment must be firm enough to provide assurance to potential applicants that they can obtain a gTLD in a second round.

Taking these further steps will reduce the burdens and costs that the gTLD expansion would impose on existing registrants, to businesses, and to NGOs.

ICANN’s business constituency understands the critical importance of a well-executed expansion of new top level domains.