**ICANN Business Constituency (BC) Requested implementation improvements to ICANN’s gTLD expansion plan 2-Feb-2012**

Section 1: Existing BC positions that are re-stated with background on supporting BC positions.

*Please indicate below any comments or suggestions regarding BC advocacy of these items.*

| **Improvement Request** | **Established BC Position** | **BC Member Comments** |
| --- | --- | --- |
| (1) Ensure that ICANN can enforce all registry restrictions and commitments made in the application, via enforceable mechanisms within the contract | [BC position ICANN Staff Recommendations for RPMs](http://www.bizconst.org/Positions-Statements/Position-11-2009_Staff_Proposals_Rights_Protection_Mechanism_New_gTLDs.pdf), Nov-2009  The Registry Operator’s manner of operation or use of a TLD is **inconsistent with the representations made in the TLD application as approved by ICANN and incorporated into the applicable Registry Agreement** and such operation or use of the TLD is likely to cause confusion with the complainant’s mark…”  The Staff Proposal would put the interests of TM holders (and possibly Communities if this applies to Communities also) at risk since once the delegation is made they would not have any recourse or rights to institute Post Delegation Disputes under this policy based on:   1. breach of representations in the gTLD application 2. breach of Registry Agreements   [BC Position on DAG v4 Rights Protection Mechanisms](http://forum.icann.org/lists/bc-gnso/msg01352.html), Jul-2010  “ the use of the PDDRPs must allow an effective remedy in cases where the registry has breached its obligations in its gTLD application, its registry agreement or when it engages in willful action leading to trademark obligations.” (p4) |  |
| (2.1) Ensure that gTLD expansion includes TLDs serving multiple languages and scripts – Include incentives to applicants to encourage offering multiple versions of their gTLD in different scripts | [BC comments on April 2011 Guidebook](http://www.bizconst.org/Positions-Statements/BC+on+Final+App+Guidebook+May+2011+v3.pdf), 15-May-2011  "Applicants should be granted fee reductions for additional versions of the applied-for string in IDN scripts and other languages." |  |
| (2.2) applicants proposing multiple language and IDN versions should not be blocked by strict string similarity tests against the applicant’s own strings | [BC comments on April 2011 Guidebook](http://www.bizconst.org/Positions-Statements/BC+on+Final+App+Guidebook+May+2011+v3.pdf), 15-May-2011  “String Similarity contention sets should not include similar strings requested by an applicant seeking linguistic variations of the applicant's other applied-for string.” |  |
| (3) Rights Protection Mechanisms |  |  |
| (3.1) Require TM Claims Notice service at all times | [BC comments on April 2011 Guidebook](http://www.bizconst.org/Positions-Statements/BC+on+Final+App+Guidebook+May+2011+v3.pdf), May-2011  “The TM Claims notification service provides a valuable service to both TM holders and registrants. This holds true any time a domain name is registered – not just during the launch period. The BC recommends that gTLD Registry Operators offer TM Claims service not only during launch, but at any time a domain name is registered.” (p.12) |  |
| (3.3) Require a standardized Sunrise approach to minimize the confusion and costs to registrants to participate in Sunrise in multiple gTLDs. | [BC Comments on first DAG](http://www.bizconst.org/Positions-Statements/Position_01_2009_draft_guidebook_TLDs.doc), dated Jan-2009  “We support the notion of a standardized sunrise validation process that permits interested rights holders to validate their rights one time, and then that validation would be accepted by all new TLD operators. “ |  |
| (3.4) Successful URS complainants should have option to transfer or suspend the name, and such names should generate TM Claims Notice for subsequent registrations. | [BC Position on DAG v4 Rights Protection Mechanisms](http://forum.icann.org/lists/bc-gnso/msg01352.html), 26-Jul-2010 and  [BC position ICANN Staff Recommendations for RPMs](http://www.bizconst.org/Positions-Statements/Position-11-2009_Staff_Proposals_Rights_Protection_Mechanism_New_gTLDs.pdf), Nov-2009  “Successful complainant must have option to transfer the name or cancel, if no appeal filed within 90 days from date of URS decision.   1. Successful complainant must also have option to have domain suspended until end of its current registration term, and then indefinitely flagged 2. Flag shall be recorded in clearinghouse so that if anyone seeks to register  such name(s) again, they would get a notice. “ (p2) | ICA continues to have concerns about proposed URS alterations that would convert it from a UDRP supplement to a substitute, and a domain transfer option does so. Our concerns are heightened by the fact that ICANN is months behind on launching an implementation WG for the URS and that existing UDRP arbitration providers such as WIPO and NAF have indicated that the promised $300 fee is infeasible. We wholeheartedly support the “Flagging” concept for reregistration of domains suspended in a prior URS action and, while we have concerns about separating a domain name from its actual use for purposes of determining infringement, would not object to placing exact matches of trademarked, non-dictionary terms on a permanent do-not-reregister list; this would have the benefit of reducing costs of carrying the domain in a defensive registration. |
| (3.5) If required RPMs 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. | [BC comments on April 2011 Guidebook](http://www.bizconst.org/Positions-Statements/BC+on+Final+App+Guidebook+May+2011+v3.pdf), 15-May-2011  "RPMs are still substantially weaker than those recommended by the IRT. Consumers and businesses will inevitably be harmed by cybersquatting and other fraud likely to occur in hundreds of new gTLDs, especially at the second level. Picking-up on discussions during a US Congressional Hearing on 4-May-2011, the BC reiterates its support for Globally Protected Marks List (GPML). Absent a GPML, trademark holders must pay for unwanted defensive registrations. |  |
| (9) Improve and modify the Communications Plan to focus more on information and education about what the mechanisms are for those who do not want to operate a gTLD registry. | [BC comments on April 2011 Guidebook](http://www.bizconst.org/Positions-Statements/BC+on+Final+App+Guidebook+May+2011+v3.pdf), 15-May-2011  While not part of the Guidebook, effective Communications and Outreach activities are essential to the success of this gTLD expansion. ICANN’s communications effort must do more than simply promote new gTLD applications. It must also fully inform user and business communities around the world of all the major changes coming with the introduction of new gTLDs. | Is this still relevant? In any event, appears to need an update now that the program has launched. |

Section 2: Requests/Recommendations that are not directly take from established BC positions. These items will support BC positions on the Improvements in Implementation of new gTLDs, along with those items in Section 2.

*Please indicate whether you Support or Oppose these implementation changes. You are invited to also offer any relevant comments.*

| **Improvement Request** | **Support from established BC Positions** | **Support**  **Request?**  **(Yes, No, or Abstain)** | **BC Member comments, changes and/or explanation for non-support** |
| --- | --- | --- | --- |
| (3) Rights Protection Mechanisms |  |  |  |
| (3.2) Manage the TM Clearing house centrally, to ensure standardized streamlined submission processes for those trademark holders using it |  | Abstain |  |
| (3.3) Extend Sunrise for all relevant gTLDs for a mandatory 60 days [brand/ single user TLDs could be excluded]. |  | Abstain |  |
| (3.4) Operate the URS initially as a sole vendor, supervised by ICANN  Commit to monitoring the disposition of URS cases to see of names subject to a URS are rapidly re-registered by others.  Future action: If this is the case, additional measures should be taken, such as making these names ineligible for future registration. Create sanctions for accredited registrars/resellers who violate such lists. | [BC Position on DAG v4 Rights Protection Mechanisms](http://forum.icann.org/lists/bc-gnso/msg01352.html), 26-Jul-2010 and  [BC position ICANN Staff Recommendations for RPMs](http://www.bizconst.org/Positions-Statements/Position-11-2009_Staff_Proposals_Rights_Protection_Mechanism_New_gTLDs.pdf), Nov-2009  “Successful complainant must have option to transfer the name or cancel, if no appeal filed within 90 days from date of URS decision.   1. Successful complainant must also have option to have domain suspended until end of its current registration term, and then indefinitely flagged 2. Flag shall be recorded in clearinghouse so that if anyone seeks to register  such name(s) again, they would get a notice. “ (p2) | Abstain | See statement above re: transfer option , flagging, and ineligibility for future re-registration.  Given the challenge of finding any credible provider at the proposed $300 pricing, as well as the dangers of forum shopping for an untested program, we support the concept of launching with a sole vendor. In addition, the BC statement should be amended to require any and all URS vendors to be placed under a binding and enforceable contract – this is consistent with the BC’s existing position that UDRP providers should be under standard agreements. |
| (4) RAA Amendments. ICANN should require registrars to comply with the amended 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. | There is no formally adopted position on the topic of amended RAA and new gTLDs. However, the BC has frequently cited need for stronger requirements on registrars, incl WHOIS accuracy, WHOIS Access, transfers, tasting, etc. | Abstain |  |
| (5) Review the criteria for community facing TLDs to avoid sending such applications to auction mechanisms, particularly in the instances of not for profit, charitable names |  | Y | In addition to reviewing the criteria in order to avoid sending such applications to auction mechanisms, ICANN should allow non-profit organizations who want to apply for their organizations’ names as gTLDs to qualify to participate in the Applicant Support Program, as described by the Joint Applicant Support Working Group (JAS WG).  As Angela F. Williams, Senior Vice President and General Counsel of YMCA USA, stated in the testimony she provided at the Senate Commerce Committee’s hearing on ICANN’s New gTLD Program on December 8, 2011, the $185,000 application fee is prohibitively expensive for most non-profit organizations. However, certain non-profits see the value in acquiring their own gTLD that reflects their organization’s name. The JAS WG has developed recommendations for a program to provide support to applicants requiring financial assistance in applying for and operating new gTLDs, and it would be useful for ICANN to allow non-profits applying for .BRAND gTLDs to qualify for this assistance.  ICA Comment: This should be narrowed from all non-profits to non-profit charitable organizations that can demonstrate financial need. Non-profits include a broad range of entities – including trade associations and major universities – many of which have substantial monetary resources.  In addition, while the JAS proposal was clearly unstoppable, ICA believes that all BC members should consider the undesirable precedent that it has set – ICANN established a subsidy program to help solve a political problem with the GAC, and in so doing has now entered into resource transfer activities as if it were a government entity. How long before JAS-assisted applicants lobby the GAC to have ICANN subsidize their operating costs, which are more substantial over the long term than new gTLD application fees? The bulk of ICANN revenues come from domain registrants who have no effective say when ICANN uses their fees (taxes) for purposes other than technical coordination of the DNS. |
| (6) Review the conditions under which a trademark name might end up being sent to auction mechanisms, and improve other options |  | Abstain |  |
| (7) WHOIS Accuracy – improve the requirement of validation of WHOIS data for new gTLDs. [Thick WHOIS does not equate to accurate WHOIS data] |  | Abstain |  |
| (8) Add a “do not register/registry block” service to the Trademark Clearinghouse, allowing any trademark holder to pay a one time fee to permanently prevent registration of names that are an identical match or include the identical match trademark name.  Operate this for two years, then evaluate continuation of this service.  The fee per name should be a one time fee that covers all new gTLDs, and creates a database of ‘reserve names’ which meet certain criteria. | [BC position ICANN Staff Recommendations for RPMs](http://www.bizconst.org/Positions-Statements/Position-11-2009_Staff_Proposals_Rights_Protection_Mechanism_New_gTLDs.pdf), Nov-2009  The BC sees the rejection of the GPML as a major setback as it leaves open the issue of defensive registrations without any solution being made available to address or remedy this problem related to the launch of new gTLDs.  Absence of this from the Proposed RPMS means that TM holders and Businesses will HAVE TO undertake Defensive Registrations. Effectively PAY for unwanted domains in EVERY new gTLD. | Y | Businesses are worried about dealing with the cybersquatting that will occur to the “left of the dot” in the new space – in other words, they are worried about the defensive registrations that they will need to pay for in open-registry-model new gTLDs in order to reduce the impact cybersquatting will have on their businesses and customers. To alleviate this issue, ICANN should require registries to give brand owners the option to buy low-cost blocks on their trademarks before any registration period (Sunrise or Landrush) opens. This can be offered at a lower cost than sunrise registrations have been priced at in the past – this precedent has been set with the blocks offered in .XXX, where the blocks are made in perpetuity for a single, non-recurring fee.  ICA is checking with its members on this recommendation |
| (10) Second Round: Board has committed to second Round after a trademark study which would start 1 year after 75 new gTLDs in the root. |  | Y | Many businesses continue to feel anxiety that stems from the belief that if they do not apply for one or more new gTLDs in this first application round, they will be put at a disadvantage relative to their competitors, in the event those competitors apply and gain a theoretical advantage from owning gTLDs.  A declaration by ICANN of when the next applicant round will take place would relieve much of that anxiety surrounding the first application period.  Businesses are making decisions by weighing the consequences of not participating in this first round when it could be five or more years, a lifetime in this digital age, before they could apply again. For many companies that is too long, should their competitors act now and begin to extract (yet unknown) benefits from a gTLD of their own.  While sympathetic to the concerns of businesses it seems unrealistic to ask the Board to set a date certain for a second round when we have no idea how many applications will be submitted in the first round, what the results of the TM study will be, or what other myriad implementation problems and legal challenges will accompany the first round.  In any event, given that the first new gTLDs won’t be operational until sometime in 2013, it must be assumed that a second round could not start before 2014-15 and businesses should make their decisions accordingly. |

To verify voting qualification, please indicate your name and organisation below:

Name: Yvette Miller

Organisation: The Coalition Against Domain Name Abuse (CADNA)