**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) | The BC should develop and lead advocacy and awareness with GAC, Board, and business on the BC’s views. As this section is about existing positions, preparation of a short overview can be developed now, and the advocacy regarding the next section of improvements added, when the members input is confirmed. This statement is intended to cover this entire section.  |
| (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%2Bon%2BFinal%2BApp%2BGuidebook%2BMay%2B2011%2Bv3.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%2Bon%2BFinal%2BApp%2BGuidebook%2BMay%2B2011%2Bv3.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%2Bon%2BFinal%2BApp%2BGuidebook%2BMay%2B2011%2Bv3.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)
 |  |
| (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%2Bon%2BFinal%2BApp%2BGuidebook%2BMay%2B2011%2Bv3.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%2Bon%2BFinal%2BApp%2BGuidebook%2BMay%2B2011%2Bv3.pdf), 15-May-2011While 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. | ICANN’s communications plan, and its implementation leaves huge unfilled informational gaps regarding the support or mechanisms that are available to registrants, and users. This is a growing problem and will contribute further to dissatisfaction as more businesses learn about the changes, and are caught unaware of needing to plan for defensive or other mechanisms to protect their trademarked names at the second level, or watch the published list of application strings. This should be addressed with some urgency.  |

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 |  | Y | The TC needs to be managed centrally to support the registrants, and to lower confusion and duplicate costs to trademark holders who chose to use it. ICANN can’t police performance in a distributed implementation.  |
| (3.3) Extend Sunrise for all relevant gTLDs for a mandatory 60 days [brand/ single user TLDs could be excluded].  |  | Y | This seems like an important improvement. If the applicant will not allow registration at the second level to external names, it is feasible to waive sunrise, but should the registry seek, later, to change and open up to external registrations, they should be required to offer a 60 day Sunrise at that point. Further the terms of Sunrise should be standardized as much as possible in the use of notices, forms, etc, to lower the risk of confusion and error by those who use it, and lower the cost to the registrant choosing to use Sunrise, both in costs, and personnel time/resources. |
| (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)
 | Y | I am of the view that this the only way that it can work, and that it will be financially viable.  |
| (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.  | Y |  |
| (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 | I took note of Phil Corwin’s comment about not for profits or non profits that are charitable organizations. Certainly I would not support extending this to universities, or trade or professional associations without very careful examination of whether they are actually in need. I have some remaining concerns as well about the JAS program, although I agree it was unstoppable. And it was of grave concern to me when various earlier proposals included lowering standards in performance, or technical or other basic requirements to protect registrants by lowering the liklihood that a registry will fall over.  |
| (6) Review the conditions under which a trademark name might end up being sent to auction mechanisms, and improve other options |  | Y | It is of concern that ICANN wants to default to auctions to address conflicts involving a string application involving competing trademarks. That is likely to only alienate affected parties, even beyond a negotiation process of some kind to reach an agreement between competing applicants.  |
| (7) WHOIS Accuracy – improve the requirement of validation of WHOIS data for new gTLDs. [Thick WHOIS does not equate to accurate WHOIS data]  |  | Y | Whois is such a priority to the BC that I was of the view that we already supported such requirements. This deserves support from the BC.  |
| (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 | I am a supporter of a low-cost ‘reserve/do not register’ approach for trademarks before any registration period (Sunrise or Landrush) opens. I agree that the IFFOR registry has pioneered improved protections in this area, where the non resolving names are made in perpetuity for a single, non-recurring fee. It is likely that this may need to be implemented, and perhaps evaluated, after a 3 year period, for any further improvements and enhancements, and to determine its effectiveness in lowering the need for defensive and unusable registrations. An administrative appeal process can be implemented, if there are conflicts between trademarked names, where one holder wants to register, and another with a competing trademark wants to reserve/block. Use of the Clearinghouse collection of the trademark documents will maximize the benefits of the Clearinghouse, but lower the costs on providing documentation to users of this enhancement to the present RPMs.  |
| (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 | It is my understanding that the Board has committed to a second round, but I can understand about the uncertainty of exactly when. However, it is important to give a time range, for example, perhaps by 2015, announce the time for the next round.   |

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

Name: Marilyn Cade

Organisation: mCADE llc