**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) | Agree |
| (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) | Agree |
| (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. “ | Agree but believe we need to distinguish that a standardized sunrise is not a “remedy” but an extortive unnecessary cost trademark owners need to bear. ICANN has refused to place price caps on the service, so it will only be “standardized” on process, not on price. |
| (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) | Agree. Transfer is an essential remedy to give the URS any teeth. The URS as it stands is an unworkable remedy that trademark owners will not use unless the standard of proof is amended to comport with the UDRP. Other critical changes include (1) change from the “clear and convincing evidence” standard to “preponderance of evidence” as in the UDRP proceeding; (2) remove any requirement that the URS provider make substantive determinations about how a trademark owner is using its mark. The URS must also be available for the low price ICANN envisioned when it watered down the rest of the idea. |
| (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. | Agree, but would amend improvement request to just say “ICANN should be ready to implement additional RPMs. “ The RPMs need not be “based on the TM clearinghouse data,” which will only cover part of the problem. |
| (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. | Agree |

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 TM Clearing house will only be effective if centrally managed. |
| (3.3) Extend Sunrise for all relevant gTLDs for a mandatory 60 days [brand/ single user TLDs could be excluded]. |  | Y |  |
| (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 agree on the urgent need for a transfer option per the prior BC comments. However, I think we need to nuance our response to include advice on who the proper vendor should be. ICANN must also commit to fixing the problems with the URS, which currently render it unworkable, including the unreasonably high standard of proof (clear and convincing evidence standard vs. UDRP’s preponderance of evidence standard) and the fact that a URS provider can be opining on the sufficiency of a trademark owner’s use. Even a single provider, if they pick the wrong one, could be a disaster. |
| (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 | Any new registry (and underlying registrars) should be required to comply with the RAA in whatever form and the new RAA will hopefully have the new safeguards for law enforcement, consumer protection etc. |
| (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 | Agree but I also believe the commercial auctions are a similar revenue-generation scheme with little correlation to who is best suited to operate as a registry |
| (6) Review the conditions under which a trademark name might end up being sent to auction mechanisms, and improve other options |  | Y |  |
| (7) WHOIS Accuracy – improve the requirement of validation of WHOIS data for new gTLDs. [Thick WHOIS does not equate to accurate WHOIS data] |  | Y | Although I agree that thick WHOIS does not always equate with accurate WHOIS, the BC has always been in support of more accurate WHOIS so we should support stronger WHOIS authentication, especially where domain names are registered through a privacy service. Registrars should warn potential registrants who search for a new domain name using a “domain spinner tool” that the name they are searching may be similar to a third party’s trademarks and have them acknowledge receipt of the warning when registering a name along with a good faith belief that they are not violating the rights of third parties |
| (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 | Trademark owners should have a one-stop opt-out option for either low fee or no- cost “do not register” service. In the case of disputes, there could be an administrative process similar to the UDRP. Governments, NGOs, nonprofits, etc should all have equal access to this remedy. |
| (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 | YES BUT if initial launch proves to be a failure, I would urge re-examination of the entire scheme before Internet security and stability is further jeopardized. |

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

Name: Sarah Deutsch

Organisation: Verizon