To:  ICANN (gtld-guide@icann.org)

**Re:  Comments to the New GTLD Program and Process**

Dear Mr. Twomey and Mr. DengateThrush:

The British Broadcasting Corporation (BBC) is the United Kingdom’s Public Service television and radio broadcaster established by Royal Charter and publicly funded by a licence fee. BBC Worldwide is a wholly owned company within the BBC group, responsible for the commercial exploitation of the BBC’s output in order to generate revenue for the BBC.

The BBC and BBC Worldwide have already signed up to endorse the submission made by MarkMonitor, Inc, however we have some additional comments which we would like to make.

The BBC group owns several thousand domain names related to its channel and programme names, the vast majority of which are held for brand protection purposes so that the public will not be misled into believing that websites using the BBC’s brands are connected with or authorized by the BBC. Whilst, generally, an individual domain name is not expensive, once a brand owner is seeking to protect a number of brands across the existing top and second level domain spaces the costs become significant. Brand owners like the BBC now face a potentially limitless expansion in that domain space. As Fairwinds has pointed out recently in its domain name blog, if half of the expected one thousand new TLDs are unbranded, and a brand owner registers an average of five names in only 50 percent of the sunrise periods, then they could expect to pay $625,000 in registration costs, and a similar amount to maintain the names biannually, leaving aside the costs of administering this increased portfolio.

It has been suggested, as justification, that this expansion is necessary because there are no longer sufficient domain names available to match demand. This is a fallacy when domain name monetisers are permitted to hold hundreds of thousands of domain names which are then used not to establish genuine websites but to operate automated sites that generate revenue through click-through links and/or to sell them at vastly inflated prices to genuine users. ICANN could free up substantial internet “real estate” by imposing reasonable controls on this practice.

Notwithstanding the comments made above and in the MarkMonitor submission, if this process does go ahead we do also have some comments to make on the detail of the draft applicant handbook, as follows:

**Timing of the Objection Period and Dispute Procedure**

It is proposed that the Objection Period will open after ICANN posts lists of completed applications and close following the end of the Initial Evaluation Period, however there is no detailed timing specified.  Sufficient time must be allowed after the end of the Initial Evaluation Period so that a brand owner could wait to see that an application has passed this first hurdle before incurring the internal and legal costs of preparing and filing an objection.

Furthermore, the proposed procedure allows a gTLD applicant who fails the Initial Evaluation to request an Extended Evaluation.  As currently drafted, it appears that the Objection Period would end before this Extended Evaluation takes place, so that a brand owner who did not file an objection, because the application failed the Initial evaluation, would later be unable to do so. This cannot be correct.

As Markmonitor pointed out, the successful party to a dispute ought to be able to recover all their costs, including the dispute resolution filing fee and their legal costs.  Given the likely international nature of the disputes, parties might have to pay sufficient sums to the dispute resolution provider to cover this, or put up some kind of bond or assurance. Significant sums of money will therefore be paid to the dispute resolution provider since both parties will be required to pay in the anticipated full costs of the dispute.  The money must be placed on deposit and returned to the successful party with interest.

The proposal is that if a party wishes to object to a gTLD application on more than one ground, for example both string confusion and legal rights, they must file and pay for separate dispute resolution procedures.  This seems unduly onerous and runs the risk of unnecessary duplication and/or costs for both parties if they have to run two related objections in tandem with different dispute resolution providers.

It is proposed that there should be one panellist for legal rights objections.  On a UDRP procedure there can be either one or three panelists and, whilst three panelists would increase the costs, this gTLD objection process should be treated with at least the same level of gravity as a UDRP, which may relate just to a single domain name.

We request that there be clarification as to the definition of a “mark” relied-on by an objecting brand owner. We assume that this would include an unregistered mark?

The draft applicant handbook refers to GNSO Recommendation 3, that “Strings must not infringe the existing legal rights of others that are recognised or enforceable under generally accepted and internationally recognised principles of law”.  Given the global nature of the internet and the wide scope of potential activity for the operator of a new gTLD, we believe that consideration should be given to the proposition that, where one legitimate brand owner objects to an application for a new gTLD then the gTLD should be refused to all, even if the applicant also has independent, legitimate trade mark rights, because in operating the gTLD they will potentially be infringing the rights of the objecting brand owner.

**Post-Delegation Dispute Resolution Procedure**

The Explanatory Memorandum states that there will be a placeholder in the new gTLD Registry Agreements for future development of post-delegation dispute resolution procedures to deal with infringement claims which might arise after a new gTLD is delegated and begins operation.  Currently we therefore have no detail on this, whereas this is clearly a very important issue and needs to be resolved before the launch of the first new gTLDs.

**String Confusion**

We are unclear from the draft applicant handbook what threshold of string confusion would block a later application.  With a 3-letter gTLD a single letter difference could be quite significant in the context of the mark overall, but could lead to a high level of “apparent confusion” using the automated visual comparison. We suggest that greater consideration and clarification is required in order that the impact of string confusion is properly understood.

**Models of Protection for Rights Holders**

Presently, it is not proposed that there should be one single model of protection for the assignment of domains within a new gTLD, ie whether there should be a sunrise period or some other procedure, and the precise terms of any such sunrise.  Consequently, with the anticipated launch of numerous gTLDs a brand owner seeking to protect its key brands will have to familiarise themselves with the particular model chosen for each one, and ensure that they comply.  This will inevitably be more time-consuming, and consequently costly, than having one prescribed model.

Yours faithfully

British Broadcasting Corporation