

Comments of Intellectual Property Constituency (IPC)

July 15, 2011

The Intellectual Property Constituency of the GNSO (IPC) offers the following comments on the Draft New gTLDs Communications Plan (“Draft Plan”). See <http://www.icann.org/en/public-comment/new-gtlds-comms-plan-24jun11-en.htm>.

(1) As a threshold matter, we question whether this 3-week public comment opportunity is meaningful, in light of the fact that ICANN has already issued an RFP for running the communications program. See <http://www.icann.org/en/announcements/announcement-05jul11-en.htm>. Substantive portions of the RFP are drawn almost verbatim from the Draft Plan. The close date for responses to the RFP (July 18) is the next business day after the close date for comments on the Draft Plan (July 15). It is hard to avoid the conclusion that ICANN is simply going through the motions of considering public comment on the Draft Plan, and that nothing that is said in those public comments will have any impact on any significant aspect of the Communications Plan.

(2) The Draft Plan identifies as its “principal goal” “to increase the likelihood of success for the new gTLD program.” This begs the question of what are the metrics for success for the new gTLD program. These metrics should have been defined and clearly and publicly stated before the Applicant Guidebook was adopted in Singapore. Since that did not happen, these metrics should be defined and publicized well before the Communications Plan is finalized and launched (indeed, before the contractor to carry out the plan is selected).

(3) The Communications Plan was presented to the ICANN community as a mechanism to ensure that everyone who might potentially apply for a new gTLD (and especially members of underserved language communities not otherwise engaged in ICANN) is aware of the impending new gTLD launch. If this is still the main focus, why is the program scheduled to continue well beyond the closing of the new gTLD application window in April 2012? At that point, the Communications Plan will have fully served the purpose for which it was presented to the ICANN community. What is expected to be done in phases 3 (from April 2012 “until the next round opens”) and 4 (defined only as occurring when “TLDs go live/in the root”) that would contribute to this goal? ICANN’s limited budget should focus almost entirely on the run-up to the opening of the application window; after this point, applicants themselves will then be investing in branding activities to take advantage of their new TLDs, which in and of itself will draw much attention to the new gTLD program after the application window closes. ICANN should consider terminating (or sharply scaling back) the Communications Plan no later than April 12, 2012, after which ICANN’s normal communications capabilities should be more than adequate to inform and educate the public regarding the subsequent steps in the process.

(4) Similarly, and in light of comments by Board members and others about the need to prioritize potential IDN applications, why is this priority not reflected in the communications plan? See, e.g., Comments of George Sadowsky, *available at* <http://www.internetnews.me/2011/06/24/george-sadowskys-explanation-of-his-no-vote/> (last

visited July 12, 2011). For example, the Draft Plan appears to pay just as much (if not more) attention to North America, where the potential IDN target audience appears quite small, as to Asia, where billions of speakers of languages using non-Latin scripts live. Why? Similarly, why is the IDN message listed last among Key Messages on page 2, rather than first or second? ICANN should re-focus its efforts to other geographical regions and give IDNs a higher priority to deliver a consistent message.

(5) Does ICANN intend to fund an awareness campaign or a marketing campaign? The tension between these goals pervades the Draft Plan. While there are several allusions in the document to ICANN presenting the program "neutrally" and as "stewards not advocates," there are also contradictory indications, such as the requirement that the communications be "upbeat," and that they "inspire and nurture natural interest in how new gTLDs will unlock creativity and innovation in the use of domain names." How will the "neutrality" of Communications Plan materials be ensured? How is "neutrality" defined for purposes of the Communications Plan (note, for example, the ICANN CEO's surprising announcement at the Singapore ICANN meeting that he had been maintaining "neutrality" regarding the new gTLD project up to that date)?

(6) Page 3 of the Draft Plan indicates that "investors" are among the target audiences for the Communications Plan. Will communications directed to "investors" be vetted for compliance with applicable securities laws? How will "neutrality" be maintained in communications directed to "investors"?

(7) Page 4 of the Draft Plan indicates that "entities that already plan to apply for a new gTLD" are among the target audiences for the Communications Plan. Why? By definition these entities already know enough about the new gTLD roll-out to "plan to apply."

(8) On page 3 of the Draft Plan, it is stated that "end-users are not the primary target of this first phase" of the Communications Plan, but that "consumers and end users [will become] a more primary target" during "later phases." During which of the four listed phases of the Communications Plan (page 4) will end-users be targeted? The explanation for the delay is "because new domains must first be available before end-users can reap the benefits." (page 3) Does this mean that after new domains "are available," i.e., delegation has occurred and the new gTLDs are in the root, ICANN resources will be expended to make "consumers and end-users" aware of them? If so, what is the justification for such a subsidy to the marketing efforts of new gTLD operators? And how will ICANN choose which new gTLDs to promote with its own communications budget?

(9) How will ICANN, and its communications contractor, partner with IPC and its members in reaching the stated target audiences that include "right holders" and "trademark attorneys"? How will these communications take into account the remaining large areas of uncertainty surrounding the new gTLD launch, e.g., regarding operation of the Trademark Clearinghouse and the rights protection measures that it supports?

(10) Another target audience is "the tech community," defined to include "registries/registrars." Is it conceivable that any accredited registrar and existing registry is not

already fully aware of the new gTLD launch, with the possible exception of extremely isolated ccNSO operators in some least developed countries?

(11) The “tech community” target audience is also defined to include “manufacturers of routing hardware who need to ensure proper technical preparedness so consumers will be able to reach sites with the new gTLDs.” Why are ICANN resources to be expended on reaching this technically sophisticated audience? Would these resources be better expended on outreach to IDN communities and other underserved audiences? Also, how will ICANN communicate effectively to “ensure proper technical preparedness” in a way that is not “overly technical” and that “avoids technical jargon,” see page 2?

(12) Among the metrics listed on pages 5-6 for evaluating the success of the communications program is “applications received.” Does this refer to the number of applications received? The diversity of applications received? The quality of applications received? If the latter, how will ICANN judge the quality of applications received, and when will that evaluation be made public?

(13) How much will be budgeted for the Communications Plan? In 2010, the stated allocation was US\$700,000. The FY 12 budget documents do not seem provide any specific figure for this program. *Compare New gTLD Budget, available at <http://www.icann.org/en/topics/new-gtlds/new-gtld-budget-28may10-en.pdf>, at 4 with FY12 Operating Plan and Budget, available at <http://www.icann.org/en/financials/proposed-opplan-budget-v1-fy12-17may11-en.pdf>.* If the budgeted amount is not adequate for the ambitious effort set forth in the Draft Plan (e.g., major public events in fifteen (15) countries in all five (5) global regions), what are the priorities to be maintained in a reduced-scale program?

IPC looks forward to ICANN’s responses to these questions about the Draft Plan.

Respectfully submitted on behalf of the IPC by Steve Metalitz, its Vice President

7/15/11