

# Comments of GNSO Intellectual Property Constituency

August 29, 2011

The Intellectual Property Constituency (IPC) offers the following comments on the “framework that has been structured to assist in soliciting community feedback,” as a step in development of the 2012-2015 Strategic Plan. See <http://www.icann.org/en/public-comment/stratplan-2012-29jul11-en.htm>.

We find virtually nothing to comment upon in this document, because the document has virtually no substance. Furthermore, if the document’s goal is to “assist in soliciting community feedback,” it is likely to fail.

Unfortunately, this document exemplifies a disturbing trend in the ICANN public comment process. In some past cycles, ICANN invited the community to comment at an early stage on far more detailed expositions of ICANN’s strategic plan. See <http://www.icann.org/en/strategic-plan/strategic-plan-draft-2009-2012-01dec08-en.pdf> (December 2008); <http://www.icann.org/en/strategic-plan/draft-strategic-plan-2009-2012-en.pdf> (October 2008); <http://www.icann.org/en/public-comment/public-comment-200711.html#stratplan-2008> (October 2007). By 2010, however, instead of substance or detail, ICANN was providing for public comment only a hastily assembled first sketch of what might someday evolve into a draft strategic plan, with the phrase “[Details of staff work will be provided in the final plan.]” appearing repetitively on nearly every page. We also note that there were only half a dozen comments on the ostensible draft strategic plan in the last cycle, and several of them were critical of the public comment process employed. See <http://www.icann.org/en/public-comment/stratplan-draft-2011-summary-comments-21feb11-en.pdf>, pp. 11-12.

The resulting current (2011-14) plan itself (see <http://www.icann.org/en/strategic-plan/strategic-plan-2011-2014-28mar11-en.pdf>) was also extremely general and cried out for clarification and specificity. For example:

- The 4 ‘key themes’ identified were only loosely tied to quite immeasurable ‘strategic metrics’. For example, ICANN undertakes to ‘promote fair opportunities to facilitate and support open entry to Internet-related markets around the globe’ – concrete visions as to how this is achievable and can be measured are absent from the strategic plan.
- As another example, and one of core interest to the IP community, is ICANN’s plan to ‘[m]easure effectiveness of Rights Protection Mechanisms in New gTLD Program’. The IP community’s response to that could only logically be: ‘Sounds good but *how? When? What?*’
- Likewise the use of terminology such as ‘operations excellence’ and ‘operational effectiveness initiative’ are left undefined. What, exactly, do they mean? How much of

ICANN's limited resources will these initiatives take up? What (real, measurable) outcomes are expected?

This year, even less is being provided for public comment – simply a list of 7 “key issues.” IPC refers ICANN staff to the numerous comments we have recently filed in several of these areas. A non-exhaustive list includes:

**(1) Policy development process (including, for example, Whois and IDNs)** - Please see, among others, the following IPC Comments:

(a) IPC Comments on the Final Report of the Policy Development Work Team filed in July of 2011 (<http://forum.icann.org/lists/pdp-final-report/msg00002.html>).

(b) IPC Comments on the Discussion Paper of the WHOIS Policy Review Team filed in July of 2011, <http://forum.icann.org/lists/whoisrt-discussion-paper/msg00019.html>, as well as previous comments such as <http://forum.icann.org/lists/whois-rt/msg00011.html>

(c) IPC Comments on the UDRP PDP filed in July of 2011 (<http://forum.icann.org/lists/prelim-report-udrp/msg00020.html>) .

**(3) Globalization/Internationalization of ICANN (including the role of governments)** - Please see various comments filed by the IPC in connection with the GAC Scorecard applicable to the gTLD comment process from January through May of 2011.

**(4) Underdeveloped nation participation (including how to increase participation)** - Please see IPC Comments on the JAS Work Group Second Milestone Report filed in July of 2011. (<http://forum.icann.org/lists/second-milestone-report/msg00020.html>)

**(6) Introducing more competition, building consumer trust and choice (including the stable launch of a timely, predictable, reliable new gTLD process)** - Please see all comments previously filed by the IPC in connection with the new gTLD process, especially those filed in 2010 and 2011 (e.g., <http://forum.icann.org/lists/6gtld-guide/msg00049.html>, <http://forum.icann.org/lists/5gtld-guide/msg00061.html>, <http://forum.icann.org/lists/4gtld-guide/msg00058.html>, etc.)

The IPC urges ICANN to focus its efforts on producing a detailed, specific and concrete draft strategic plan for public comment in September, in accordance with the stated timetable. See <http://www.icann.org/en/announcements/announcement-29jul11-en.htm#stratplan-timeline>. If it does so, the IPC will look forward to providing its comments on that draft at that time. In particular, we look forward to commenting on:

- the critical need to develop a policy to regulate the offering of proxy and privacy registration services;
- ICANN's plans for benchmarking the effect of new gTLDs on key issues such as fraud, malicious conduct, respect for intellectual property rights, law enforcement and consumer protection; and

- how ICANN plans to address the growing perception that it lacks neutrality, is ethically deficient, and has evolved into a platform from which individuals can monetize their experience in the launch of new gTLDs.

We urge ICANN to address all these issues in a concrete and specific manner in the draft strategic plan.