



MarkMonitor
303 Second Street
Suite 800N
San Francisco, CA 94107

VIA EMAIL

Mr. Rod Beckstrom
President and CEO, ICANN
4676 Admiralty Way, Suite 330
Marina del Ray, CA 90292

Mr. Peter Dengate-Thrush
Chairman of the Board of Directors, ICANN
4676 Admiralty Way, Suite 330
Marina del Ray, CA 90292

November 20, 2009

Dear Mr. Beckstrom, Mr. Dengate-Thrush and the ICANN Board:

MarkMonitor Inc. appreciates the opportunity to submit these detailed comments relating to each of the distinct modules of the Applicant Guidebook Version 3 (“DAG3”).

MarkMonitor is the world's largest corporate domain name registrar, providing services to over 50 Fortune 100 companies, as well as 5 of the top 10 most popular Internet sites in the world.

In April of 2009, MarkMonitor submitted comments on Version 2 of the Draft Applicant Guidebook. We are pleased that a number of our comments were addressed, including our requests for Thick Whois, Post Delegation Dispute Procedures, and additional requirements that prohibit those who have been convicted of criminal activities, or any wrongful activities associated with the domain name industry from applying for a new gTLD.

In addition, while we are aware that DAG3 does not contain the vast majority of the rights protection mechanisms identified by the Implementation Recommendation Team, we also understand that the ICANN Board has requested that the GNSO review and evaluate the creation of an IP Clearinghouse, and Uniform Rapid Suspension process for use in clear-cut, blatant cases of trademark infringement. With cautious optimism, we look forward to reviewing these recommendations.

Below are detailed comments to DAG3 and the Base Agreement, prepared by MarkMonitor:

Comments on ‘Module 1’

Section 1.1.2.4 – Objection Filing

The current version of DAG3 provides for a two-week window for the filing of objections from the posting of the Initial Evaluation Results. We recognize that objections can be filed as soon as applications are posted upon completion of the Administrative Check. However, it is likely that the majority of people will refrain from filing objections until an application has actually passed the Initial Evaluation. This may be especially true in

303 Second Street
Suite 800N
San Francisco, CA 94107

415 278 8400 **tel**
415-278-8445 **fax**
www.markmonitor.com

cases where multiple applications for the same string have been submitted. The two-week time period is therefore too short. Consequently, we ask that the two-week window for filing objections be extended to 30 days at a minimum.

Section 1.1.2.9 – Lifecycle Timelines

The addition of lifecycle timelines describing the anticipated length of each phase enables registries, registrars and corporations to gain a better understanding of the entire process. Although the inclusion of launch timelines is noticeably missing, ICANN’s commitment to ensuring that solutions to the four overarching issues are identified prior to announcing anticipated launch dates is commendable.

Section 1.2.1 – Eligibility

We commend ICANN staff for incorporating additional safeguards prohibiting registry ownership of more than 15% by those who have been: convicted of a felony, or a financially-related misdemeanor, subject to ICANN disqualification, or involved in cybersquatting or other domain name related fraud.

Section 1.6 – Questions about this Guidebook

The availability of the Question and Answer Forum during the Submission Period is an extremely positive addition to the process and should help to reduce the need for Extended Evaluations.

Comments on ‘Module 2’

Section 2.3.4 – Conflict of Interest Guidelines for Evaluation Panelists

We are pleased that Conflict of Interest Guidelines have been introduced with respect to Evaluation Panelists. However, there does not appear to be any delineated process in DAG3 for the handling or managing of conflict of interest complaints. Specifically, how should a complaint be filed? Who internally handles complaints? And, how will it be managed by ICANN?

Comments on ‘Module 3’

Section 3.1.5 - Independent Objector

According to the latest revisions in the DAG3, the Independent Objector will be forced to cover filing and administrative fees, which will only be refunded in cases where the Independent Objector prevails. However, with this approach, the Independent Objector is likely to only file objections when a favorable ruling is certain, and may shy away from more questionable, yet still important cases. We would recommend that all filing and administrative fees arising from actions taken by the Independent Objector be covered by the new gTLD application fee proceeds. We also believe that the Independent Objector should be required to conform to the new gTLD Application Program Code of Conduct to prevent any real and apparent conflicts of interest.

Comments on 'Module 5'

Section 5.4.1 – What is Expected of a Registry Operator

While it certainly makes sense that community-based TLDs are required to maintain self-prescribed policies and procedures, we also believe that the Mission / Purpose as described in Standard Applications should be used to determine ongoing Registry eligibility. For example, if an applicant states that the purpose of a particular Standard TLD is to make it publicly available, but then keeps it for its own internal use, under the existing Terms and Conditions there is no recourse unless intellectual property rights are infringed. In order for meaningful objections to be raised to applications, objectors must understand how the TLD is to be used, and the objectors need to know that the self-prescribed use will not change over time.

MarkMonitor wishes to thank ICANN for their time and consideration of our comments. If you have any questions or wish to discuss any of points raised herein, please contact Frederick Felman (ffelman@markmonitor.com).

Respectfully submitted,



Frederick Felman
Chief Marketing Officer
MarkMonitor