



Mr Rod Beckstrom
President & CEO, ICANN
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20 July 2010

Re: New gTLD Draft Applicant Guidebook version 4 (DAGv4)

Dear Mr Beckstrom,

HSBC welcomes the opportunity to comment on the Draft Applicant Guidebook version 4 (DAGv4).

At the recent ICANN meeting in Brussels, Staff and the Board gave a strong indication that the next version of the DAG (v5) would be the final unless there were substantive comments received in the current public comment period. Presently, we consider that there are still substantial issues remaining that ICANN need to address before finalising the guidebook and launching new gTLDs. Of particular concern are the proposals relating to Trademark Protection, the recent introduction of an Economic Framework (Part 1) and the Root Scaling issues.

Trademark Protection

The IRT proposals were considered by many brand-holders to be a respectable compromise in order to support ICANN's objective for new gTLDs. This was an ideal opportunity for ICANN to use the IRT proposals as a baseline, from which further refinement and enhancement could have provided much needed trademark protection and, in turn, protect Internet users overall. Regrettably, even the IRT proposals are no longer recognisable in the DAGv4.

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The proposed ‘Trademark Clearinghouse’ in DAGv4 does not offer any rights protections, it is now simply a database to help streamline a process. This will not resolve the continuing need for brand owners to register defensive domains nor prevent the loss of consumer trust resulting from infringements of their brand, along with the scaling cost of monitoring and taking appropriate action.

The Globally Protected Marks List (GPML) has disappeared completely without any justification and the associated research requested by the IRT team was never undertaken. The absence of the GPML and the linkage to the Trademark Clearinghouse leaves a considerable void in what was intended to be a ‘tapestry’ of rights protection mechanisms proposed by the IRT, with no alternative provided.

The Staff-proposed Uniform Rapid Suspension (URS) is not rapid at all and the process is overly burdensome for the sake of temporarily suspending a domain. The existing UDRP is likely to be a more effective and reliable route to resolution. The URS also relies upon the brand holder to monitor, detect and take action, together with all associated costs, so it will not deter infringements and malicious behaviour.

In essence, the DAGv4 offers little, if any, additional trademark protection than existing mechanisms. If ICANN was truly concerned with the impact that malicious behaviour and brand abuse has on the Internet users, we would expect to see preventative measures implemented for new gTLDs, rather than reactive – ‘Prevention is better than cure’. For instance, policies based on a ‘loser-pays’ approach are more likely to deter bad actors and in the event of a Registrant being untraceable due to invalid or incorrect WHOIS contact information, the liability should be passed on to the Registrar or Privacy WHOIS providers. An approach like this could reduce the harm to Internet users and also be leveraged to improve the validity and accuracy of WHOIS data.

We believe that the DAGv4 does not address the overarching issue of Trademark Protection and that substantial effort is still required by ICANN to remedy this, **despite the fact that reasonable and balanced proposals have already been offered to ICANN**, specifically but not solely through the IRT.

Economic analysis

The Economic Framework paper was published just days prior to the Brussels meeting, allowing insufficient time for the community to evaluate the content and consider its conclusions when the meetings took place.

The paper discusses the potential user benefits of new gTLDs (e.g., innovative business models and IDNs), while also acknowledging the potential costs and externalities (including consumer confusion, malicious abuse and brand protection). Interestingly, the paper includes positive references to the IRT proposals for trademark protection but it should be noted that these IRT proposals are not the same as the RPM's applied to the DAGv4 (as explained above).

In conclusion, the Economic Framework paper suggests that ICANN should:

- continue the practice of introducing new gTLDs in discrete, limited rounds and;
- adopt practices that will facilitate the assessment of the net benefits from the initial rollout of additional gTLDs.

By implementing both of these recommendations, ICANN would be able to learn from experience and make more-informed decisions. However, it is unclear if and to what extent ICANN will undertake the studies suggested and how the initial recommendations may influence, if at all, the final version of the DAG under the current timetable.

It is alarming to see the introduction of an economic analysis at such a late stage of planning, as this would have been far more informative at the initial development stage, helping to shape the overall approach to new gTLDs and also allow sufficient time to undertake effective research. Nevertheless, we expect ICANN to fully consider the recommendations now put forward under the Economic Framework and to undertake the relevant pre-launch studies. ICANN should factor the results in to the DAG and the overall approach to launching new gTLDs.

Root scaling

The Root Scaling Study published last year suggested that the various programmes underway or being planned (DNSSEC, IPv6, IDNs and new gTLDs) could cause substantial pressure on the Root, with potentially adverse affects upon the security and stability of the Internet. We understand that the SSAC and RSAC are still considering the issues identified in the Root Scale Study and we eagerly await their response in due course.

There are still unknown factors that could impact the scaling of the root, principally the number of new gTLD extensions that will be applied for and approved. This prompts further demand to introduce new gTLDs in a controlled manner, similar to the recommendation put forward in the Economic Framework report, thereby mitigating the risks identified in the

Root Scaling Study. We expect ICANN to manage these risks effectively to ensure that the launch of new gTLDs does not compromise the security and stability of the Internet.

We trust you will give our comments your serious consideration.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'MS', written over a horizontal line.

Martin Sutton
Manager, Group Fraud Risk

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