



**Comments of the GNSO Intellectual Property Constituency (IPC)
on the gTLD Marketplace Health Index Proposal**

January 22, 2016

The GNSO Intellectual Property Constituency (IPC) appreciates this opportunity to comment on the gTLD (generic Top Level Domain) Marketplace Health Index Proposal (“the MHIP”). See: <https://www.icann.org/public-comments/gtld-marketplace-health-2015-11-17-en>

IPC applauds the effort to develop metrics and other measurable data with which to analyze and understand the effects and characteristics of the New gTLD program. The IPC agrees in principle that ICANN should endeavor to study and understand the health of the domain name marketplace. However, we have concerns about both the rationale and the methodology of the proposed community Advisory Panel.

First, the IPC questions the rationale for developing a Marketplace Health Index that focuses not on the health of the domain name system itself, but on the robustness of the market for domain names and registries the New gTLD program has created. While we recognize the efforts and effects of the New gTLD program to provide opportunities for new and innovative registries, the proposed Index appears to focus on the value of domain names and not the value of the New gTLD program to the end users.

Second, the proposed Key Performance Indicators (KPIs) appear to derive from and to be intended to support the promotion of the New gTLD marketplace, rather than to understand it. This presumption begins with the general areas of focus (e.g., “Robust and Competitive gTLD Marketplace”; “Trusted gTLD Marketplace” and “Stable gTLD Marketplace”), and extends to the proposed KPIs which, absent the critical metrics of the CCT/AOC review are entirely promotional in nature.

IPC believes that the Community Questions, while useful in focusing the discussion, should be a guide for the Advisory Panel, rather than the proposed KPIs – which reflect an analytical bias to measure the quantity of commerce in the New gTLDs rather than the quality of new registries and the health of the domain name system overall. These issues should be explored fully, beginning with the principles underlying the program and the system itself, and moving to consider what “health” means in relation to the system. The Advisory Panel should not be asked to begin with the presumption that the development of a domain name Marketplace is the goal of the New gTLD program.

As to the Community Questions, we do have a few comments to share with the Advisory Panel. Tracking the questions and their numbering:

1. We believe the health of the global gTLD includes consideration of whether the mechanisms developed to protect intellectual property, privacy, and other rights are sufficient and sufficiently enforced to ensure the safety and stability of the Internet and civil and commercial rights. We also suggest including analysis of the fairness of pricing models introduced in the new registries and their effect on both commerce and trust.

2. We believe that several of the proposed KPIs – in particular those comparing the number of individual registrars and registries to “families” of the same – are not necessarily indicative of the health of the marketplace or the system, unless they are coupled with qualitative analysis. Similarly, metrics relating to the outcomes of dispute resolution procedures or of compliance complaints may not be meaningful without an evaluation of the efficacy of those procedures.

3. We do believe that resellers and speculators have an impact on the gTLD marketplace and on the system and should be measured – both in their behavior, their requirements, and their effects.

4. We believe the Advisory Panel should seek to include consideration of the experiences of individuals, commercial entities, and organizations in regard to gTLDs, and not focus merely on the effects and opportunities of the domain name, registry, and investor communities. This proposal should not be used to develop a marketing and self-promotional platform, but to develop a true measure of the wellness, variety, and stability of the gTLD system.

In summary, IPC supports the formation of this Advisory Panel and the attempt to identify measurable elements that may indicate the health of the New gTLD program and system. However, we believe the Advisory Panel should be given the responsibility of developing a list of metrics and queries that will enable a true analysis of the system, and not merely support its existence. Above all, ICANN must guard against the high risk that the entire effort will be perceived as a promotional initiative more suitable to a domain name industry trade association than to a multi-stakeholder entity dedicated to the public interest, and must take steps (such as those summarized above) to reduce the risk of that perception arising.

IPC thanks ICANN for its consideration of these comments.