



To: ICANN (gtld-guide@icann.org)

Re: Comments to the New gTLD Program and Process

Dear Mr. Twomey and Mr. Dengate-Thrush:

Corporation Service Company<sup>®</sup> (CSC), is the trusted partner of over 50% of the *100 Best Global Brands*, including 3 of the top 4, for global domain name registration/management and brand protection. Since the release of the New gTLD Applicant Guidebook ("Guidebook") by ICANN on October 24, 2008, we have been engaged in significant and on-going dialogue with our clients and other corporate registrars regarding the new gTLD program.

On behalf of the undersigned companies and individuals identified below, CSC respectfully submits the following comments related to the Guidebook and the new gTLD program.

### **Introduction**

Although ICANN is firmly committed to implementing its new gTLD program in 2009, there remain many unanswered questions related to the implementation and demand for potentially hundreds of new TLDs at this time. A quick read of the news clearly highlights the fact that we are in the midst of a historic, worldwide recession where public and private enterprise, as well as consumers are experiencing mass lay-offs, bankruptcies, budget cuts, and all are limiting non-essential spending. Given this environment, there is significant sentiment among corporate brand owners that now may not be an appropriate time to be launching such a costly and expansive initiative.

In the face of this current climate, ICANN should reconsider its decision to move forward at this time and conduct broader, global studies, education and consultation to confirm its assumptions regarding the economic demand for these new gTLDs. Depending upon the results of such studies and consultation, it may be appropriate to scale back the launch of the new gTLD program initially, such as launching only those IDN or geographic based gTLDs that are supported by a significant community demand.

However, since it appears that the new gTLD program launch is inevitable, we understand that some corporations will likely apply for new gTLDs for primarily defensive reasons, and a few may do so to support their Internet marketing initiatives. However, most major corporations prefer that the new gTLD launch be delayed until basic safeguards are adopted to protect against brand abuse.

### **Rush to Implementation Causes Those Not Experienced in ICANN Politics and Processes to be at a Significant Disadvantage**

As is evidenced by the creation of ICANN's Fellowship Program and Issue Briefs, it is recognized by ICANN that the structure, nomenclature, processes and issues discussed and debated at ICANN Meetings and on the ICANN.ORG website are highly-specialized, often technical in nature, complex and are not universally known or understood. Meaningful participation in the

ICANN policy-making process requires tremendous time, financial resources and mentorship over a prolonged period of time. While ICANN has made attempts to specifically encourage and assist the business community to become more active and engaged in the ICANN policy-development process with the creation of the “Business Track” at ICANN Meetings, these efforts only began in earnest in mid-2008 and are still in their infancy.

Most companies lack dedicated budget and staff to consistently participate and attend ICANN Meetings. As a result, the voice of the broader global business community has not adequately been heard and considered during discussions concerning the need and utility of new gTLDs. Now companies are faced with the daunting task of reading and understanding 200+ pages of proposed implementation documentation with little to no background, warning or time to understand the all implications the new gTLD initiative can have on their business

Thus, ICANN should allow significantly more time and create many more in-person opportunities beyond ICANN Meetings for the education of and consultation with the global business community and other Internet users about new gTLDs before the implementation proceeds any further. The timelines currently articulated by ICANN are self-imposed and only cause those not experienced in the policies and processes of ICANN to be at a significant disadvantage in understanding and participating in the policy creation process.

### **Brand Abuse is Expected to Grow Exponentially in the New TLDs**

Assuming that the new gTLD program proceeds, ICANN should adopt better safeguards against systemic brand abuse in new gTLDs. Due to the possibility that hundreds, if not thousands, of new gTLDs could be approved, ICANN should recognize that the UDRP is no longer an effective remedy for brand holders. The cost, resources required and associated delays render the UDRP impractical and an undue burden upon rights holders. As reported by Corporation Service Company in its Spring 2008 *Domain Name Cyberscape Report*, 74% of domain names containing a brand were registered by 3<sup>rd</sup> parties and not the brand owner. We believe that this number will increase exponentially when hundreds or thousands of new gTLDs are available.

### **New Tools to Protect Against Brand Abuse Should be Adopted**

Today, brand holders protect against domain name abuse primarily through UDRPs and defensive registrations. This approach is no longer reasonable when faced with potentially thousands of new gTLDs, since it is not feasible for companies to increase their legal expenditures to correspond with the rising number of gTLDs. Many brand holders view sunrise registrations as a fee shifting exercise from brand holders to registries to help fund the initial phase of a registry launch. Instead of this ‘fee shifting’, ICANN needs to consider innovative new ways of dealing with brand abuse that shifts the costs of infringement away from the brand holders whose rights have been systematically abused over the last few years.

We were encouraged by Paul Twomey’s opening remarks in Cairo that ICANN would like to consider innovative ways of addressing the needs of the IP community, including the creation of an ICANN sanctioned rights database or clearinghouse, where rights holders could submit evidence of their rights (“IP Registry”). Such a tool could be utilized for purposes beyond sunrise periods. For example, the IP Registry could be used for blacklisting purposes, at the top level (i.e., .ibm) and at the second level (i.e., ibm.web). If a gTLD application conflicts with a name on the IP Registry, the rights holder should be notified immediately and given the opportunity to file its own gTLD application or seek other legal redress. For these potentially infringing applications, ICANN should verify the applicant’s background and motives, and approve only non-infringing or non-commercial uses. If any applicant is approved for a non-infringing use, ICANN should require strict compliance of the approved uses to protect the rights of the brand holder. For second level registrations, ICANN should mandate a notice/take down procedure if the

domain name is used in an infringing manner to a name on the IP Registry, or require WHOIS verification and prohibit proxy or anonymous registrations for registrants intending to register a domain name conflicting with a name on the IP Registry. These suggestions would provide a more cost-effective means of dealing with brand abuse in the new gTLDs, and should discourage abusive registrations and abusive new gTLD applicants.

### **Dispute Resolution Costs**

A prevailing brand holder in a dispute should not experience any fees or costs in protecting their brand. The Guidebook should be revised to provide that a prevailing party in any dispute resolution proceeding will be reimbursed for all of their costs and expenses, (such as attorney fees and filing fees). Under the Guidebook, only some of the filing fees are refunded to the prevailing party.

### **Commitment to Publicly Accessible, Free and Accurate WHOIS**

The Guidelines contain few requirements related to WHOIS. Central to the concerns of brand holders is the need for a free, accurate, and publicly available access to WHOIS, to quickly identify the registrant of abusive domain names. Given the industry-wide problems related to access to WHOIS, and the proliferation of inaccurate WHOIS, we believe that ICANN should evaluate the applicant's commitment to maintaining and enforcing WHOIS requirements. In addition, applicants should be encouraged to maintain centralized or "thick" WHOIS databases, and adopt additional WHOIS requirements. For example, ICANN could inquire whether an applicant intends to allow proxy or anonymous registrations, and, if so whether the applicant plans to require the disclosure of the "true registrant" upon request by a brand holder protecting its rights, or escrow such proxy/anonymous data. This inquiry is appropriate because continued access to WHOIS is essential to protect the stability and security of the Internet, as well as to maintain confidence of consumers in the integrity and safety of e-commerce.

### **Dispute Resolution Decisions Should be Binding on ICANN**

Under the Guidebook, ICANN has proposed allowing dispute resolution service providers (DRSP) such as WIPO to evaluate string contention disputes, including whether a string violates the legal rights of others. We are supportive of this process, but believe that a decision from a DRSP should be final and binding on ICANN, rather than be viewed as an "expert determination" to be considered by ICANN as a factor in the evaluation of the gTLD application.

### **Conclusion**

The undersigned companies are deeply concerned about their ability to protect millions of Internet users worldwide from additional forms of online abuse, such as fraud, phishing, counterfeits, identity theft, and other forms of brand abuse. We urge ICANN to carefully consider the request for additional education and meaningful consultation with the global business community, as well as additional safeguards against illegal online activities in the new gTLDs.

Respectfully submitted,

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