**August 2009**

**Introduction**

This newsletter update provides a summary of the main issues concerning the Business Constituency following the ICANN meetings in Sydney.I would also like to take this opportunity to wish members a happy holiday season.

Best wishes

Gary

**GNSO Reform**

**Philip Sheppard writes:**

This moves slowly. The Board has proposed changes to all the draft charters for the four new stakeholder groups. The changes for the transitional Commercial Stakeholder Group Charter (which includes the BC) are minimal. The BC will now need to consider changes to its own Charter to be compatible with the updated CSG Charter. A new draft will be sent shortly for member discussion. It is supposed that the new two Houses structure will be in place for the Seoul meeting.

The issue of the three additional Council representatives for the non-commercial stakeholder group (NCSG) has been solved with a proposal that they will be Board nominations as placeholders until such time as the NCSG demonstrates it is a broader-based organisation.

However, tensions are emerging as the Council and Board wake up to a fundamental conflict in the proposed structural change. The new bicameral structure was agreed by the existing six constituencies and all of them find an obvious home. However, the recent encouragement for new constituencies has led to the emergence of potential new constituencies that do not fit the proposed two Houses structure. For example, the City TLDs Constituency and a possible Registry Operators Constituency are neither Users nor ICANN contract parties. How the Board will resolve this conflict is uncertain.

**New gTLDs**

**Mike Rodenbaugh writes:**

The current timeline for new gTLDs is as follows:

|  |  |
| --- | --- |
| End 2009 | Calls for a final version of the Applicant Guidebook |
| March 2010 | Applications from potential operators |
| Latter half 2010 | New gTLDs go live |

Clearly, if this schedule is to become reality, ICANN staff and the community still have much work to do.

Several months ago, ICANN Staff identified four ‘overarching issues’ that must be addressed before the new gTLD program could launch.

**Trademark protection**

Please see specific newsletter item below

**Malicious use of the DNS**

Today, the various contracts – between ICANN, its contracting parties and domain registrants – are inconsistent with respect to abusive and malicious behavior. Some contracts prohibit it, some do not; some contracting parties take action against it, some do not. A Working Group has been chartered within ICANN to examine these facts and determine whether consistent provisions and/or enforcement would help protect the public from this harm. The Working Group workspace is here:<https://st.icann.org/reg-abuse-wg/index.cgi?registration_abuse_policies_working_group>

**IDN gTLDs**

It is likely that a joint working group, with representatives from the CCNSO and the GNSO, will form soon to try to reach consensus as to the best path forward. Their goal is for both types of IDN gTLDs to be released as soon as possible, without adversely affecting one another’s market opportunities, and considering all of the difficulties inherent in the launch of any form of IDN gTLDs.

**Registry-Registrar separation**

A public comment forum concerning antitrust experts’ reports on this issue has recently closed:  
[http://forum.icann.org/lists/competition-pricing-final](http://forum.icann.org/lists/competition-pricing-final/)

ICANN staff is expected to make recommendations which then will be subject to further public debate and comment before the next iteration of the new gTLD Applicant Guidebook, expected in late September.

**New gTLDs – Trademark protection**

**Mike Rodenbaugh writes:**

Several months ago, ICANN Staff identified four ‘overarching issues’ that must be addressed before the new TLD program could launch. One of those issues was raised consistently by trademark owners who fear that new domain spaces will force them to register their trademarks in order to keep cybersquatters from registering corresponding domain names. With studies showing that major online brands already deal with ten thousand or more current domain name infringements at any given time, their concerns have resonance.

At the Mexico ICANN meeting, the ICANN Board commissioned a team of trademark experts to consider all of the public comments addressing trademark concerns, and develop recommendations that might be implemented in connection with the launch of new TLDs in 2010. This ‘Implementation Recommendation Team’ (IRT) produced five significant recommendations contained in their final report: [www.icann.org/en/announcements/announcement-4-29may09-en.htm](http://www.icann.org/en/announcements/announcement-4-29may09-en.htm).

Of these, the most controversial, and thus least likely to move forward, is the ‘Globally Protected Marks List’ which effectively would give a small subset of the most famous trademark owners special rights to block domain name registrations that precisely correspond to their trademark. At a public session to discuss the IRT report, this proposal forcefully criticized. However, the other recommendations were less controversial, and would provide protection against cybersquatting.

The foundational proposal is to create an ‘IP Clearinghouse’ allowing trademark owners to submit information about their trademark rights to one database service provider. This seeks to overcome the challenge that brand owners have faced in past TLD launches, having to register their trademark rights with each new TLD registry in order to have first right to purchase corresponding domain names during the ‘sunrise period.’ With the IP Clearinghouse, they would only need to submit their info once, and all new TLD registry operators will have equal access to the data. When someone tries to register a domain that corresponds to a trademark, they would receive a notice of the trademark owner’s rights, and would have to promise not to use the domain name in an infringing manner. This may provide a deterrent to some would-be infringers, as at least it should eliminate the commonly attempted defense of ‘innocent infringement.’

Of course, infringers will still make this promise, since they know that trademark owners cannot possibly police every infringement in a timely manner, and they can profit in the meanwhile. Therefore the most important proposal is to allow a much quicker and cheaper suspension of domain resolution in ‘clear and convincing’ cases of cybersquatting. For a few hundred dollars, trademark owners would swear out a complaint under the Uniform Rapid Suspension (URS) process. If the complaint is not timely answered, or the standing trademark specialist is otherwise convinced, resolution to the domain will be suspended. This contrasts with the current Uniform Dispute Resolution Policy (UDRP) which costs more than $1000 to file (plus thousands of dollars in investigation and legal fees) and takes many months for a decision, all the while the infringer profits from the domain.

Unfounded (and sometimes ridiculous) opposition has been raised as to the substance of the IP Clearinghouse and URS proposals — the comment forum is here: <http://forum.icann.org/lists/irt-final-report/>.

But it is obvious that the UDRP has been entirely ineffective in deterring cybersquatting in the existing TLDs. So, after ten years of the UDRP, it is clear that new methods are needed to deal with this rampant problem. The IP Clearinghouse and URS proposals, in conjunction with one another, would strike a reasonable balance between trademark rights, protection of the public, and protection of domain name registrants.

A series of global outreach events are currently discussing the IRT proposals and the ICANN Board is then expected to take action to incorporate some or all of the proposals into the application guidebook for new TLD applicants.

**gTLD global outreach**

Zahid Jamil will be attending the ICANN global outreach event in Abu Dhabi on Tuesday 4 August.

Details of the event can be found here:  
[www.icann.org/en/topics/new-gtlds/consultation-outreach-en.htm](http://www.icann.org/en/topics/new-gtlds/consultation-outreach-en.htm)

**Business Outreach, Sydney**

**Liz Williams follows up on the outreach events in Sydney:**

**Business Lunch**

As you know, we sent invitations well in advance to the three commercial constituencies and a wide range of other potential attendees. We asked for RSVPs a week before the meeting to assist the ICANN meetings team with logistics, catering and budgets. We had 75 people respond affirmatively; only 45 turned up. This was disappointing because we incurred unnecessary cost. The heavily-scheduled ICANN program is partly a contributing factor. We have had a number of people tell us that they would like to join the constituency which is a good result. We had a good mix of local/international/new/old members as well as a good scattering of ICANN Board. We need to keep doing this event as it complements the cross constituency breakfast.

**Business Cocktail**

This event was very carefully managed by the ICANN corporate affairs team as they wanted to have senior business figures attend to meet Board members and others. There was a good turnout but my feeling is we need a more casual, mingling, open event. For the future, We also need to think about how to get more business leaders involved or to think seriously about whether that is necessary at all, given that the work is done by a certain group of people that are not CEOs or similar.

**ICANN meeting, Seoul**

The next ICANN meeting will be in Seoul, South Korea 25-30 October 2009.Details of the meeting can be found here:  
[http://sel.icann.org](http://sel.icann.org/)

**New ICANN CEO**

Rod Beckstrom is the new CEO of ICANN, replacing Paul Twomey.

The ICANN announcement of the appointment:  
<http://icann.org/en/announcements/announcement-26jun09-en.htm>

Rod Beckstrom’s personal website and blog:  
[http://rodbeckstrom.com](http://rodbeckstrom.com/)

**ICANN updates**

The latest ICANN policy update can be found here:  
[www.icann.org/en/topics/policy/update-jun09-en.htm](http://www.icann.org/en/topics/policy/update-jun09-en.htm#13)

**Members Matters**

**Nominating Committee 2010**

Further to my list mail, elections for our two representatives to the Nominating Committee will take place at the end of August. I will send details of the process closer to the time. In the meantime, information about the Nominating Committee can be found here:  
<http://nomcom.icann.org/faqs.htm>

**DATES FOR YOUR DIARIES**

**ICANN meetings, Seoul, South Korea 25 – 30 October 2009**

**ICANN meetings, Nairobi, Kenya 7 – 12 March 2010**