

To: ICANN Board
From: Business Constituency, GNSO
Date: March 25, 2011

Re: Statement of the Business User Constituency (BC) on Board reply document to the GAC Scorecard on new gTLDs

The Business Constituency (BC) represents business users interests within ICANN. We commend the Governmental Advisory Committee (GAC) and the ICANN Board for the hard work undertaken for the Brussels Intercessional discussions, and the work that has brought us to the further discussions during the ICANN March meeting.

The BC participated in all phases of the public comments on drafts of the Applicant Guidebook. These comments focus on Scorecard topics and support suggestions to improve the Guidebook.

The BC views the name space as a shared resource. We see ICANN as its trusted steward, responsible for ensuring that the interests of the user community are respected and addressed. And we believe that security, stability and resiliency are first principles in the activities and actions of ICANN.

The BC has consistently supported a managed, responsible expansion of top-level domains, and our positions have attempted to ensure a stable and responsible new gTLD program.

We welcomed the Scorecard of the GAC. The approach taken by the governments in identifying a limited number of topics, offering detailed concerns and proposed changes to the Applicant Guidebook was extremely helpful. We also welcomed the Board's acceptance of the need to address Scorecard items, and the provision of background documents and the commitment to fully support intercessional interactions with GAC members.

Many issues identified in the GAC Scorecard are very similar to the concerns raised numerous times by the BC and other members of the business user community, and supported by many other stakeholders.

We thank both the Board and the GAC for their full support and commitment to ensuring that the stakeholders could follow the Board and GAC intercessional discussions in Brussels through both observers in the room, and through remote participation.

Of 80 sub-points in the Scorecard, 25 were moved to 1a, representing agreement. This in and of itself is a very positive step in the right direction. 28 sub-points are in category 1b, which is agreement in principle, but still in need of implementation approaches. 23 sub-points are category 2, and 9 are in an unresolved category.

The BC's comments initially address key areas where we urge the Board to accept GAC suggestions that are consistent with BC member views. This would bring the GAC and

Board closer to reaching agreement on how to advance toward a goal of a practical, pragmatic, and responsible process for new GTLDs.

1a sub elements:

The BC is prepared to accept and endorse all of the 1a elements. We strongly urge that these items be considered completed, other than any necessary final details. They should not be reopened.

Our written comments address both category 2's, and key 1b elements.

We share the Board's and GAC's expressed perspectives that the number of disagreed items should, in the end, be small.

For instance, Section 6 has 33 [or 35] sub-points. Nine are 1a's; 10 are 1b's and 15 are 2's. This section which focuses on Protection of Rights Owners and Consumer Protection Issues is a critically important area to the BC, and to those who are concerned about: abuse of domain names at the second level; possible conflicts in the use of trademarks at top level domains; concerns about the use of certain strings such as .bank which may attract particular kinds of exploitation; and those who are concerned about limiting the negative externalities associated with the need for defensive registrations.

Next we address the completion of 1b elements and sub-elements:

Payment of fees to Object:

The BC understands the concerns expressed by governments about having to pay fees to file an objection that will typically be in the public interest. We believe that ICANN should find a solution to this issue, within the ICANN budget.

Section 4, regarding Market and Economic Impacts:

The BC shares GAC view that applicants should be able to describe benefits that their proposed gTLD would provide. For example, a registry should describe how it will market the gTLD to potential registrants.

The BC position has been to support an orderly rollout of new gTLDs in keeping with the requested implementation of the GNSO Final Report on the Introduction of New gTLDs. That is, to support new gTLDs that have potential for meaningful market differentiation.

Applicants should also be able to describe the actions and processes that will be included pre and post launch that would minimize negative externalities such as: costs and risks to registrants and users/consumers in terms of defensive registration; cyber squatting; and other known DNS risks to users and registrants.

Community based gTLDs applicants should clearly describe how they will ensure that registrants fit their community criteria, and how they will avoid registration of non qualified users. Adherence to the community-based criteria is important to establish and ensure as an ongoing requirement.

The BC has made previous comments about the importance of understanding the characteristics of users and registrants, and of how the Internet distribution is changing, both in geographical diversity and language diversity. In agreement with the GAC Scorecard point to support “applications in languages whose presence on the web is limited”, the BC believes that gTLD applicants should be given fee reductions to offer additional versions of their applied-for string in IDN scripts and other languages.

Section 5: Registry-Registrar Separation

The BC opposes mandatory separation for TLDs “for internal use” where all registrants are under control of the registry and domains are “not for sale to the general public”. Single registrant TLDs should not be restricted from using an affiliated registrar to register and manage names that it controls. BC discussions of “internal use” have included: divisions and product names for a single registrant; employees of a single registrant; subscribers, customers, and registered users subject to approval and control by the single registrant.

Section 6: Protection of Rights Owners and Consumer Protection Issue:

We support the changes agreed as 1a in Section 6.

The balance of our comments address categories 1b and 2.

In 6.1.2, the BC supports requiring both Sunrise and Trademark claim notice services for all new gTLDs. These mechanisms serve different but complementary purposes.

If there is a rationale to exclude these requirements, such as in a special purpose or brand gTLD that *only* serves internal registrations, that can be provided for with a special waiver. Exceptions should be limited and documented.

It should be clear to the applicant that post-award changes in TLD contractual terms will not be allowed. Applicant should expect to comply with the contractual terms if they are granted a special exception under such circumstances.

Moreover, the Trademark Claims Notice service should extend in perpetuity for each gTLD. Cyber squatting is a continual challenge and is not limited to the launch phase of a new gTLD. Claim Notices can certainly include non-exact matches, since this is merely a notification process.

6.1.7.2: The BC agrees that funding of the Trademark Clearinghouse should also come from registrars, since registrars will have an integral need to use the Claims Notice service post-launch.

On page 16, in 6.2.9, there is a suggestion that a registrant losing more than a certain number of URS proceedings could see limitations in their rights in future URS cases. While ICANN has rejected this, ICANN should offer a reasonable criteria for when a history of bad faith or bad actions would limit the rights of a registrant to use the URS mechanism.

6.2.10.2: The BC agrees with the GAC that the time for filing an appeal must be reduced from 2 years to 6 months.

6.4.1: Consumer Protection: Improvements on Abuse Point of Contact. It is important that ICANN's new gTLD program maintain abuse points of contact with well-defined criteria. For example, abuse points of contact should be available 24 X 7, with three options for means of contact: phone; fax; and e-mail, of which a minimum of two should be provided. A standard for response times should be provided in the Agreements signed with ICANN, and maintained. Random verification of this should be provided by ICANN, and a mechanism to deal with patterns of non-compliant responses should be implemented in ICANN's Compliance Processes.

6.4.4: The BC welcomed the GAC discussion of 'generally regulated industries', and since these are businesses, would suggest that the BC has expertise to offer here.

Some BC members agree that there is strong evidence of abusive registrations at the second level in certain industries such as pharmacies and banking, which will undoubtedly become risks in new TLDs without the increased scrutiny proposed by the GAC.

During discussions in San Francisco, comments were also made by non-commercial user representatives about fraud risks that arise in strings associated with not-for-profit activities, such as .fundraising or .charity.

Some BC members believe that this set of issues must be further discussed and the implications taken into account. The BC would, as we do represent business users at ICANN, welcome being part of this discussion.

Section 8: Use of Geographic names

The BC appreciates the concerns expressed by those who are responsible for names that are identified with legal entities of government. The BC suggests ICANN needs to continue to work on acceptable approaches to address the concerns raised by the GAC.

The early warning system which is under discussion in 8.1.3 should be developed and made available for public comment.

8.1.4: The BC understands the concerns of the GAC in this area and urges ICANN to provide a mechanism to exempt GAC members from paying fees to file objections.

The BC understands that ICANN may outsource objection evaluation tasks during the new gTLD application process. But a decision to outsource services should not enable ICANN to escape accountability for decisions made by outsourcing vendors. ICANN's Board must be the final resolution body for disputes that arise during evaluation and objection processes.

Section 10: Providing opportunities for all Stakeholders, including those from developing countries

While respecting the concerns raised by the GAC and others in the community, and supporting the need for applicants from developing and least developed countries to participate, the BC believes that technical and business performance criteria are as important to registrants from these regions and countries as they are to registrants from developed countries. Failure of a new gTLD to serve communities from developing countries would have a profoundly negative impact on the registrants.

As solutions or approaches are developed to provide special support to such applicants from least developed countries, adherence to minimum registry performance criteria should be maintained. If special considerations are provided, there should be a defined and transparent process.

The BC agrees with the GAC Scorecard point to support “Applications in languages whose presence on the web is limited”. The BC believes that gTLD applicants should be given fee reductions to offer additional versions of their applied-for string in IDN scripts and other languages.

Awareness of businesses and users on a more globally distributed basis and in emerging economies and developing countries

We share the GAC concern about the need for inclusiveness in the communications and outreach strategy for the new gTLD program.

Communications and Outreach activities are not yet fully informing business communities around the world even of the major changes coming with the introduction of new gTLDs. The communications strategy and program should not only be to promote gTLD applications. It must also broadly explain the changes that are coming with new gTLDs, including the opportunity for IDNs and informing all users of the DNS.

Thus the BC does support 10.7 and agrees that more work is needed by ICANN. The BC welcomes discussions with ICANN about how to use the business community and other parts of the business network to improve the communications outreach.

10.7: The BC has members who share the concern expressed by the GAC.