

## ICANN Board-GAC Consultations: Market and Economic Impacts

### EXPLANATION OF ISSUES/HISTORY

ICANN's mission statement and one of its founding principles is to promote user choice, consumer trust and competition. Economic impacts of new gTLD introduction were discussed in the White Paper (<http://www.icann.org/en/general/white-paper-05jun98.htm>):

[n]ew top level domains could be created to enhance competition. The U.S. Government is of the view ... that competitive systems generally result in greater innovation, consumer choice, and satisfaction in the long run. Moreover, the pressure of competition is likely to be the most effective means of discouraging registries from acting monopolistically.

ICANN's first MoU with the USG (<http://www.icann.org/en/general/icann-mou-25nov98.htm>) raised a duty in ICANN to:

[c]ollaborate on the design, development and testing of a plan for creating a process that will consider the possible expansion of the number of gTLDs. The designed process should consider and take into account: ... [p]otential consumer benefits/costs associated with establishing a competitive environment for gTLD registries. Successive MoU's described similar obligations.

ICANN has commissioned several economic studies to inform the development of implementation procedures on a number of issues, including whether additional gTLDs would create competition at the registry level, whether new gTLDs should have price caps, and whether there should be restrictions on registry-registrar cross-ownership. ICANN intended the economic studies to address questions from the community (including the NTIA) about how to understand and balance costs and benefits of the new gTLD program. Ultimately, ICANN obtained reports from several economists, including some of the world's leading economists who specialize in competition issues.

Those economists generally supported an open approach in which new gTLDs would continue to be added to the DNS, subject to appropriate restrictions to address trademark and other competition concerns that ICANN has included in the gTLD Guidebook. Those studies greatly improved ICANN's understanding of the marketplace. Further, while the economists did not anticipate that the costs that might be associated with new gTLDs would outweigh the overall benefits of their introduction, they also stated that quantitative predictions of net benefit were too speculative to predict.

A more fulsome description of the GAC comments and economic report history is included below. A reference document of all GAC and Board communication on this issue is in an attached appendix.

## REMAINING AREAS OF DIFFERENCE WITH GAC:

### A. Specific Differences

- 1) The GAC indicates that additional economic study be undertaken in order to:
  - a. understand with greater certainty that benefits accruing from the new gTLD program will outweigh the costs and quantify that net benefit.
  - b. as part of the analysis above, distinguish demand for new name registrations versus defensive registrations by current brand holders

The Board has indicated that additional economic studies would not provide useful information to the Board in making its decision given the depth of previous studies and the high quality of the authors.

The Board also believes that economic studies do not provide evidence that new TLDs will result in demand for defensive registrations. Existing independent studies, that the Board is seeking to validate, indicate that defensive registrations occur only in the very largest, well-established registries only.

- 2) The GAC recommends an initial fast track round for a limited number of non-controversial applications, which should include a representative but diverse sample of community, cultural and geographical applications.

The Board is following the GNSO policy recommendation that the number of applications be limited by rounds. This is essentially a policy issue and not an economic study discussion point, Limiting applications by category or type create conflict, limit innovation, lead to a difficult compliance environment, provide an unfair first-movers advantage and stifle innovation.

### B. Discussion

#### 1. The need for additional economic study

- a. Cost - benefit

In order to assess whether additional economic studies are still necessary, the Board considered the independent economic reports listed above and the extensive comments provided by the Community.

It appears from this analysis that the question of the general costs and benefits of opening the gTLD space has been identified.

The economists generally support an open approach in which new gTLDs would be added to the root, subject to appropriate restrictions to address trademark and other competition concerns. ICANN has included restrictions and protections in the gTLD Guidebook. The question is whether the efficacy of these protections can be estimated *a priori*, and whether additional study can predict whether benefits (through innovation, competition and other factors) outweigh costs mitigated by new protections. None of the studies, all by accomplished, respected economists, have been able to make those predictions and some state that the inability to make such a prediction is common.

With respect to certain findings, the Board, did not find economic support that: ICANN should block all new gTLD proposals, economic analysis of every new proposed gTLD should be conducted in order to determine whether the theoretical benefits of that gTLD outweigh the theoretical costs, or that competition for .COM is relevant to the question of whether new gTLDs would promote competition in the marketplace generally. Specifically, empirical studies on the question of proving whether an individual or multiple TLD would provide net benefit would be extremely difficult. It seems impossible to conclude that, less than fifteen years after the introduction of the commercial Internet, ICANN should make the decision to block all efforts to create competition at the registry level, including possible competition for .COM unless there is *a priori* quantification of the net benefits associated with new gTLDs.

ICANN's default position remains to foster competition and avoid rules that restrict innovation and competition. Blocking all new gTLDs would be contrary to the basic economic principle raised in the studies that innovation and efficient competition is good and is highly likely to result in long-run benefits to consumers.

As a result, ICANN's Board has concluded that no further economic analysis would prove to be more informative in that regard than those that have already been conducted.

b. Defensive registrations

Defensive registrations are those made to prevent probability of fraudulent or infringing behavior. It is asserted that new TLDs will result in significantly higher defensive registration costs for trademark holders.

The Board position is that defensive registrations will increase but not in numbers projected by some trademark holders. Based on independent reports, defensive registration are primarily made in .com and that the need for defensive registrations will

increase somewhat, but not dramatically until one of the new TLDs competes directly and effectively with .com.<sup>1</sup>

This is because:

1. trademark holders may register top brand names in new TLDs, however
2. by far, most defensive registrations (in the form of typos and related words) occur in .com and very few other registries, because
3. nearly all infringing behavior occurs in .com and very few other registries, therefore
4. relatively few defensive registrations are expected in all but the very largest registries, and
5. new safeguard mechanisms established through community interactions will serve to minimize those costs.

Economic Study / Independent Reports:

The most recent ICANN commissioned economic study provided an opinion that trademark holders are interested in preventing other parties from using domains containing trademarks but the trademark holders are not interested in affirmatively using those domains. <http://www.icann.org/en/topics/new-gtlds/phase-two-economic-considerations-03dec10-en.pdf> p74. The study draws a conclusion that registries currently perform this by registering, but not using domain names in registries other than .com.

The report also states that more generally, the probability of fraudulent or infringing use would increase with the openness of new gTLDs' registration policies and the popularity of new gTLDs among users, and decrease with the strength of IP protection protocols adopted by the new gTLDs' registries. <http://www.icann.org/en/topics/new-gtlds/phase-two-economic-considerations-03dec10-en.pdf> p57.

This report relies on registration of 200 top brand names to demonstrate that they nearly all registered in the top gTLD registries. Also interesting is an [independent analysis of registrations of identical names across the major gTLDs](#). The analysis of these identical registrations leads to slightly different conclusions. First, approximately 80% of defensive registrations are in .com. A comment to the report offers an opinion that over 70% of defensive registrations occur in .com and nearly all the rest occur in .org, .info, and ccTLDs, i.e., none in newer gTLDs. This is because most defensive registrations are

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<sup>1</sup> However, a registry competing effectively with .com will also bring significant benefit to the TLD space. Just as the benefits accruing from .com are presently assumed to significantly outweigh the costs, one might also assume a registry effectively competing with .com outweighs the costs.

not just the brand name but are also typos of the brand name or the brand name adjacent to other words (e.g., version.com and verizonphone.com).

This leads to the conclusion the brand owners, repeating past practice, will not register their marks in new gTLDs in great numbers. A [companion report](#) states that registrations that infringe the rights of others are made only where there is economic benefit to the infringing registrant, i.e., .com. Since defensive registrations only make economic sense where infringing behavior occurs and that is only in .com and the largest registries, it is not expected that new TLDs will attract defensive registrations.

While this approach appears to make sense, the Board is seeking (and will publish) independent corroboration that:

- trademark holders generally do not register their trademarks in all the current generic TLDs.
- Therefore, it is not expected that trademark owners, in general, register their trademarks in new gTLDs, and
- due to the expected costs to run a registry and the expected low number of defensive domain name registrations, there is no economic incentive for an applicant to obtain a TLD for the sole purpose of making money from defensive trademark registrations.

It should also be taken into account that “defensive registrations” are not valueless. At outside request, ICANN undertook an analysis of 49 domain names and found that many were “parking pages,” or redirect pages registered by the brand owner for value as well as defense. While this is not yet a common practice, [http://www.circleid.com/posts/20101029\\_understand\\_the\\_value\\_of\\_defensive\\_domain\\_registrations/](http://www.circleid.com/posts/20101029_understand_the_value_of_defensive_domain_registrations/), some companies are earning revenue [http://www.cfo.com/article.cfm/13012957/c\\_13015052?f=insidecfo](http://www.cfo.com/article.cfm/13012957/c_13015052?f=insidecfo) to offset other trademark protection costs.

The Board believes that the introduction of detailed rules and safeguard mechanisms based on extensive Community interaction in the successive versions of the draft applicant guidebook is the appropriate way to minimize the potential costs related to the implementation of this policy and optimize the use of the Domain Name Space as a common global resource.

In particular, to the extent that there are costs to trademark owners or others, ICANN has worked extremely hard with the community to address those concerns, and ICANN pledges to continue that effort and review the newly developed rights protections mechanisms on a regular basis to ensure they are working or, if necessary determine what revisions to be made to improve those mechanisms.

## 2. Limited rounds, gTLD categories

Whether to make accommodations for categories of gTLDs has been widely discussed. The Board took a position that separate categories should not be defined beyond those described by: the GNSO policy (community-based TLDs); and the GAC defined requirements to address sovereignty concerns: geographically named TLDs.

The reasons argued for creating categories of TLDs were that certain categories should be given accommodations to facilitate their delegation and operation. Suggested accommodations included relief from: fees, contractual obligations, consensus policy compliance, and the requirement to use registrars. Types of categories discussed included: single-owner, Intergovernmental Organization, not-for-profit, developing country-based, and cultural / linguistic TLDs.

The Board position was based on the assumption that the creation of categories would give rise to a set of many complex negotiations to arrive at a set of rules. More importantly, it was thought that the market should define categories. ICANN, *a priori*, was not suited to make these determinations. Finally, categories should not be a reason to avoid obligations. (Community and geographic TLDs give rise to *additional* obligations.)

It is also suggested that the first round be limited to certain TLD categories or numbers of non-controversial TLDs. The Board position is that the round should not be limited in this way for several reasons. While some of the examples below can be argued either way, examples are numerous and indicate the impracticability of the possible restrictions.

- a. An important lesson learned from the sTLD round was that limiting a round to a type of TLD causes applicants to force their business model into that classification, resulting in:
  - i. Restricted business models that cannot compete
  - ii. Loss of the opportunity to innovate
  - iii. Difficult application evaluation situations that add no value to DNS stability, competition, or choice for users
- b. A restricted round will give a “first movers advantage” to those that qualify. IDNs, not-for-profits, cultural and geographical name TLDs all seek to attract registrations and compete across the DNS. Examples of classifications that could result in an unfair competitive situation:
  - i. IDNs can seek to capture registrations in a region before an ASCII equivalent can.
  - ii. Joespizza.nyc would compete ahead of joes.pizza, harming the opportunity to compete.

- iii. Not-for-profits still compete strongly for names against other TLDs.
- c. Restricted TLDs create an untenable or impracticable compliance environment with significant costs and no benefit to the DNS.
  - i. A .brand TLD might have to make employee lists available to ICANN to ensure it was not violating its registration restrictions.
  - ii. Registration restrictions for geographical name TLDs might have to be developed and policed.
  - iii. Business models for not-for-profits would have to be monitored.
- d. Limiting the numbers of TLDs would lead to subjective and not predictable processes. How can ICANN choose between .two and .three (two “uncontroversial” TLDs)? The model in 2000 is not appropriate in the face of today’s demand. (Numbers can be objectively restricted by price through auction or higher fees but this is contrary to ICANN policy.)

For these reasons, the GNSO decide to limit the number of applications by conducting evaluations in rounds. The Council stated that applications would be limited to rounds until the scale of demand was clear. Limiting applications to a fairly brief period, say 60-90 days, will allow batch processing of applications and evaluation of program effectiveness before the next round is launched. Efficacy of trademark protections, abuse mitigation measures, and applicant screening will be measured.

## **RELEVANT COMMENTS, HISTORY, GUIDEBOOK SECTIONS AND OTHER PAPERS**

### GAC Comments

In March 2007, the GAC Principles on New gTLDs

([http://www.gac.icann.org/system/files/gTLD\\_principles\\_0.pdf](http://www.gac.icann.org/system/files/gTLD_principles_0.pdf)) stated: [i]t is important that the selection process for new gTLDs ensures the security, reliability, global interoperability and stability of the Domain Name System (DNS) and promotes competition, consumer choice, geographical and service-provider diversity.

In August 2007, the GNSO concluded a rigorous policy development process determining that (and the circumstances under which) new gTLDs would be added (<http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>). A broad consensus was achieved in community deliberations that new gTLDs should be added to the root in order to achieve the benefits of competition and for numerous other reasons.

In August 2009 comments on Guidebook version 2

(<http://www.icann.org/en/correspondence/karklins-to-dengate-thrush-18aug09-en.pdf>) the GAC remained concerned that, “the threshold question has not been answered whether the introduction of new gTLDs provides potential benefits to consumers that will not be outweighed by the potential harms... that the economic reports commissioned by ICANN have failed to distinguish adequately between real demand and derived demand arising from widespread concern in the business community about the multiplication of the opportunity for cybersquatting, fraud and malicious conduct

generally. The GAC notes that the recent IRT report addresses a number of related intellectual property protection and enforcement issues. However, the GAC believes there is an urgent need for separate empirical research to be undertaken regarding the costs of defensive registrations and the impact on consumers of the availability of new gTLDs.”

In response to Guidebook version 3

(<http://www.icann.org/en/correspondence/karklins-to-dengate-thrush-10mar10-en.pdf>), the GAC reiterated “[t]he urgent need for economic studies to be concluded which assess whether the benefits of new gTLDs are likely to outweigh any costs to users, ... and distinguish demand for new name registrations versus defensive registrations by current brand holders.”

In August 2009 comments on Guidebook version 4

(<http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-23sep10-en.pdf>) the GAC concluded, “that an initial fast track round for a limited number of non-controversial applications which should include a representative but diverse sample of community, cultural and geographical applications, would be a preferable course for ICANN to take rather than a single open-ended launch... [T]his limited first round would require a fully open community discussion and clear direction in the applicant guidebook. The GAC recommends that ICANN undertake a full review of the results of the fast track process before embarking on subsequent rounds.

#### Economic Studies

In October 2006, to inform the renewal of the .BIZ, .INFO, and .ORG agreements (and unrelated to the proposal to develop new gTLDs), the ICANN Board resolved that ICANN’s President commission an independent study to deliver findings on economic questions relating to the domain registration market (<http://www.icann.org/en/minutes/minutes-18oct06.htm>).

ICANN commissioned CRA International (CRAI) to perform an economic study. By the time CRAI began its study, however, several other important economic issues had arisen in conjunction with the ongoing development of the new gTLD program. As a result, ICANN asked CRAI to focus on those issues in particular, including issues associated with common ownership of registries and registrars.

After CRAI issued its October 2008 report, several members of the ICANN community requested that ICANN commission economic studies that would specifically address the possible economic consequences of new gTLDs. Although this was not the focus of the Board’s resolution in October 2006, some commentators argued that ICANN should not proceed with new gTLDs until the Board received the results of the study the Board had requested in 2006. Accordingly, ICANN retained the services of economist Dennis Carlton, who recently had served as the chief economist to the United States Department of Justice Antitrust Division.

In March 2009, Professor Carlton issued his first report, which states that ICANN retained him to analyze from an economic perspective ICANN’s anticipated introduction of new generic top level domain names (gTLDs), and to identify and address the benefits



and costs associated with ICANN's proposal. <http://www.icann.org/en/topics/new-gtlds/prelim-report-consumer-welfare-04mar09-en.pdf>.

Also in March 2009, Professor Carlton issued a second report, which specifically addresses the question of whether new gTLDs should have price caps. <http://www.icann.org/en/topics/new-gtlds/prelim-report-registry-price-caps-04mar09-en.pdf>.

In April 2009, economist Michael Kende submitted a report to ICANN entitled Assessment of Preliminary Reports on Competition and Pricing, on behalf of AT&T. Dr. Kende's report comments on Professor Carlton's March 2009 papers.

In June 2009, Professor Carlton submitted a report responding to Michael Kende's April 2009 Assessment of Preliminary Reports on Competition and Pricing. <http://www.icann.org/en/topics/new-gtlds/carlton-re-kende-assessment-05jun09-en.pdf>.

Also in June 2009, Professor Carlton issued his fourth and final report, entitled Report of Dennis Carlton regarding ICANN's Proposed Mechanism For Introducing New gTLDs. <http://www.icann.org/en/topics/new-gtlds/carlton-re-proposed-mechanism-05jun09-en.pdf>.

On 30 September 2009, ICANN committed (via its Affirmation of Commitments with the U.S. Department of Commerce) to further analyze the effects of new gTLDs within one year of their introduction. <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>.

In the fall of 2009, ICANN retained the services of Professor Michael Katz from the University of California Berkeley and Professor Greg Rosston from Stanford University to conduct even further economic analysis. On 16 June 2010, Professors Michael Katz and Greg Rosston issued their first report. <http://icann.org/en/topics/new-gtlds/economic-analysis-of-new-gtlds-16jun10-en.pdf>. On 3 December 2010, Professors Michael Katz and Greg Rosston issued their second report. <http://icann.org/en/topics/new-gtlds/phase-two-economic-considerations-03dec10-en.pdf>.

#### Links to Reports:

[Economic Considerations in the Expansion of Generic Top-Level Domain Names, Phase II Report: Case Studies \(Phase II Report\)](#) [782 KB] (Dec 10)

[An Economic Framework for the Analysis of the Expansion of Generic Top-Level Domain Names](#) [334 KB] (Jun 10)

[Report Of Dennis Carlton Regarding ICANN's Proposed Mechanism for Introducing New gTLDs](#) [628 KB] (Jun 09)

[Comments on Michael Kende's Assessment of Preliminary Reports on Competition and Pricing](#) [52 KB] (Jun 09)

[Public Comment Forum](#) (closed on 20 Jul 09)

[Preliminary Report of Dennis Carlton Regarding Impact of New gTLDs on Consumer Welfare](#) [157 KB] (Mar 09)

[Preliminary Analysis of Dennis Carlton Regarding Price Caps for New gTLD Internet Registries](#) [56 KB] (Mar 09)

[Public Comment Forum](#) (closed on 17 Apr 09)

Report from CRA International "[Revisiting Vertical Separation of Registries and Registrars](#)" [493 KB] (Oct 08)

[Summary & Analysis](#)

[Public Comment Forum](#) (closed on 15 Dec 08)

## **REFERENCE DOCUMENTS: MARKET AND ECONOMIC IMPACTS**

- **SUMMARY OF ACTIONS TAKEN RESPONDING TO GAC AND PUBLIC COMMENTS**
  
- **CHRONOLOGICAL LISTING OF GAC ADVICE AND COMMENTS ON NEW GTLDS AND RESPONSES PROVIDED BY ICANN AND KEY DOCUMENTS PUBLISHED ON THE TOPICS**

## **SUMMARY OF ACTIONS TAKEN RESPONDING TO GAC AND PUBLIC COMMENTS**

### **Market and Economic Impacts**

- Four related economic studies were completed and released. More study was undertaken due to calls for additional analysis.
- Action plan included public benefit analysis on the program as verification of policy work.
- Economic studies articulated some factors that would enhance social benefit and reduce external costs, such as extra trademark protection mechanisms and community protection measures. Prior to and in response to those studies, ICANN has undertaken the establishment of measures for trademark protection and mitigation of malicious conduct.

**THIS TABLE PROVIDES A CHRONOLOGICAL LISTING OF GAC ADVICE AND COMMENTS ON NEW GTLDS AND RESPONSES PROVIDED BY ICANN AND KEY DOCUMENTS PUBLISHED ON THE TOPIC**

**Market and Economic Impacts**

<b>GAC Advice and Comments</b>	<b>ICANN responses and key documents</b>
<p><b>27 March 2007: GAC Principles regarding New gTLDs</b></p> <p>2.6 It is important that the selection process for new gTLDs ensures the security, reliability, global interoperability and stability of the Domain Name System (DNS) and promotes competition, consumer choice, geographical and service-provider diversity.</p>	<p><b>ICANN mapping of GNSO Policy Recommendations<sup>1</sup></b></p> <p><b>2.6)</b> is addressed by multiple GNSO Principles and Recommendations, as follows:</p> <p>GNSO Principle A: "New generic top-level domains (gTLDs) must be introduced in an orderly, timely and predictable way."</p> <p>GNSO Principle C: "The reasons for introducing new top-level domains include that there is demand from potential applicants for new top-level domains in both ASCII and IDN formats. In addition the introduction of new top-level domain application process has the potential to promote competition in the provision of registry services, to add to consumer choice, market differentiation and geographical and service-provider diversity."</p> <p>GNSO Principle D: "A set of technical criteria must be used for assessing a new gTLD registry applicant to minimise the risk of harming the operational stability, security and global interoperability of the Internet."</p> <p>GNSO Recommendation 4: "Strings must not cause any technical instability."</p> <p>GNSO Recommendation 7: "Applicants must be able to demonstrate their technical instability."</p> <p>GNSO Recommendation 7: "Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out." In the current implementation planning phase, proposed sets of technical and operational capability criteria are being developed, to be explained fully to the applicants in the Request For Proposal (RFP).</p>
<p><b>10 March 2009: Comments on V1 of Applicant Guidebook</b></p>	<p><b>24 October 2008: Applicant Guidebook Version 1</b> <a href="http://www.icann.org/en/topics/new-gtlds/draft-rfp-24oct08-en.pdf">http://www.icann.org/en/topics/new-gtlds/draft-rfp-24oct08-en.pdf</a></p> <p><b>18 February 2009, version 1 Public Comments Analysis Report</b></p>

<sup>1</sup> On 7 May 2008, Kurt Pritz sent a document to the GAC Chair mapping the GAC Principles to the GNSO Recommendations which was shared with the GAC. The information contained here is taken from that document.

	<p><a href="http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf">http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf</a></p>
	<p><b>18 February 2009: Applicant Guidebook Version 2</b>  <a href="http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-18feb09-en.pdf">http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-18feb09-en.pdf</a></p> <p><b>31 May 2009, Summary and analysis of public comments on version 2</b>  <a href="http://www.icann.org/en/topics/new-gtlds/agv2-analysis-public-comments-31may09-en.pdf">http://www.icann.org/en/topics/new-gtlds/agv2-analysis-public-comments-31may09-en.pdf</a></p>
<p><b>24 June 2009, Communiqué Sydney</b>  The GAC discussed the Draft Applicant Guidebook version 2 and feels that it does not yet respond to all the concerns that governments have. The GAC notes that considerable work is underway seeking to address several critical yet outstanding issues but the GAC remains concerned about a number of important issues:</p> <ul style="list-style-type: none"> <li>- The lack of comprehensive analysis of economic and competition impacts;</li> </ul>	
<p><b>18 August 2009: Comments on V2 of Applicant Guidebook</b>  The GAC had registered its concern at the Mexico City meeting that the two preliminary reports on competition and price caps had not provided appropriate answers to the 2006 Board request for economic studies to be undertaken. Such analysis is needed to take full account of the entire domain name environment. The GAC remains concerned that the threshold question has not been answered whether the introduction of new gTLDs provides potential benefits to consumers that will not be outweighed by the potential harms.</p> <p>The GAC notes that the economic reports commissioned by ICANN have failed to distinguish adequately between real demand and derived demand arising from widespread concern in the business community about the multiplication of the opportunity for cybersquatting, fraud and malicious conduct generally. The GAC notes that the recent IRT report addresses a number of related intellectual property protection and enforcement issues. However, the GAC believes there is an urgent need for separate empirical research to be undertaken regarding the costs of defensive registrations and the impact on consumers of the availability of new gTLDs. To the extent that the uses of new gTLDs are innovative and respond to registrant demand, the GAC expects there would be benefits to consumers.</p> <p>The GAC also recommends that any analysis of the gTLD environment encompass fact gathering beyond empirical studies. A thorough analysis would include interviews with and perhaps surveys of a wide cross-section of market participants.</p>	<p><b>22 September 2009: Reply from ICANN Chairman</b>  <a href="http://www.icann.org/en/correspondence/dengate-thrush-to-karklins-22sep09-en.pdf">http://www.icann.org/en/correspondence/dengate-thrush-to-karklins-22sep09-en.pdf</a></p> <p><b><u>New gTLD – Economic Study</u></b></p> <p><u>I. Summary</u></p> <p>The calls for economic studies cover several different issues, and even these questions/phrases mean different things to different people. The issues fall into the following three categories:</p> <ol style="list-style-type: none"> <li>1) Fulfillment of 2006 Board resolution</li> <li>2) Economic analysis of benefit vs. cost</li> <li>3) Public benefit of introducing new gTLDs / demand for new gTLDs</li> </ol> <p>ICANN proposes a plan for dealing with each of these issue areas separately. Once we have agreed on an overall plan internally, ICANN will structure our answers into appropriate categories externally as well, and avoid the inappropriate grouping under the heading "economic studies".</p> <p>There has been substantial work to answer the economic questions associated with new gTLDs. A set of four related studies was released. Existing economic studies indicate significant consumer benefit flowing from the introduction of new gTLDs and identify risks that should be mitigated prior to introduction. Some of the</p>

As a first step in this process, the GAC recommends that ICANN more systematically conduct outreach and data gathering from the variety of resources represented by the participants in the malicious conduct and e-crimes sessions in Sydney.

elements that offer benefits to consumers include: lower cost, more choice, new languages (IDN), and innovation. Staff has taken action to mitigate identified risks through improved new gTLD implementation plans, primarily related to IP concerns and malware concerns.

There has been comment that additional study should be undertaken. That form of comment has cited different objectives. We anticipate that the analytical value of further studies will be small; and, it appears that an objective of the calls for additional study is to delay the implementation. It may well be that no action/outcome (other than delay) will quell that criticism. Still, there may be consensus-building value in heeding the call for additional study, and staff is proposing additional study.

## II. Background

### Contractual Issues

There has been a considerable amount of research and work undertaken on the impact that the introduction of new gTLDs will have on various stakeholders, including consumers, trademark owners, existing registries and registrars. In addition to the economic studies commissioned by ICANN, much of the work undertaken on the 'overarching issues' have addressed the issues of cybersquatting, malicious conduct and trademark related issues, such as defensive registrations, which are nominated by the GAC as areas of concern.

While acknowledging the GAC's assertion that the economic studies did not answer the Board's call in 2006 for economic studies, it must be noted that the Board's request of 2006, was associated with considering the renewal and amendment of *existing* gTLD contracts, such as .biz and .info, and not new gTLDs.

These issues are:

- Should there be price caps for registration services?
- Are registrations in different TLDs substitutable?
- What are the effects of the switching costs involved in moving from one TLD to another?
- What is the effect of the market structure and pricing on new TLD entrants?

During the comment period of the first Draft Applicant Guidebook a number of issues were raised that focused on the costs associated with the introduction of new gTLDs, and the risks associated with:

- Trademark infringements,

- Protection of trademarks at top-level,
- Costs for defensive second-level registrations,
- Potential growth in malicious conduct, and
- Potential for user confusion

In an attempt to answer questions related to registry contractual issues, market structure questions and possible new costs and risks as identified by the Board and comments received on the first Draft Applicant Guidebook, a series of related studies of the domain name marketplace were undertaken, and subsequently released, namely:

- Preliminary Report of Dennis Carlton Regarding the Impact of New gTLDs on Consumer Welfare (March 2009)
- Preliminary Analysis of Dennis Carlton Regarding Price Caps for New gTLD Internet Registries (March 2009)
- Report Of Dennis Carlton Regarding ICANN's Proposed Mechanism for Introducing New GTLDs (May 2009)
- Comments on Michael Kende's Assessment of Preliminary Reports on Competition and Pricing (May 2009)

The studies identified potential costs associated with gTLD expansion, for example:

- Potential for user confusion,
- Imposing significant costs on trademark holders by forcing them to establish "defensive" registrations,
- Increased opportunity for malicious conduct, and
- Taxing the capabilities of the root zone,

and recommended that the gTLD implementation undertake actions in mitigation of those concerns. These actions include:

- Existing objection and dispute resolution procedures for:
  - Similar TLD applications causing user confusion
  - Misuse of community labels
  - Infringement of rights
- Introduction of additional rights protection mechanisms
- Measures to mitigate and reduce malicious conduct
- Root zone scaling study

The study also anticipated benefits with gTLD expansion:

- Removing artificial restrictions on the marketplace
- Increasing output, lowering prices and increasing innovation
- Increased, enhanced participation



- Expanded community representation
- Expanded regional participation through IDNs
- Clearer, easier brand identification: i.e., a brand no longer has to be “brand.com”

Finally, there were conclusions regarding price controls:

- Price caps or ceilings on prices charged by operators of new gTLD registries are not necessary.
- Trademark holders should be protected through alternate rights protection mechanisms.
- New gTLD registries that attempt to act opportunistically by subsequently raising prices face significant risk of harming their reputation and the loss of customers.
- The imposition of price caps for new gTLDs may inhibit the development and marketplace acceptance of new gTLDs.

### III. Action Plan

Fulfillment of 2006 Board resolution:

- Consider analysis that has been done with respect to the 2006 Board resolution, to determine if additional action can be fruitfully taken.
- Augment the existing studies to map the findings to the questions posed by the Board.
- Seek positive closure on this issue with the Board and community.

Economic analysis of benefit vs. cost:

- Retain economists to review and summarize work to date, ideally putting that work into the context of the questions some have said remain open.
- With that work done, state that the question is answered from an ICANN viewpoint.

Public benefit of introducing new gTLDs:

- Assuming positive results of a feasibility assessment (understanding expected outcome, cost, and time), staff will initiate a new study on public benefit of new gTLDs. .
- The public benefit analysis will be a verification of the policy work. This approach will enable implementation work proceed while this additional study is being done.
- This is intended to be responsive to the community call for a new study.

<p><b>28 October 2009: Communiqué Seoul</b> Following discussions in Seoul however, both between GAC members and with other stakeholders, the GAC feels that many of its concerns remain outstanding, related in particular to:</p> <ul style="list-style-type: none"> <li>the importance of further economic studies to improve the community's understanding of all the costs, benefits and market impacts;</li> </ul>	
	<p><b>4 October 2009: Applicant Guidebook Version 3</b> <a href="http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-04oct09-en.pdf">http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-04oct09-en.pdf</a></p> <p><b>15 February 2010, Summary and analysis comments version 3</b> <a href="http://www.icann.org/en/topics/new-gtlds/summary-analysis-agv3-15feb10-en.pdf">http://www.icann.org/en/topics/new-gtlds/summary-analysis-agv3-15feb10-en.pdf</a></p>
<p><b>10 March 2010: Comments on V3 of Applicant Guidebook</b></p> <p>The urgent need for economic studies to be concluded which assess whether the benefits of new gTLDs are likely to outweigh any costs to users and to assess whether any registry operator can or will be able to exercise market power with respect to any existing or new gTLD, before any changes are made to the current policy requiring vertical separation between registries and registrars. Economic studies should also distinguish demand for new name registrations versus defensive registrations by current brand holders.</p>	<p><b>5 August 2010: Reply from ICANN Chairman</b> <a href="http://www.icann.org/en/correspondence/dengate-thrush-to-dryden-05aug10-en.pdf">http://www.icann.org/en/correspondence/dengate-thrush-to-dryden-05aug10-en.pdf</a></p> <p>The issues of costs and benefits to the expansion of the namespace, the possible impacts on users, the relevance of market power, and the use of defensive registrations are discussed in “An Economic Framework for the Analysis of the Expansion of Generic Top-Level Domain Names,” an independent study completed by economists Michael Katz, Gregory Rosston, and Theresa Sullivan and published by ICANN for comment in June 2010. See <a href="http://icann.org/en/topics/new-gtlds/economic-analysis-of-new-gtlds-16jun10-en.pdf">http://icann.org/en/topics/new-gtlds/economic-analysis-of-new-gtlds-16jun10-en.pdf</a>.</p> <p>The report examines the current status of the gTLD market and surveys existing work that has been done on this set of economic issues. The report also outlines a number of potential case studies that would seek to quantify the net costs and benefits involved in the introduction of new gTLDs. Selected studies recommended in the report are now being initiated. It is possible that these second-phase studies will recommend particular measures for the gTLD evaluation process that would minimize external costs (including, for example, the cost of defensive registrations) while allowing socially beneficial innovation. In this case, any such recommendations will be considered by ICANN and subject to public consultation before being implemented.</p> <p>ICANN has published additional economic studies:</p>

	<ul style="list-style-type: none"> <li>• <a href="http://www.icann.org/en/topics/new-gtlds/carlton-re-proposed-mechanism-05jun09-en.pdf">Report Of Dennis Carlton Regarding ICANN’s Proposed Mechanism for Introducing New gTLDs</a> (<a href="http://www.icann.org/en/topics/new-gtlds/carlton-re-proposed-mechanism-05jun09-en.pdf">http://www.icann.org/en/topics/new-gtlds/carlton-re-proposed-mechanism-05jun09-en.pdf</a> )</li> <li>• <a href="http://www.icann.org/en/topics/new-gtlds/prelim-report-consumer-welfare-04mar09-en.pdf">Preliminary Report of Dennis Carlton Regarding Impact of New gTLDs on Consumer Welfare</a> (<a href="http://www.icann.org/en/topics/new-gtlds/prelim-report-consumer-welfare-04mar09-en.pdf">http://www.icann.org/en/topics/new-gtlds/prelim-report-consumer-welfare-04mar09-en.pdf</a> )</li> <li>• <a href="http://www.icann.org/en/topics/new-gtlds/prelim-report-registry-price-caps-04mar09-en.pdf">Preliminary Analysis of Dennis Carlton Regarding Price Caps for New gTLD Internet Registries</a> (<a href="http://www.icann.org/en/topics/new-gtlds/prelim-report-registry-price-caps-04mar09-en.pdf">http://www.icann.org/en/topics/new-gtlds/prelim-report-registry-price-caps-04mar09-en.pdf</a> )</li> <li>• Report from CRA International “<a href="http://www.icann.org/en/topics/new-gtlds/crai-report-24oct08-en.pdf">Revisiting Vertical Separation of Registries and Registrars</a>” (<a href="http://www.icann.org/en/topics/new-gtlds/crai-report-24oct08-en.pdf">http://www.icann.org/en/topics/new-gtlds/crai-report-24oct08-en.pdf</a> )</li> </ul> <p>In addition, the GNSO considered whether new gTLDs should be introduced and the net benefits of new gTLDs in its final report on the introduction of new gTLDs (<a href="http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm">http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm</a>).</p>
	<p><b>28 May 2010: Applicant Guidebook Version 4</b> <a href="http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-28may10-en.pdf">http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-28may10-en.pdf</a></p> <p><b>12 November 2010: Summary and analysis of comments version 4</b> <a href="http://www.icann.org/en/topics/new-gtlds/summary-analysis-agv4-12nov10-en.pdf">http://www.icann.org/en/topics/new-gtlds/summary-analysis-agv4-12nov10-en.pdf</a></p>
<p><b>23 September 2010: Comments on V4 of Applicant Guidebook</b> Although it was published too late to be taken into account at the Brussels meeting, the GAC welcomes the publication of “An Economic Framework for the Analysis of the Expansion of gTLDs” (the report). The GAC looks forward to receiving the case analysis that is to follow this report.</p> <p>A key issue identified in the report is that ICANN has insufficient information to enable it to predict with certainty the economic impacts of the delegation of a large number of new gTLD strings. The GAC notes in this context the suggestion contained in the economic analysis that ICANN address this problem through conducting a small pilot programme with the aim of collecting relevant information and then using this data to refine and improve the application rules for the subsequent rounds. Such a proposal would have the support of many governments</p>	<p><b>23 November 2010: Reply from ICANN Chairman</b> <a href="http://www.icann.org/en/correspondence/dengate-thrush-to-dryden-23nov10-en.pdf">http://www.icann.org/en/correspondence/dengate-thrush-to-dryden-23nov10-en.pdf</a></p> <p>The analysis of whether new gTLDs should be introduced into the market place, and under what circumstances, was undertaken during the policy development process by the GNSO. As the GAC is aware, the Board approved the GNSO policy recommendations in June 2008, thereby agreeing to open up the new gTLD space and tasked staff with developing an implementation plan.</p> <p>A number of economic studies have been undertaken to date and these were highlighted in my correspondence of 5 August 2010 to the GAC. We await the latest of these.</p>

<p>as consistent with sound technical and management practice when embarking on such a transformative initiative as the full opening up of the gTLD space in the domain name system.</p> <p>At the same time, the GAC is aware that there may be a number of relatively straightforward, non-sensitive and uncontroversial gTLD proposals – including community-based initiatives – which are being unduly delayed as a result of wider operational and policy development issues that do not directly concern or involve them. In the GAC’s view, these applications could be considered as part of a fast track first round. Instituting such a first phase of the gTLD round would also serve to “road test” the core application procedures and bed them in before subjecting them to the handling of more complex applications. The GAC also notes in this respect that the fast track process for IDN ccTLDs could serve as a useful benchmark.</p> <p>The GAC concludes therefore that an initial fast track round for a limited number of non-controversial applications which should include a representative but diverse sample of community, cultural and geographical applications, would be a preferable course for ICANN to take rather than a single open-ended launch. Ensuring equity and fair play in the application process for this limited first round would require a fully open community discussion and clear direction in the applicant guidebook. The GAC recommends that ICANN undertake a full review of the results of the fast track process before embarking on subsequent rounds.</p> <p>Furthermore, such a limited approach to the initial launch round would be consistent with the several cross-community discussions that have taken place since the Nairobi meeting which in the GAC’s view have successfully highlighted the social and economic benefits of track differentiation between categories. Specifically, the GAC recommends that such categorization be used in a more clearly defined version of the application batching process set out in version 4 of the DAG. It will be important of course in the design and implementation of this process to be mindful of the risk of potential “gaming” by applicants and there should be provisions to prevent market distortions.</p>	<p>The economist reports to date reflect that the benefits of innovation, or the effectiveness of trademark protection developed by the intellectual property constituencies, are too speculative to predict with accuracy. However, the Board does not agree that “... an initial ‘fast track’ round for a limited number of non-controversial applications which should include a representative but diverse sample of community, cultural and geographical applications, would be a preferable course for ICANN to take.” The process outlined in the Applicant Guidebook already provides equity and fair play for all applicants globally. An attempt to limit the process to “non-controversial” would be by its very nature controversial, since it will provide a first movers advantage and an incentive for misuse of the process that would be difficult and expensive to manage. I note that at the time the Board was considering the Expression of Interest (EOI) proposal, which was also put forward as a proposal to assist with addressing the question of the economic impact of the introduction of new gTLDs, the GAC questioned the benefits of pursuing a separate EOI as it could distract attention and resources from finalizing the New gTLD Program.</p> <p>The GAC has raised the issue of “track differentiation between categories” in their comments on versions 2 and 3 of the applicant guidebook, and while I appreciate that this is in a slightly different context, on previous occasions, I responded in essence that we are not opposed to categories, which we expect will become self-evident over time. However, the introduction of a number of new gTLD categories with a number of different accommodations will lead to a complex and difficult application, administration and evaluation process, in addition to a very complicated contractual compliance environment.</p>
	<p><b>25 September 2010, Board Retreat Trondheim</b>  <a href="http://www.icann.org/en/minutes/resolutions-25sep10-en.htm">http://www.icann.org/en/minutes/resolutions-25sep10-en.htm</a></p> <p>“...Whereas, on 23 September 2010, the Governmental Advisory Committee (GAC) provided comments on version 4 of the draft Applicant Guidebook. Resolved (2010.09.25. __), staff is directed to determine if the directions indicated</p>

	<p>by the Board below are consistent with GAC comments, and recommend any appropriate further action in light of the GAC's comments.”</p> <p>Board Briefing Materials:  <a href="#">One</a> [PDF, 3.23 MB]  <a href="#">Two</a> [PDF, 2.03 MB]  <a href="#">Three</a> [PDF, 816 KB]  <a href="#">Four</a> [PDF, 240 KB]  <a href="#">Five</a> [PDF, 546 KB]</p>
	<p><b>12 November 2010: Proposed Final Applicant Guidebook</b>  <a href="http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-12nov10-en.pdf">http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-12nov10-en.pdf</a></p> <p><b>12 November 2010: Explanatory Memo—Morality &amp; Public Order</b>  <a href="http://www.icann.org/en/topics/new-gtlds/explanatory-memo-morality-public-order-12nov10-en.pdf">http://www.icann.org/en/topics/new-gtlds/explanatory-memo-morality-public-order-12nov10-en.pdf</a></p>
<p><b>9 December 2010: Communiqué Cartagena</b>  That the GAC will provide the Board at the earliest opportunity with a list or "scorecard" of the issues which the GAC feels are still outstanding and require additional discussion between the Board and the GAC. These include:</p> <ul style="list-style-type: none"> <li>• Market and Economic Impacts;</li> </ul>	<p><b>10 December 2010, Board meeting</b></p> <p>New gTLD Remaining Issues  <a href="http://www.icann.org/en/minutes/resolutions-10dec10-en.htm#2">http://www.icann.org/en/minutes/resolutions-10dec10-en.htm#2</a></p> <p>Resolved (2010.12.10.21), the Board:</p> <ol style="list-style-type: none"> <li>1. Appreciates the GAC's acceptance of the Board's invitation for an inter-sessional meeting to address the GAC's outstanding concerns with the new gTLD process. The Board anticipates this meeting occurring in February 2011, and looks forward to planning for this meeting in consultation and cooperation with the GAC, and to hearing the GAC's specific views on each remaining issue.</li> <li>2. Directs staff to make revisions to the guidebook as appropriate based on the comments received during the public comment period on the Proposed Final Applicant Guidebook and comments on the New gTLD Economic Study Phase II Report.</li> <li>3. Invites the Recommendation 6 Community Working Group to provide final written proposals on the issues identified above by 7 January 2011, and directs staff to provide briefing materials to enable the Board to make a decision in relation to the working group's recommendations.</li> <li>4. Notes the continuing work being done by the Joint Applicant Support Working Group, and reiterates the Board's 28 October 2010 resolutions of</li> </ol>

	<p>thanks and encouragement.</p> <ol style="list-style-type: none"><li>5. Directs staff to synthesize the results of these consultations and comments, and to prepare revisions to the guidebook to enable the Board to make a decision on the launch of the new gTLD program as soon as possible.</li><li>6. Commits to provide a thorough and reasoned explanation of ICANN decisions, the rationale thereof and the sources of data and information on which ICANN relied, including providing a rationale regarding the Board's decisions in relation to economic analysis.</li><li>7. Thanks the ICANN community for the tremendous patience, dedication, and commitment to resolving these difficult and complex issues.</li></ol>
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