



TO: ICANN Board New gTLD Program Committee

FM: Steve Metalitz, IPC President

RE: "Digital Archery" batching method

DT: May 9, 2012

I write at the direction of the Intellectual Property Constituency (IPC), to urge ICANN to reconsider use of the "digital archery" method for batching new gTLD applications for evaluations.

On May 4, ICANN announced that over 2000 new gTLD applications have been received. Since the evaluation system is only designed to handle about 500 applications at once, it is clear now that batching is not just a theoretical possibility, but a necessity, at least under the evaluation system ICANN has adopted.

The "digital archery" batching method announced by the ICANN Board on March 28 is complex, untried, and readily subject to gaming. The paralysis of ICANN's new gTLD application system (TAS), resulting from a so-called "glitch" that ICANN failed to detect in testing the TAS, has now persisted for nearly a month, with no defined end in sight. This episode inescapably casts doubt on ICANN's capacity to implement another technically complex system for batching evaluation of applications. Another such "glitch" in the earliest stages of the most ambitious and far-reaching project ICANN has ever undertaken would permanently damage the organization's credibility, and likely call into question its continued viability as the steward of the domain name system.

The possibilities for gaming the "digital archery" process are obvious and manifold. Inevitably, it will serve as yet another revenue extraction opportunity for those entities that are managing and promoting new gTLD applications. We are already seeing this happen. See <http://www.pool.com/gtld/digitalarchery.aspx>. This arcane and seemingly arbitrary batching method will also reinforce the widespread impression that all ICANN procedures are dominated by "insiders" with contractual relationships to ICANN, who will surely know best how to manipulate this initiative to their own benefit, or that of their paying customers. It is difficult to reconcile such an outcome with ICANN's obligation to act in the public interest.

Whether or not the ICANN staff presented to the Board any options to the "digital archery" proposal before the March 28 decision, the fact is that alternatives were suggested by the community that would have avoided the serious pitfalls and risks – including but by no means limited to those mentioned above – of the method the Board chose. These included categorical batching methods, based entirely on self-selection by applicants of categories already provided in the Applicant Guidebook, that also would have prioritized the potential benefits of new gTLD launches, as noted by ICANN's own economic experts.

IPC urges the Board's new gTLD Program Committee, to which the Board has delegated all its decision-making authority for the new gTLD program, to reconsider the decision taken by the full Board on March 28, review the options available to it, and adopt a simpler, more credible, and lower-risk method than "digital archery" for batching new gTLD applications for evaluation.