Report of Public Comments

Preliminary Issue Report on New gTLD Subsequent Procedures	

Publication Date:	4 December 2015
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Comment Period:		**Important Information Links**
Comment Open Date:	31 August 2015	**Announcement**
Comment Close Date:	30 October 2015	**Public Comment Box**
		View Comments Submitted

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Section I: General Overview and Next Steps

In accordance with Policy Development Process (PDP) rules, the Preliminary Issue Report on New gTLD Subsequent Procedures [PDF, 1.28 MB] was posted for public comment on 31 August 2015. This Preliminary Issue Report follows the efforts of the Discussion Group on New gTLD Subsequent Procedures, which produced a set of outputs that served as the basis for this report. This Issue Report sought to explore in detail the set of issues/subjects that the Discussion Group identified during its proceedings.

Following the close of the public comment period and the publication of this Report of Public Comments, a Final Issue Report will be prepared for the GNSO Council, which will then consider a Charter for a PDP Working Group on this issue. The Final Issue Report will reflect consideration of all feedback received through the public comment forum which identified specific clarifications, corrections, or enhancements to the Preliminary Issue Report.

Section II: Contributors

At the time this report was prepared, a total of thirteen (13) community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials
Cyber Invasion, Ltd.	James Gannon	CIL
At-Large Advisory Committee (ALAC)	At-Large Staff	ALAC
UNINETT Norid AS	Annebeth B. Lange	NORID
Governmental Advisory Committee (GAC)	Tom Dale	GAC
International Trademark Association (INTA)	Lori Schulman	INTA
Big Room Inc.	Jacob Malthouse	BR
Registries Stakeholder Group (RySG)	Stephane Van Gelder	RySG
Intellectual Property Constituency (IPC)	Greg Shatan	IPC
Business Constituency (BC)	Steve DelBianco	BC

FairWinds Partners	Samantha Demtriou	FP	
Google Registry	Stephanie Duchesneau	GR	
DomainMondo.com	John Poole	DM	
Governments of Peru, Uruguay, Venezuela, Paraguay and Argentina	Olga Cavalli	GPUVPA	
Dotgay LLC	Jamie Baxter	DGL	

Individuals:

Name	Affiliation (if provided)	Initials
N/A	N/A	N/A

Section III: Summary of Comments

> *General Disclaimer:* This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

As noted in Section 1, the Preliminary Issue Report followed and was inspired by the efforts of the Discussion Group (DG) on New gTLD Subsequent Procedures. In the Preliminary Issue Report, the subjects identified by the DG were explored in detail, providing background and analysis of each topic. The Preliminary Issue Report also included a draft PDP-WG Charter for community consideration as developed by the DG.

Comments received on this Preliminary Issue Report fell broadly into two categories:

- Comments suggesting clarifications, corrections, or enhancements to the Preliminary Issue Report. These are further summarized below and will be reflected in the Final Issue Report.
- Comments related to the organization and sequencing of subjects within the Preliminary Issue Report.

Comments suggesting clarifications, corrections, or enhancements

Within the 13 sets of comments received, there were approximately 20 specific comments that responded directly to the public comment forum's call for community input on information that might be missing from the Preliminary Issue Report, necessary corrections, or updates to information in the Preliminary Issue Report, or whether there are any questions or subjects that should be explored in this PDP in addition to those already described in the Preliminary Issue Report.

- There were a few comments suggesting new topics, which led to the integration of new content into existing subjects headings, which would not preclude the PDP-WG from addressing these topics as discrete subjects. For instance:

- o IPC stated "Since the launch of the 2012 round, the IPC has consistently requested that ICANN examine issues concerning new gTLD premium name and pricing practices, particularly in view of abusive practices perpetrated by certain new gTLD registry operators vis-à-vis premium names and pricing. Despite the importance of these issues to the IPC and other stakeholders, the Report provides very little discussion on matters relating to premium names and pricing."
  - o IPC also stated "In addition, the IPC notes that some of the tasks and questions identified as being appropriate for a PDP might themselves be better developed through the use of one or more of the new procedures developed by the Policy & Implementation working group – i.e., the Fast Track PDP Process, the GNSO Guidance Process and the GNSO Input Process."
- §4.2.3: Competition, Consumer Trust and Consumer Choice – Comments suggested that this subject would be likely to require policy development:
  - o ALAC stated "We would wish the community to neither denigrate nor ignore the metrics defined by the evaluation of the last round's KPIs. A PDP examining the results of this analysis is, in the ALAC's view, mandatory."
- §4.3.2: Base Agreement – There were several comments about the base agreement, as well as subjects that may be closely related, as they pertain to possible registry requirements that could be included in a revised base registry agreement.
  - o BC states "Pricing of reserved/premium names is a critical issue. Designating brands as premium names should not be designed to create commercial opportunity for registry operators. Applicants should be required to describe their premium name program and include pricing evaluations in their application and then be held to what was proposed by ICANN compliance."
  - o IPC states "The IPC strongly encourages ICANN to provide additional background, context, and guidance regarding premium names, pricing policies and implementation in the Final Report and Charter, to ensure that the PDP Working Group has an adequate basis for considering these issues."
- §4.3.4: Contractual Compliance – There were several comments concerning contractual compliance.
  - o IPC states "INTA is concerned that the DG did not identify any specific issues with respect to contractual compliance in light of the number of troubling operational practices engaged in by registry operators during the first new gTLD round. These practices include arbitrary and abusive pricing for premium domains targeting trademarks, use of reserved names to circumvent Sunrise and operating launch programs that differed materially from what was approved by ICANN. These troubling practices seem to violate the spirit, if not the letter of various contractual obligations in the Registry Agreement."
  - o BC states "Concerns about premium pricing and predatory pricing were identified by the BC, but ICANN did not consider this a compliance issue. We recommend requiring registry operators to include a detailed description of their proposed Sunrise and premium pricing programs in their applications."
- §4.3.7: Second Level Rights Protection Mechanisms – There were several comments related to second-level RPMs, some expressing surprise that the subject may not require policy development within this PDP-WG. Others highlighted issues that may support the effectiveness of RPMs.
  - o ALAC states "The ALAC understands the possibility of a PDP dedicated to Rights Protection

Mechanisms must be independently initiated. But we wish to ensure that such work is not overlooked or does not fall between the cracks if it is not treated as a policy matter in the PDP-WG on subsequent procedures. In our view these matters are clearly linked and best addressed in tandem."

- o INTA states "The Report correctly acknowledges that one of the rationales for creating the new RPMs was "to mitigate potential risks and costs to trademark rights holders that could arise in the expansion of the new gTLD name space." As a general matter, any substantive review of the RPMs must ask the question whether each RPM is actually achieving the underlying goal of mitigating the potential risks and costs to trademark owners."
- o BC states "The BC has many concerns with all of the issues described in this section, including reservation of premium generic domains, TMCH notices, Name Collisions and the URS. We look forward to participating in the PDP and the in-depth discussion."
- §4.4.2: String Similarity – Commenters had concerns around consistency and plural names.
  - o ALAC states "…we have experienced the current process of determination and its delivery of completely inconsistent outcomes even to the point of absurdity in some cases, we recommend the process be reviewed so that as far as possible, inconsistent evaluation is removed. We would recommend that the explanation of string similarity cases in the Issues Report be expanded to include the plural of words."
- 4.4.3: Objections – Commenters had concerns around consistency and effectiveness of particular objections grounds:
  - o ALAC states "We are troubled by inconsistency of proceedings and the definition of "community" embraced by objection examiners."
  - o INTA states "While INTA appreciates ICANN's efforts to protect existing trademark rights, INTA recommends that any PDP-WG conducts a general review of the objection possibilities, particularly of the following provisions of the LRO:"
- §4.6.1: Security and Stability – Several comments noted the absence of studies into the effect of of new gTLDs on the DNS and other security related questions.
  - o CIL states "We would support the recommendation that the evaluation criteria and other aspects related to SSR issues being examined as part of any policy development efforts prior to the announcement of any potential subsequent rounds."
  - o ALAC states "the way this topic is addressed does not take into account any further assessment about Security and Stability considerations beyond the first round of delegations. For example, there is the question as to whether the DNS can incorporate more new gTLDs to the same scale as the current round without jeopardising Security and Stability?"
  - o IPC States "However, the one issue that could be more directly addressed by the Report is whether the rapid expansion of the root zone (from the aggregate issuance of many gTLDs) could affect the security and stability of the DNS."
- §4.7: Work Processes – There were several comments advocating for either of the two suggested methods for organizing the work (i.e., simultaneous versus sequential), though the work process will ultimately be decided by the Working Group itself. There were also comments noting that additional mechanisms developed by the Policy & Implementation WG may benefit the disposition of certain

subjects.

- o IPC states "In addition, the IPC notes that some of the tasks and questions identified as being appropriate for a PDP might themselves be better developed through the use of one or more of the new procedures developed by the Policy & Implementation working group – i.e., the Fast Track PDP Process, the GNSO Guidance Process and the GNSO Input Process."

Comments related to the organization and sequencing of subjects

Within the 13 sets of comments received, there were approximately 3 specific comments that expressed concern regarding the organizations and sequencing of subjects in the Preliminary Issue Report.

- IPC states "However, we have found the present Report very difficult to grapple with due to the manner in which the groupings have been selected, the issues allocated to those Groups, and the order in which issues are discussed within the Groups."
- INTA states "However, the team of INTA members tasked with preparing this comment have found it difficult at times to identify where a specific issue is dealt with within the Report and whether it is satisfactorily addressed or not. This is due to issues not always being allocated to the most logical Group, or to the most logical section within a Group, and to the substantial overlap between sections."

Section IV: Analysis of Comments

General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.

With a few notable exceptions, commenters either confirmed or did not challenge the substantive research and background information provided in the Preliminary Issue Report. Comments suggesting clarifications, corrections, or enhancements to the Issue Report have all been reviewed by the Staff Manager to ensure that requested additions were either already present or added to the Final Issue Report, and that requested corrections have either been incorporated or addressed through clarifications in the Final Issue Report.

A high number of comments were in regards to registry requirements in Registry Agreements, which currently may not include provisions that might allow for contractual compliance action related to pricing, sunrise programs, and other areas. These comments have been incorporated into §4.3.2 on the Base Agreement and §4.3.7 on Second-level Rights Protections, although this would not preclude a PDP-WG from debating new contractual requirements as a discrete topic.

There were also several comments expressing concern with the organization of the report, noting that it can be difficult to locate specific issues, that there are instances where there may be overlap or duplication, and that the sequencing of subjects does not appear to be ideal. Staff has resisted the temptation to make wholesale changes in the sequencing or organization of subjects, as developing a work plan is a function of the PDP-WG.

However, staff has provided additional proposals around the organization of work, which may hopefully assist the development of the work plan.

It is Staff's recommendation that all comments which did not directly address the Issue Report, but rather were intended as substantive inputs, be considered during deliberations by the PDP-WG at the appropriate points during the PDP process. The comments underscore the diverse concerns of various stakeholders and will serve to inform the PDP, along with other available inputs summarized in the Final Issue Report.

The Final Issue Report will include this Report and analysis of public comments received, to enable the GNSO Council to fully consider all the issues and concerns expressed by the community in order to move forward on this PDP, while possibly adopting the included PDP-WG Charter.