



GNSO PROTECTING THE RIGHTS OF OTHERS WORKING GROUP



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GNSO PRO WG

- The Mission

- Document additional protections implemented by existing gTLD operators beyond current terms in registration agreement and existing dispute resolution mechanisms to protect legal rights of others during domain name registration process, particularly during initial start up of new gTLD where there is contention for what registrants perceive as “best” names.
- Determine whether to recommend to Council a best practices approach to providing any additional protections beyond current registration agreement and UDRP for legal rights to others during domain name registration process, particularly during initial start up of new gTLD where there is contention for what registrants perceive as “best” names.

GNSO PRO WG

- The Tasks
 - Review
 - Existing registry operations and previously implemented mechanisms
 - New gTLD draft recommendations
 - Registry proof of concept reports
 - Evaluation of the New gTLDs: Policy and Legal Issues, Summit Strategies International, July 2004
 - Consult
 - Online questionnaire
 - Expertise within Working Group
 - Report (finalized June 1, 2007)
 - Developed list of draft principles
 - Work remains outstanding
 - The Team
 - 20 Members (4 CBUC, 5 IPC, 1 NCUC, 4 RrC, 4 RyC, 2 NomC)
 - One Observer
 - Staff support
 - Working methods
 - One face-to-face meeting, 14 teleconferences, e-mail discussion list

Overview

- WG unable to reach consensus on whether to recommend “best practices” approach
 - Concern about negative implications for new registry operators that may choose not to implement “best practices”
 - Wide variety of registry services business models
- Developed list of draft principles that various WG members believe should be considered as policy statements for TLD operators to implement, but full discussion of principles not completed
 - “Agreement” on 6 principles
 - “Support” for 6 principles
 - 6 “Alternative views” for 4 principles
- Identified outstanding work – general principles, fee-related aspects, new rights protection mechanisms/features of such mechanisms

Definitions

- WG agreed upon 15 definitions. Four definitions included in principles for which WG reached “Agreement.”
 - Abusive Registration: Domain Name which either: i . registered or otherwise acquired in a manner which, at the time registration or acquisition took place, took unfair advantage of or was unfairly detrimental to another’s Legal Rights; OR ii. has been used in a manner which took unfair advantage of or was unfairly detrimental to another’s Legal Rights.
 - Authentication of Legal Rights: process performed by the Authentication Agent to confirm that the claimed Legal Rights are prima facie authentic based on documentary evidence and of a nature and class accepted by the TLD registry for its Rights Protection Mechanisms. Authentication of the Legal Rights has no bearing on their validity which is a matter for courts of competent jurisdiction.

Definitions (cont'd)

- Legal Rights: rights of a nature and class recognized by a TLD as, subject to Authentication, entitling owners to participate in a Rights Protection Mechanism. Legal Rights have included registered national and regional unitary marks and, in so far as recognized by the law of the nation state where they are held, unregistered trademarks, trade names, business identifiers, company names, geographical names and designations of origin and distinctive titles of protected literary and artistic works.
- Rights Protection Mechanisms: processes or mechanisms adopted and implemented by TLD registries for the purpose of protecting Legal Rights by discouraging or preventing registration of domain names that violate or abuse a participant's Legal Rights. Rights Protection Mechanisms are in addition to the protection afforded through the UDRP and Registration Agreement.
- Other agreed-upon defined terms are Authentication Agent, Charter Eligibility Dispute Resolution Policy, Defensive Registrations, First Come First Served, IP Claim Service, Land Rush, Name String Notification, Start-Up Trademark Opposition Policy, Sunrise Process, and UDRP.

Definitions (cont'd)

- Additional definition provided by NCUC, and not approved by WG
 - Rights of Others: rights of the public to use descriptive and generic words, including where permitted by the law of the nation state where they reside, to use words which may be subject to Legal Rights in particular classes of the Nice Classification System—outside those classes. In relation to unregistered Legal Rights, they include the right to use words that are not subject to protection in their nation state or where no goodwill or reputation arises in their nation state in relation to such a word. They include the right to make fair and legitimate use of words in which others may claim Legal Rights.

Methodology

- The WG adopted the following conventions for expression of views:
 - Agreement - there is broad agreement within the Working Group (largely equivalent to “rough consensus” as used in the IETF).
 - Support – there is some gathering of positive opinion, but competing positions may exist and broad agreement has not been reached.
 - Alternative view - a differing opinion has been expressed, without getting enough following within the Working Group to merit either Agreement or Support.
- The WG used the RFC 2119 (<ftp://ftp.rfc-editor.org/in-notes/rfc2119.txt>) as the basis for determining where the words “should”, “must” and “may” ought to be used.

Agreements

- That there is no universal Rights Protection Mechanism.
- That each new gTLD should adopt and implement a dispute mechanism under which a third party could challenge another's use of that gTLD's Rights Protection Mechanism that results in obtaining a domain name registration.
- That the Legal Rights on which a party bases its participation and seeks to protect in a Rights Protection Mechanism should be subject to actual authentication, at least if the authenticity of such rights is challenged.

Agreements (cont'd)

- That if a new gTLD elects to use a Sunrise Process as its Rights Protection Mechanism, it should restrict eligible Legal Rights in such a manner as to discourage abusive registration.
- That regardless of other authentication of Legal Rights, all new gTLDs should institute measures to deter abuse of the Rights Protection Mechanisms and clearly false submissions. These measures could be automated or conducted on an ad hoc basis to focus on Rights Protection Mechanism submissions that are nonsensical or likely to be false (e.g., registration number is 12345, date is 00/00/00, name is John Doe).
- That all Legal Rights to be protected in a Rights Protection Mechanism must be capable of being authenticated.

Support

- That all new gTLDs must provide a Rights Protection Mechanism.
 - Alternative view: That all new TLDS may provide a Rights Protection Mechanism.
- Each gTLD applicant must describe in its application (a) the Rights Protection Mechanism(s) it intends to provide and; and (b) how that Rights Protection Mechanism/those Rights Protection Mechanisms will protect the rights of others and discourage abusive registrations.
 - Alternative view: That each gTLD applicant must describe in its application the methods they will employ to protect the rights of others.
 - Alternative view: That each gTLD applicant must describe in its application the methods, if any, they will employ to protect the rights of others.

Support (cont'd)

- That if a new gTLD elects to adopt and implement a Rights Protection Mechanism that consists of eligibility or membership verification requirements and second-level name selection criteria (such as those used by the .museum, .aero, and .travel TLDs), an additional Rights Protection Mechanism may not be necessary.
 - Alternative view: That if a new gTLD elects to adopt a description that includes eligibility or membership verification requirements and second-level name selection criteria (such as those used by the .museum, .aero, and .travel) TLDs or another similar set of criteria, a Rights Protection Mechanism shall not be necessary.
- That if a new gTLD elects to use a Sunrise Process as its Rights Protection Mechanism and second-level names are not awarded on a First-Come, First-Served basis, then competing applicants may be provided with an opportunity to reach an allocation decision between/among themselves.

Support (cont'd)

- That to the extent a gTLD is intended for/targeted to a particular geographic region, the Legal Right on which the owner or claimant bases its participation in the Rights Protection Mechanism should originate from the laws that apply to a country in the region or, in the case of a gTLD intended for/targeted to a region within a country, the laws that apply to the region.
- That the creation of “Approved Model Rights Protection Mechanisms” (to be developed later) should be available at the registry’s sole discretion to select, which standardizes the Rights Protection Mechanism across a registry/registrar to minimize the costs of implementation, and eliminates the need for ICANN to scrutinize this aspect of an application during the new TLD process. A registry applicant that fails to pick an “Approved Model Rights Protection Mechanism” must not be prejudiced in any way if it elects not to use a “Approved Model Rights Protection Mechanism” as this is purely a voluntary standard that is meant to make the launch of new TLDs more efficient. The list of Approved Model Rights Protection Mechanisms may be updated from time to time.

Support (cont'd)

- Alternative view: That “Approved Model Rights Protection Mechanisms” (to be developed later) should be utilized by the new registry, unless there are reasonable grounds for non-use in the particular registry. Such use of a standardized Rights Protection Mechanism may minimize the costs of implementation for all interested parties, and would lessen the need for ICANN to scrutinize this aspect of an application during the new TLD process. The list of Approved Model Rights Protection Mechanisms could be updated from time to time.
- Alternative view: That the Supported principle is acceptable subject to the substitution of “and may eliminate the need for ICANN to scrutinize this aspect of an application during the new TLD process” for “and eliminates the need for ICANN to scrutinize this aspect of an application during the new TLD process.”

Outstanding Work

- Some WG members identified some proposed principles that either were not fully discussed or were not discussed.
- Three categories
 - General principles
 - Fee-related aspects
 - New Rights Protection Mechanisms or features of such mechanisms

Outstanding Work (cont'd)

- General principles
 - All potential registrants have legal rights. gTLD operators should not consider the legal rights of IP holders as superior to of the legal rights of others to register and use a domain name.
 - The Rights Protection Mechanisms used by gTLD operators should not presume that a registrant intends to infringe on or violate the legal rights of others simply by the act of registering a domain name.
 - All potential registrants should have an equal opportunity to register common words, phrases, labels or strings as domain names.
 - All principles relating to Rights Protection Mechanisms should equally apply to both ASCII/LDH TLDs and IDN TLDs.
 - Rights Protection Mechanisms for second level names should also apply to third and higher level names made available for general registration by the TLD operator.

Outstanding work (cont'd)

- Fee-related aspects
 - New gTLDs should accept payment for participation in their Rights Protection Mechanisms by means other than credit cards.
 - The fees charged by a gTLD for participation in its Rights Protection Mechanism should be reasonable and each gTLD applicant must identify in its application the basis of its fee calculation.
 - The fees charged by a gTLD for participation in its Rights Protection Mechanism must be reasonably close to their actual or expected costs.
 - The fees associated with the use of Rights Protection Mechanisms must be established at the sole discretion of the gTLD operator.

Outstanding Work (cont'd)

- Proposed new Rights Protection Mechanisms and features of such mechanisms
 - Centralized mechanism for Authentication of Legal Rights
 - Standard Sunrise Process
 - Outsourced Sunrise Process
 - Defensive Removal
 - Name-string Notification
 - Procedure for Addressing Competing Rights
 - Name-string Watch Service & Notification
 - Rapid Suspension Procedure

Thank You