Business Constituency Position
The 2006 GNSO policy development process for new generic top-level domain names

February 2006

Background

The document draws on existing positions of the ICANN GNSO Business Constituency (BC), and seeks to refine certain points in an initial response to the four questions posed in the terms of reference for the GNSO Council policy development process (PDP) launched in December 2005. The BC broadly supports the proposed terms of reference and offers these detailed comments. There are implications for both new and existing registries: policies resulting from this PDP and the registry services PDP will need to be jointly considered. The BC may submit further comments after reviewing other contributions.

1. Should new generic TLDs be introduced?

While the BC continues to support a managed introduction of new top-level domain names (TLDs), it is important that there is a real business need for them. To date, the call for new TLDs primarily comes from those proposing to run the new domains and not from those likely to use new domains. One primary reason to introduce new TLDs is to provide user choice. The BC recognizes that it is too early to tell how successful the "proof of concept" TLDs will be in bringing choice to users. Nevertheless, informed policy relies on understanding the present situation. Much of the fact based information that can guide informed policy is still lacking.

- **Prioritisation – IDN issues ahead of new gTLDs**
  The characteristics of the Internet and its users have changed dramatically in the last 5 years. One in every ten Internet users today is from China; and India. is not far behind. Besides the demand for non-English content, there is growing support for non-Latin character sets. It is important that ICANN, along with other relevant organizations, address this effort now. The BC recommends that effort is directed towards the creation of entirely new IDN gTLDs: not clones of existing ones.

- **Sponsored TLDs not open TLDs**
  In discussions within the business community, there is limited to no support for the introduction of "open" gTLDs that merely require existing registrants to duplicate, or defensively register. Over a period of the past few years, there has been the development of support for the introduction of "sponsored" TLDs, which have a charter, and which restrict registration to those who meet criteria for such registration. This was elucidated in the White Paper June 2005, co sponsored by the BC, ISPCP, and IPC (see www.bizconst.org).

  The position of the BC is that any further gTLDs should be focused on names that create differentiation, limit the need for duplicate and defensive registrations and demonstrate clear and broad support from the affected community to which the sTLD would apply. The BC is interested in any options outside of sponsored gTLDs which ensure the above.

- **Safe harbour for users in the event of registry failure**
  The BC strongly supports the need for a process by which a failing/or failed registry's registrants are provided a "safe harbour", where they can continue to receive resolvability of their web sites. The circumstances under which a failed registry would be reallocated to a new entity would have to be the subject of policy making by the GNSO: such policy should be known in advance of any new award. To date inadequate steps have been taken in this regard, and the BC calls on the GNSO to establish such policy.

- **Re-bid for existing gTLDs**
  Every 5 years ICANN should ask the question "should the existing registry continue to run the gTLD?" In the case of sponsored gTLDs the question should be asked primarily of the sponsoring community, but also with the input of the broader community, inclusive of the relevant ICANN Advisory Committees. This policy should be put in place before the creation of any new domain names and should be retroactive.

- **Further analysis is essential and attainable**
  For some time, the BC has called on ICANN to fund a thorough analysis of the registration characteristics in the existing gTLDs. With the cooperation of the registries in providing zone file data in a neutral and secure manner, such a study need not be expensive or unduly lengthy. Questions should include:
  - examining the characteristics of registrants to see whether new TLDs have resulted in differentiated registration.
  - examination of the number of defensive registrations in the proof of concept gTLDs.
  - examination of the number of live sites versus the number of registrations.

Recommendation:

> *No new generic TLDs should be introduced at this time. Instead ICANN should focus on introducing new IDN TLDs.*
>
> *Any further new gTLDs should be sponsored and the GNSO should provide further guidance for staff and evaluators in this respect.*
>
> *ICANN via the GNSO should develop policy on safe-harbour in the event of registry failure and on the re-bidding for existing TLDs.*
>
> *An evaluation of the proof of concept TLDs should be expedited.*

2. Selection criteria for new top-level domains

The BC considers that it is appropriate to develop selection criteria for further new TLDs, and recommends that these be based on refinement of the criteria used in the proof of concept sTLD round. The BC has previously offered a detailed selection model, and this is attached in Appendix 1.

Recommendation:

> ***ICANN via the GNSO should adopt and list selection criteria for the introduction of further new TLDs.***
>
> ***Staff and evaluators should return to the GNSO Council for clarification, when they encounter questions in understanding selection criteria.***

3. Allocation methods for new top-level domains

A need for structure
The BC recommends that there be structured allocation methods for new TLDs that recognize the need for competition at the registry level while maintaining the stability of the Internet. The BC supports a managed approach to allocation that has a cost-plus recovery approach on the fees charged to the applicants and urges that costs are kept as low as possible so not to divert funds from start-up innovation.

The BC supports a process whereby criteria are established, and assessed by a neutral and professional team. The proof of concept rounds were established to guide future policy: it is time they did so.

Supplier or user driven?
ICANN has to balance the real user demand for new TLDs with the interest of suppliers to provide new gTLDs. Where there is a conflict, the interest of users must prevail. This is not an easy decision, and the BC is sympathetic to the challenges that this presents to the ICANN community

Recommendation:

> ***A structured allocation method should recognise:***
> - ***the role and feasibility of effective competition in the names space.***
> - ***the need to set clear expectations for those who wish to operate a TLD.***
> - ***a neutral and professional assessment team with transparency of process.***
> - ***the need to allow existing TLDs to build a market presence.***
> - ***the scarce resources of ICANN.***
> - ***the relevant concerns of governments.***

4. Policy to guide contractual conditions for new top-level domains

Recently, ICANN has been embedding additional fees in registry contracts, such as .net and.com. Regardless of their merits, there must be policy to guide the establishment of such fees, when in a market economy it is the user who ultimately pays .

There is a need as well for greater transparency during the negotiation process, both in the initial awards, and in re-bids. The BC recommends refinement of the public portion of the consultation; while supporting the need for appropriate confidentiality.

The BC recognizes that there should be fair treatment of registries proportionate to their demands on ICANN resources. For instance, open gTLDs will always make greater demands on ICANN resources compared to sponsored TLDs where certain policy areas are delegated and where the sponsoring community itself provides oversight to the sTLD registry.

TLD registries should not be allowed to extend their monopoly position into areas where a competitive marketplace will provide optimal solutions. Areas in question include new registry services and traffic data.

Recommendation:

> *It is fundamental that ICANN engenders:*
> - *fair treatment of suppliers in proportion to their call on ICANN resources.*
> - *equal obligations imposed on suppliers via ICANN consensus policy.*
> - *transparency in registry negotiation, while allowing for appropriate confidentiality.*
> - *limits on the ability of registries to extend their monopoly into otherwise competitive markets through capture of upstream inputs.*

Appendix1 - selection criteria for TLDs

As outlined in previous position papers and most recently in the *White paper on internet domain name expansion June 2005,(www.bizconst.org)* the BC believes that sTLD applications that comply with the following 13 criteria should be accepted. Those that do not and cannot adjust themselves to meet the criteria, should be denied.

1. **Principles**. Does the application conform to these five principles?

a	Differentiation	**a gTLD must be clearly differentiated from other gTLDs.** If a new registry/sponsor proposed a name that promised differentiation which seemed reasonably achievable, that should be sufficient. Whether the applicant subsequently succeeded in achieving true differentiation would be a function of the success of its business model.
b	Certainty	**a gTLD must give the user confidence that it stands for what it purports to stand for.** A new gTLD proposal should propose names that assist the Internet end-user to determine the relationship of the name and its stated purpose. However, a name should not be dismissed because it seems esoteric to the general populous so long as there is a defined population to whom it has relevance.
c	Good faith	**a gTLD must avoid increasing opportunities for bad faith entities who wish to defraud users.** A new gTLD proposal should avoid names that have the potential to confuse net users because they are typographically similar to, variants of, or derived words from, existing gTLDs. Equally, confusion with popular marketing terminology or brand names should be avoided unless a bona fide rationale for the similarity and a means to address confusion were apparent.
d	Competition	**a gTLD must create value-added competition.** A new gTLD should add-value to the domain name system. The purpose of introducing new names is to make the domain name system more useful and more accessible to broader communities of interest and to more end users. A name which seemed to be simply duplicative me-too competition should be avoided.
e	Diversity	**a gTLD must serve commercial and non-commercial users.** Similar gTLDs could co-exist if they served different types of users and in that way were differentiated.

2. **Is it sponsored?** Does the application fit the definition* of sponsored domains? Does the application demonstrate that the new sTLD string will serve a "sponsored community" as defined by the GNSO?

3. **Community support**. Does the sponsoring entity have broad and documented support from the community who would register in the new domain space?

4. **Diversity**. Is there global diversity in the sponsoring entity and global support for such a TLD?

5. **Sufficient resources.** Has the sponsor provided documentation of sufficient financial and administrative resources to ensure the stable operation of the TLD, even with slower than expected registrations?

6. **Technical competence**. Does the applicant demonstrate fail-safe 24/7 worldwide ability for technical and operational management of the registry?

7. **Risk of failure.** Does the sponsor provide proper documentation of escrow? Is there a process (such as the transfer of the zone file information to another registry) to protect registrants in the event of registry failure?

8. **Registrant Compliance**. Does the sponsor's proposal demonstrate the necessary administrative processes to ensure registrants comply with the defined sTLD policy?

9. **ICANN policies**. Does the sponsor or subsequent registry operator agree to comply with other ICANN consensus policies as appropriate such as WHOIS, UDRP, Deletes, or Transfers?

10. **Sunrise period.** Is there an adequate mechanism to ensure that trademark holders who will be forced to defensively register in the TLD have a "first option" on the relevant domain names, such as a "sunrise period"? Is there an adequate "resolution of disputes" during this process?

11. **Who can register?** What are the rules about who is permitted to register second-level domain names and about what activities are or are not appropriate on the corresponding sites?

12. **Charter compliance.** Does the application include a system to make sure that prospective domain name applicants qualify for registration under the sponsor's charter prior to obtaining a domain name registration?

13. **Charter violation**. What is the mechanism to ensure efficient resolution of violations of the sponsored gTLD's charter? What is the mechanism for removing an offending domain name from the namespace?

* **ICANN definition**: A Sponsor is an organization to which ICANN delegates some defined ongoing policy-formulation authority regarding the manner in which a particular sponsored TLD is operated. The sponsored TLD has a Charter, which defines the purpose for which the sponsored TLD has been created and will be operated. The Sponsor is responsible for developing policies on the delegated topics so that the TLD is operated for the benefit of a defined group of stakeholders, known as the Sponsored TLD Community, that are most directly interested in the operation of the TLD. The Sponsor also is responsible for selecting the registry operator and to varying degrees for establishing the roles played by registrars and their relationship with the registry operator.