

## ICANN REGISTRAR STAKEHOLDER GROUP

16 March 2011

To: ICANN Board of Directors  
ICANN Governmental Advisory Committee

CC: Tim Cole, Chief Registrar Liaison

Re: Stakeholder Group assessment of current status of new gTLD program

At the request of ICANN's Chairman of the Board of Directors, the Registrar Stakeholder Group (RrSG) is pleased to provide its assessment of the current status of the new gTLD program, and its recommendations to the Board and Governmental Advisory Committee (GAC) on bringing preparations for the program to conclusion.

As active participants in the ICANN policy development process, the RrSG believes the new gTLD program will bring choice, innovation and value to Internet consumers, and will positively contribute to economic growth.

The RrSG supports and wishes to underscore the importance of the bottom-up, multi-stakeholder policy-making process, and as contributors to the GNSO, asks the Board to carefully consider stakeholder group input if additional changes to the applicant guidebook are to be contemplated.

The RrSG is prepared to assist the Board and GAC in completing its work in the most timely and efficient manner possible.

### **Program status**

#### Encouraging continued good faith discussions

The RrSG applauds the Board's and GAC's redoubling of efforts to resolve outstanding issues related to new gTLDs, and thanks members of both bodies for devoting time and resources over the past few months. We encourage continuation of these efforts in good faith.

#### Correctly focus intended policy outcomes by considering operational input of registrars and registries

As discussions continue, the RrSG requests that the Board and GAC seek and consider input from registry operators and registrars as to the practicality of policy implementation. As the Board and GAC are aware, registrars and registries met in late February in Brussels with international law enforcement representatives, and made substantial progress on policy issues important to that community on the basis of understanding what is and isn't easily applicable to operational systems. Similarly, regular consultation with registrars and registries can also contribute greatly to the policy-making process for new gTLDs.

Specific input is provided below as it relates to outstanding issues on the GAC Scorecard.

#### Minimally, approve a timeline

The RrSG asks that, should the applicant guidebook not be approved at the Silicon Valley-San Francisco meeting, at minimum the Board approve and publish a timeline for finalizing the guidebook, opening applications, and introducing new gTLDs.

#### Decisions will begin to restore balance to community and give necessary latitude for investments

Discussions of new gTLDs have increasingly burdened the community's time, finances and resources. Further, potential applicants have patiently devoted additional resources to their organizations while the community attempts to arrive at decisions. The RrSG anticipates and

looks forward to decisions that will bring restoration of relative balance to community resources and more operational certainty for potential applicants, while satisfying the concerns of rights holders and others.

### **Specific input on GAC Actionable Item Scorecard**

The RrSG thanks the GAC for its advice, and favorably note that the overwhelming majority of this advice is incorporated in the Applicant Guidebook.

Prior to the Brussels meeting, the GAC provided approximately 80 points of specific advice and further note the Board has already accepted much of this advice. In particular, the RrSG is pleased to see that new gTLDs will have enhanced protections for trademark rights holders.

In the few cases where the Board designated "2" (signifying disagreement with GAC advice), the RrSG generally supports the Board and its rationale. Our stakeholder group finds that there is likely room for additional compromise, and believe the following items could be reclassified to "1" according to the following:

- 2.1.2            String evaluation—GAC advice  
This could be moved from "2" to "1" provided the "additional scrutiny" does not involve the introduction of new evaluation criteria. Rather, GAC advice suggesting "measures to mitigate concerns" for "strings that could impact the public trust" should be shared with such applicants, who could then choose whether or not to implement the recommended measures. If applicants choose not to, they do so at risk of further GAC advice and the Board's right not to approve a string if it's not in the public interest.
  
- 5                Cross Ownership  
The RrSG believes the GAC-Board disagreement might be resolved with additional clarity in the GAC's language. It is clear that both agree any abuse of registry market power related to cross ownership should be a violation of the registry Code of Conduct and referred to competition authorities. If this is the GAC's intended position, this could be re-classified as "1."
  
- 6.1.7.2        Cost of Trademark Clearinghouse  
We support the Board's position: TM holders and registries bear the cost.
  
- 6.2.8            URS Loser Pays  
For the reasons articulated in multiple sources, the RrSG supports the Board position that a full-scale "loser pays" model would be difficult to implement and could harm innocent registrants. However, our group supports a middle ground solution, as proposed by the IRT, whereby a URS proceeding against a "serial" infringer (25 or more domains) be conducted under a loser pays model. (Note: Design of such a model must include contributions from registries and registrars to understand operational considerations.)
  
- 6.2.10.2       URS Appeal  
The RrSG supports a reduction in time allocated for filing an appeal from the proposed two years.
  
- 6.2.13         URS Exact Match  
The RrSG supports the Board's belief that URS claims should be limited to names that are "identical or confusingly similar" to the protected marks. However, we note a complainant may elect to file a URS for any combination of terms involving its mark, and that a URS panelist would be able to make the determination as to whether the claim would succeed based on the applicable "clear and convincing" standard.
  
- 6.3.6           PDDRP Notification Period

The RrSG supports a reduction in the 30 day notification period.

6.4.2 Law Enforcement

We believe any assistance must be in compliance with applicable law in the jurisdiction where the registry operator is located. We further support the Board position and are committed to working with registries and law enforcement consistent with the recent law enforcement meeting in Brussels.

6.6.4 Applicant vetting

The current AG provides for a high level of vetting, which should be used for every string. RrSG input is that "more intensive vetting" should not include additional evaluation criteria.

General comment on trademarks: We support the board's endorsement the community consensus position as reflected in the consensus on the STI report, which was unanimously approved by the GNSO council.

Rights afforded to TM holder should be based some form of legitimacy of the mark.

8.1.3 City Name Applications

The RrSG believes this disagreement between the GAC and the Board could be resolved by further clarification of Question 18 in the TLD Application, which requires applicants to describe the intended purpose of a gTLD. A proper reply to this question should address the GAC's concern.

11.2.1 Weighting of applicants

We support the board's position. Registrars would be opposed to categorization of strings.

11.3 Addition of Domestic Screening Services

We support the Board's position and further confirm our position that intensive vetting is already required by the AGB. Therefore additional screening in a duplicative and unnecessary expense

## **Further input**

### Community Based Strings

In other areas the RrSG supports the Board's position on 2s. In particular, the concerns behind the GAC's advice on "Expanded Categories of Community Based Strings" are already satisfied by numerous, existing applicant guidebook provisions. We strongly support the Board's position on this set of issues and believe the GAC's concerns are already addressed.

### Implementation Burden and Cost, and Consumer Cost

It's important that the contemplation of various protections consider implementation burden and cost. Consultation with registrars about how systems are put into place will inform the community in advance about whether or not those envisioned systems can actually achieve their desired outcomes. The RrSG believes the guidebook can be approved now and implementation details can be fully resolved as we progress.

### Impact of needy applicants on consumer cost

The RrSG encourages the Board and GAC to consider the issue of cost impacts on needy applicants and consumer cost. The more that's added to the guidebook, the costlier it will be to consumers. Ongoing IP claims, as an example, would be very burdensome. We have specific feedback on sections of the scorecard we believe will increase consumer costs during introduction of new TLDs.

**Conclusion**

The RrSG is encouraged by the positive and cooperative spirit of the GAC and Board in this consultation process and looks forward to the timely and efficient resolution of all outstanding issues at the Silicon Valley-San Francisco meeting.