



FICPI INFORMATION DOCUMENT

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CET INFORMATION DOCUMENT

TITLE:	Beijing ICANN Public Meeting in review, meeting held April 6 – 11, 2013	QR CODE:	
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PURPOSE:	For information and publication in the library section of FICPI's website		

The ICANN's 46th Public Meeting was held in Beijing, China, April 6 – 11, 2013.

APRIL 4 - 5

The meeting started in fact unofficially already by Thursday, April 4, with GAC (Governmental Advisory Committee) meetings. GAC members were making some final comments on the regulations for new top level domains, and ended up by asking ICANN to include the so-called public interest commitments into the contracts with new TLD operators.

The public interest commitments (PICs) mechanism (including a dispute resolution procedure, PICDRP) was only recently established by ICANN in an effort to allow applicants to address GAC public policy concerns expressed in GAC "early warning" notices. Governments gathered in Beijing welcomed the PICs system. But they rejected ICANN's proposal that compliance would be monitored by the "crowd," with the possibility for any user to start a PICsDRP in case of deviations. Including the commitments into the contracts would shift monitoring responsibility to ICANN instead.

I had an informal follow informative meeting with the Swedish representatives of CAG on April 5, followed by a meeting with the IPC (Intellectual Property Constituency) Leadership¹.

APRIL 6

This was a full GNSO Council working session day, covering everything from informational presentations from ICANN staff and the community on current Policy Development Processes ("PDPs") to preparation sessions for formal meetings with other ICANN Supporting Organizations and Advisory Committees later on during this ICANN meeting.

The Council discussed the following topics:

The GNSO Council tentatively agreed to form a **Policyvs Implementation** Working Group to spring board off of the recent staff draft framework in this area and establish a concrete set of principles to determine what issues are clearly policy matters within the remit of the GNSO and GNSO Council.

The **Locking of a Domain Name Subject to the UDRP Working Group** recently published its initial report, most notably recommending, "as a best practice, complainants need not inform respondents

¹ FICPI is a member of the IPC, and as representing IPC in the GNSO Council, I am also participating in the IPC Leadership meetings



that a complaint has been filed to avoid cyberflight;" and "within two business days, at the latest following receipt of the verification request from the UDRP Provider, the registrar will modify the status of the registration to prevent any changes of registrar and registrant." It was clarified that selection of the two business day time frame was a practical consideration for smaller registrar business models².

The GNSO Council sought clarification to ensure that any recommendations to improve **WHOIS data accuracy** from the Expert Working Group on gTLD Directory Services are not forced into the new gTLD Registry Agreement or proposed 2013 Registrar Accreditation Agreement via unilateral Board of Directors resolutions, as opposed to receiving consideration from the community through the ongoing PDP on gTLD Registration Data.

Two motions pending before the GNSO Council were discussed: 1) the first motion sought to demonize and appeal the implementation of elements within the strawman solution, and 2) the second motion sought to sever any mandatory link between new gTLDs and the proposed 2013 RAA. The **IPC opposed the first motion** because brand owners fervently support the strawman solution as necessary implementation measure. The IPC opposed the second motion because it was untimely submitted and because the IPC supports a requisite 2013 RAA for all new gTLD registrars.

An update on the **IRTP Part D WG** sparked a brief unresolved debate as to whether thick WHOIS registries, which use Extensible Provisioning Protocol Authorization Codes ("Auth-Info Codes"), ever actually experience transfer disputes and whether rules covered by the IRTP Part D are even applicable.

A majority of the GNSO, including myself, expressed support for inclusion of IDN variants within the Trademark Clearinghouse, so that identical marks in simplified and traditional Chinese, for example, need not incur duplicate registration fees. The technology to implement this already exists in the Clearinghouse, all that is needed is an underlying policy directive or rule set.

Finally, the GNSO, in preparing for its key meetings with the GAC and Board during ICANN 46, agreed to explore creative ways for the GAC to participate earlier in policy development and committed to raise concerns with the Board with respect to recent top-down decisions on *inter alia* the trademark clearinghouse strawman solution.

APRIL 7

During this second full day GNSO Council meeting, the Council continued to receive informational presentations from ICANN staff and the community on current Policy Development Processes ("PDPs") and the status of the new gTLD program, and also held formal meetings with other ICANN Supporting Organizations and Advisory Committees, such as the Governmental Advisory Committee ("GAC"). Specifically, the Council reviewed the following issues:

The Thick WHOIS WG, which is examining the transition of all thin WHOIS registries to a thick model, intends to publish its Initial Report for public comment in advance of ICANN 47 in Durban, South Africa in July 2013.

The SSAC confirmed that it will not advise the Board of Directors to delay the new gTLD program on the basis of an internal certificate authority practice that, if widely exploited, could pose a significant

² See further FICPI's comments to this Initial Report



risk to the privacy and integrity of secure Internet communications in new gTLDs. In essence, internal name certificates that end in applied-for gTLD strings are being improperly issued that, if exploited, will facilitate man-in-the-middle attacks in new gTLDs.

Members of the GNSO Council expressed frustration with ICANN leadership given their perception that the bottom-up multi-stakeholder model of policy development has been circumvented as of late by ICANN leadership. The ICANN Board of Directors observed that “if there is no willingness to delay the [new gTLD] program to settle policy questions, then you will always be in a conundrum of trying to push something through faster than it should be done.” They also welcomed further input for consideration in contemplation of curative action to close the Beijing meeting. In contrast, ICANN CEO Mr. FadiChehadé defended, stating that he had been elected to “get this done, and that is what we are doing—getting it done.”

ICANN staff provided an update on the new gTLD program, including an updated application timeline and deliverables timeline pictured in the advisory below. In addition, the Trademark Clearinghouse sunrise services will not be operational until July 2013 and the claims services will not be operational until August 2013. With respect to the Uniform Rapid Suspension System (“URS”), the Supplemental Rules from the National Arbitration Forum (“NAF”), the dispute resolution service provider, are expected to be published later this month, and more information is forthcoming with respect to validation of Complaints by NAF and registration data by registries—all culminating in launch of the URS accompanied with a demonstration in Durban, South Africa in July 2013.

APRIL 8

This day included a meeting with updated information on the new **Uniform Rapid Suspension (URS)** system for initial domain disputes in the new system. Here, it was noted that:

- National Arbitration Forum (NAF) is announced as the first URS provider
- In 2 – 3 weeks from now, the Supplementary Rules is to be published
- There will also soon be additional provider/s appointed³
- During April – June 2013, system details, such as announcement page, interfaces, verification, will be published
- July: System launch and demonstration

We also had the joint **ccNSO / GNSO Council Meeting**, which was more of an informative joint meeting on how the two organizations of ICANN work practically with certain issues:

- Providing input and advice, often at short notice. A discussion and sharing of the experience of dealing with the various requests that come to both of our groups in order to provide advice or input, often at short notice or at unpredictable times, and not linked to current scheduled work.
- The impact of gTLDs on ICANN. How significant might this be and are existing structures and approaches adequate to absorb and deal with this?
- Global Internet Governance. Looking at issues on an international level and how these may impact on ICANN and the multi-stakeholder model.

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³Asian Domain Name Dispute Resolution Centre (ADNDRC) was announced on April 20



The day started with a meeting organized by the **Commercial Stakeholders Group (CSG) and representatives of GAC**. I especially discussed with Ms Susanne Radell, the US representative of GAC on the importance of co-operative work between intellectual property experts and the national governmental representatives of ICANN.

A public meeting with ICANN staff and registrar representatives informed that ICANN had now completed negotiations on a revised Registrar Accreditation Agreement which most if not all registrars are prepared to sign.

The IPC had its full meeting, where updates were presented on

- Trademark Clearinghouse
- URS
- Strawman& LPR
- Briefing on replacement of Whois protocol
- Preparations for next day GNSO Council

APRIL 10

GNSO Council working session day, starting with updates on the work done by all ICANNs working groups/constituencies:

- Registries Stakeholder Group
- Registrars Stakeholder Group
- Non Commercial Stakeholder Group
- Not-for-Profit Operational Concerns Constituency
- Non Commercial Users Constituency (NCUC)
- Commercial and Business Users Constituency (BC)
- Intellectual Property Constituency (IPC)
- Internet Service Providers and Connectivity Providers (ISPCP)

The Registry Stakeholder Group ("RySG") provided a very brief update, focusing on the initiation of good faith negotiations between ICANN and a newly constituted gTLD Registry Agreement ("RA") Negotiating Team. The Registrar Stakeholder Group ("RrSG") also provided a brief update conveying that their negotiations with ICANN with respect to the proposed 2013 Registrar Accreditation Agreement ("RAA") are nearly concluded pending final cosmetic tweaks. The Non-Commercial Stakeholder Group ("NCSG") voiced its continued disappointment with perceived circumvention of the multi-stakeholder by ICANN leadership and its interest in providing feedback to the final 2013 RAA. The Business Constituency ("BC") briefed the Council on their concerns with respect to string similarity between singular and plural TLD applications, which they will expand upon for the record during the Public Forum tomorrow. The Intellectual Property Constituency ("IPC" – where FICPI is a member) merely identified the subjects they discussed during ICANN 46, including future organizational changes within the GNSO, as well as the current status of the Trademark Clearinghouse and the Uniform Rapid Suspension System ("URS"). The IPC also set the stage for its intended deferral of two controversial motions before the Council by indicating that fulsome membership discussion with respect to the motions in Beijing was not possible. The Internet Service Provider Constituency ("ISPC") also identified the subjects they discussed during ICANN 46, including the same Council motions and their support for mandatory execution of the 2013 RAA by all new gTLD registrars. The Not-For-Profit Organizations Constituency ("NPOC") provided a lengthy and banal update that focused upon their new members, current outreach efforts, and their current participation in various Working Groups.



Motion – The Trademark Clearinghouse “Strawman Solution”:

This motion, submitted by the Non-Commercial Users Constituency (“NCUC”), essentially expressed disappointment and concern with the recent decision of ICANN to implement elements of the trademark clearinghouse strawman solution, which was characterized in the motion as the circumvention of the multi-stakeholder model and bottom-up policy development. The NCSG immediately “tabled” the motion based on their conclusion that the NCSG does not need the support of the Council to demand reconsideration of the strawman solution. Councilors from the RySG and RrSG expressed support for the spirit but not the substance of the motion, arguing that the ICANN bylaws prohibit such top-down decision making from ICANN leadership and expressing disappointment that the Board of Directors essentially ignored the Council’s letter that labeled the entirety of the strawman solution as policy rather than implementation.

An argument ensued with respect to the status of the motion—whether it was live, deferred, or withdrawn. The NCSG was criticized for attempting to defer its own motion and several alternatives were proposed by Councilors supporting the spirit of the motion. RrSG representatives suggested a follow-up letter to the Board of Directors, emphasizing the GNSO’s central policy-making role and essentially chastising the CEO for his failure to revert to the Council prior to implementing elements of the strawman solution. RySG representatives suggested that Jonathan Robinson, Chair of the GNSO Council, publicly admonish ICANN leadership during the Public Forum. Conversely, several Council representatives spoke out in support of the strawman solution, and generally in support of ICANN CEO FadiChehadé’s approach to the situation. BC representatives noted for the record the myriad of public comments expressing support for the strawman as implementation measures. “ICANN did not fail to respond,” they argued, “they merely disagreed with the Council.” Ultimately, the motion was withdrawn and the Council Chair agreed to make a statement during the public forum and follow up in writing if necessary.

Motion – Policy Concerns Regarding the Registrar Accreditation Agreement:

The third motion, also submitted by the NCSG, essentially attempted to decouple the 2013 RAA from the new gTLD program, permitting registrars to sell second-level domain names in new gTLDs without having executed the 2013 RAA. The Chair of the GNSO Council preempted the issue as to whether the motion was timely submitted by referring it to the Standing Committee on Improvement Implementation (“SCI”) for further consideration. In discussing the status and substance of the motion, the NCSG again failed to specify whether it wished to maintain, withdraw or defer this motion. The RrSG and RySG again expressed qualified support for the spirit of this motion, but concern that the language was not tight enough—particularly given that “the Council’s role in the RA and RAA contracts needs to be very carefully navigated.” Moreover, the RySG representatives felt it inappropriate to support such a motion during the pendency of RA and RAA negotiations. The BC, IPC and ISPC opposed the motion on principle, as they each support a mandatory 2013 RAA for all registrars selling domain names in the new gTLD space. Ultimately, this motion was also withdrawn subject to further developments on the RA and RAA.

Updates on Translation and Transliteration of Registration Data; Uniformity of Contractual Compliance Reporting; Policy Versus Implementation; and Any Other Business:

Once again, the Council considered the recently published Final Issue Report on Translation and Transliteration of Registration Data. The report framed the central issue as whether IDN registration data should be translated into English or transliterated into Latin characters. It also considered the potential costs commensurate with such a sweeping change to registration data. In the report,



ICANN staff ultimately recommended that the GNSO Council initiate a PDP to determine the answers to these questions. However, no draft motion to initiate a Policy Development Process (“PDP”) was submitted in time for ICANN 46, and so further action was deferred until the Council’s May 2013 meeting.

The Council also received an update on the Final Issue Report on Uniformity of Contractual Compliance Reporting. The report details the three-year plan developed by the ICANN contractual compliance department, which essentially seeks to categorize the types of complaints it receives, migrate its complaint intake system from INTERNIC to ICANN.ORG, and initiate a recurring audit program with three-year cycles. In the report, ICANN staff recommended that the Council not initiate a PDP, and instead await completion of the compliance department’s three-year plan, as well as collaborate on methods and practices for acquiring additional metrics in the interim to facilitate future policy development and better inform the Council. Such metrics might include complaint data obtained from contracted parties and existing, comparable DNS abuse metrics. Per the recommendation by staff, no draft motion to initiate a PDP was submitted, and further action and consideration was deferred until the Council’s May 2013 meeting.

ICANN policy staff briefed the Council on the policy versus implementation session. In short order, the Council and community participants coalesced around initiation of a cross-community Working Group to settle upon appropriate criteria for delineating policy versus implementation. No specific discussion was held with respect to the additional recommendation for impartial mediators to assist in resolving instances of impasse or stalemate.

Finally, in the council’s closing session dedicated to any other business, the BC reinitiated a discussion on string confusion and singular versus plural TLDs. In essence, the BC does not concur with the ICANN string similarity assessment panel conclusion that singular and plural forms of TLDs are not visually confusing. The RySG did not specifically second the concern, but did express great interest in learning more about the specific standards the string similarity assessment panelists employed to reach that conclusion. In closing the session on any other business, the RySG also expressed concern for the perceived lack of interest and current level of inaction with respect to IDN variants.

APRIL 11

This day included updated and informative sessions on the status of the “Trademark Clearinghouse” and “Locking of a Domain Name Subject to UDRP Proceedings - Initial Report”.

Then we had the GNSO Council so-called “Wrap-up session”:

The GNSO Council began by discussing its meeting with the ICANN Board of Directors earlier in the week, suggesting next steps consistent with its draft statement for the Public Forum affirming absolute GNSO authority over all generic domain name policy matters within ICANN. Councilors from the Non-Commercial Stakeholder Group (“NCSG”) and Business Constituency (“BC”) suggested reinforcing the same absolute authority in future GNSO structural reviews, as well as through the current Accountability and Transparency Review Team 2 (“ATRT2”).

The Council also discussed its meeting with the Board-Governmental Advisory Committee (“GAC”) Recommendation Implementation (“BGRI”) Working Group. ICANN staff suggested streamlining methods of communication with the GAC. The Registrar Stakeholder Group (“RrSG”) suggested a monthly teleconference with the GAC. The NCSG reinforced the suggested creation of a GAC liaison, but made an unrealistic demand that this liaison have equal standing and status as other GAC



members. The BC reminded the Council that it must fulfill the GAC request to identify current GNSO projects and provide clear timelines identifying the various windows where the GAC can best provide its input.

String Confusion and Singular Versus Plural Top-Level Domains:

The BC reemphasized the need to discuss the impact of plural and singular strings on string similarity confusion. Council Chair, Jonathan Robinson, suggested reviewing its prior policy recommendations to determine whether that advice has been followed with respect to singular versus plural strings or string confusion. In the interim, the Council will remain open to further input on this matter from the stakeholder groups and constituencies. A draft statement from the Council to the Board of Directors is presently under consideration.

Implementation of Internationalized Domain Name Top-Level Domains:

The Registry Stakeholder Group (“RySG”) reiterated its request to “crystallize, in the next three to six months, how the Internationalized Domain Name (“IDN”) TLDs, will be launched and operated,” including concerns at the second-level regarding inclusion of IDN variants within the Trademark Clearinghouse. ICANN staff volunteered to spearhead an expedited community-wide initiative in this regard. The Council Chair suggested raising this issue with the Board during the Public Forum and expressing concern with respect to “effective and thorough implementation of IDN TLDs.”

The Expert Working Group on gTLD Directory Services:

The Council identified its open channels of communication with the Expert Working Group (“EWG”) on gTLD directory services, including a member of the Council who is also serving on the EWG, Mr. LanreAjayi. The Council intends to use these of communication to shepherd the structure the EWG’s input before it is provided to the GNSO for further policy development.

Generic Names Supporting Organization Council Motions Practice:

A representative from the Intellectual Property Constituency (“IPC”) raised a controversial question implying that the NCSG introduced two Council motions in bad faith, and merely with intent the withdraw the motions. An argument ensued, where the NCSG defended its conduct and the Chair of the Council sought to elevate the discussion from what he characterized as an unproductive “rat hole” and procedural minutia.

Policy Versus Implementation Discussion:

The Council reiterated its goal to formulate a cross-community working group tasked with development of firm criteria to distinguish policy versus implementation matters. It also committed to develop a timeline of deliverables for the formation and operation of this group in advance of ICANN 47 in Durban, South Africa in July 2013.

Generic Names Supporting Organization Structural Review:

The Council committed to consider an initial self-review of its structure and effectiveness. As part of this self-review, the Council agreed to examine previous self-reviews performed by the GNSO, as well as examine any links or overlap between the forthcoming GNSO review and the ATRT2.

The next ICANN meeting (ICANN 47th) will take place in Durban, South Africa, July 13 – 18, 2013

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