

**U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C 20416**

Office of the Chief Counsel for Advocacy

January 10, 2000

**Comments of the Office of Advocacy
U.S. Small Business Administration
On the WG-C Interim Report**

The Office of Advocacy of the United States Small Business Administration (“Advocacy”) submits these comments to Working Group C’s Interim Report (“Interim Report”). WG-C was tasked by the Internet Corporation for Assigned Names and Numbers (“ICANN”) to develop a document showing the consensus on the introduction of new global top-level domains (“gTLDs”). Generally, Advocacy supports the introduction of new gTLDs following a limited introduction and an evaluation period. Also, Advocacy recommends that regulation of new gTLDs be minimal and only used to encourage competition or ensure stability of the Internet. Finally, Advocacy believes that limited safeguards for trademark holders is appropriate as long as they do not expand trademark rights and are balanced with the interests of domain name registrants.

The United States Congress established the Office of Advocacy in 1976 by Pub. L. No. 94-305, *codified as amended* at 15 U.S.C. §§ 634(a)-(g), 637, to represent the views and interests of small business on all issues affecting competition or policies that can act as barriers to competition.

Small businesses are a crucial element to the growth of the U.S. economy. Their dependence on and involvement with the Internet is essential to its growth. In 1998, there were 23 million small businesses in the United States, which represents more than 99 percent of all

employers in this country. Small businesses employ 52 percent of private workers and employ 38 percent of private workers in high-tech occupations. Virtually all of the net new jobs in the United States were created by small businesses.

Small businesses use of the Internet is rapidly expanding. In the past two years, the number of small businesses with access to the Internet has doubled from 21.5 percent to 41.2 percent. Thirty-five percent of small businesses maintain a Web site and one in three do business transactions through their site. Additionally, according to statistics received from Network Solutions' registrar service ("NSI"), more than 80 percent of registrations through NSI in .com, .net, and .org is by small businesses with less than 500 employees. Another 10 percent of NSI's registrations is by individuals for personal or business use. Based upon the number of NSI's registrations in December 1999, small businesses have registered more than 5 million domain names. Any policy that detrimentally affects the ability of these small businesses to use the Internet would have a significant impact on this nation's economy and limit the effectiveness of the Internet as a tool of business and commerce. This impact is recognized by Vice President Al Gore, who said that one of the primary policy challenges for the past year has been "the recognition that small and medium-sized enterprises, and their rapid adoption of e-commerce, are crucial to our continued economic success." *Towards Digital eQuality*, U.S. Government Working Group on Electronic Commerce, 2nd Ann. Rep. (1999), Forward, at ii (Statement of Vice President Al Gore).

Comment Period Provided a Valuable Opportunity for Small Businesses

Before commenting on the content of the Interim Report, Advocacy wishes to call attention to the importance of the report itself. Advocacy commends Working Group C ("WG-C") for issuing the report. Advocacy believes that the reports provide an excellent opportunity to

solicit input from interested parties that do not have the ability to participate in the day-to-day process of the working group. This is especially valuable for small businesses that have limited resources. Advocacy encourages WG-C and other working groups to use interim reports at crucial stages before reaching any conclusions on consensus.

Advocacy would also like to thank the Names Council of the Domain Name Supporting Organization (“DNSO”) for extending the comment deadline. The extension of the comment deadline allowed Advocacy the opportunity to canvas interested small businesses that do not have the ability to participate in the day-to-day process of the working group. Advocacy held a roundtable last week to receive input from small business and interested parties. The roundtable proved very valuable and these comments draw upon information that Advocacy garnered as part of the roundtable discussion.

The following people participated in the roundtable: Dori Kornfeld, Association for Computing Machinery; John Zangardi, George Mason University; Haywood Torrence, Bell Atlantic; Eric Malinen, Federal Communications Commission; David Young, Bell Atlantic; Tricia Rino, Telcordia Technologies; S. Jenell Trigg; Francisco Montero, Federal Communications Commission; Rick Lane, U.S. Chamber of Commerce; Kathryn Kleiman, Association for Computing Machinery; Neeran Saraf, Saraf Software Solutions; Scott Benfield, The Ickes & Enright Group; Anthony M. Rutkowski, NGI Associates; Lauren Gavisser, Register.com; Judith Oppenheimer, ICB; Milton Mueller, Syracuse University; Harold Feld, Media Access Project; Mehran Towfigh; Hugh Latimer, Wiley, Rein & Fielding; Michael Sondow, International Congress of Independent Internet Users; Ingo Gross, Intaglobal; Dave Lalande, RMI.NET; Jason Hendeles, A Technology Company, Inc.; Michael Palage, CIO

InfoNetworks, Secretariat of the ICANN Registrar Constituency, Co-Chair of ICANN Working Group B; Richard Sexton; and, Jeanine Parker, Association of Internet Professionals.

Advocacy is looking for a practical means of making a transcript or audio file of the roundtable available on its Web site in the near future. We also intend to hold additional roundtables in the future to discuss other domain name system (“DNS”) issues – most notably on the prospective Working Group B (“WG-B”) Interim Report.

New gTLDs Hold Great Opportunity for Small Businesses and Should Be Introduced

After reviewing the proposals in the Interim Report and receiving input from small businesses, Advocacy believes that the introduction of new top level domains is beneficial to small businesses and to the Internet. Advocacy also acknowledges that the continued stability of the Internet is one of ICANN’s primary concerns, and any additional gTLDs must meet technical guidelines and not threaten that stability. Advocacy agrees with Proposal Papers A and B that recommend a limited introduction of new gTLDs, followed by a testbed evaluation, and then a steady introduction of more gTLDs.

Advocacy is particularly swayed by the reasoning that a large number of top level domains will create more opportunities for new entrants, which are likely to be small businesses. As Position Paper B points out, the demand for domain names is climbing dramatically. This demand continues to grow with each passing month as more and more businesses and individuals use the Internet. The introduction of new gTLDs will multiply the number of gTLD strings available for registrants and open opportunities for new entrants who will need to register names in the future.

Advocacy agrees with Position Papers A and B that the number of new gTLDs should only be bounded by technical limitations. An artificial cap on the total number of gTLDs will limit competition and prevent new entrants from joining the marketplace. Furthermore, it will preclude innovation and full development of the DNS. A large number of gTLDs will allow competition to flourish and permit the marketplace to determine which registries succeed. Advocacy does not believe that ICANN should choose a total number of gTLDs to introduce. Instead, ICANN should set the technical qualifications and allow unlimited gradual introduction of new gTLDs, as long as it does not interfere with the stability of the Internet.

Advocacy understands the need for caution on this matter. Once a new gTLD is introduced, it will be difficult to remove it from the Internet. Advocacy believes that a limited introduction of new gTLDs followed by an evaluation period is prudent. However, Advocacy concurs with Position Paper B's proposal that the technical criteria for the evaluation be defined beforehand, and its proposal that ICANN declare that it will introduce additional gTLDs if all technical criteria are met. Advocacy believes that this is necessary to avoid undue speculation in the testbed gTLDs. Furthermore, it will insure that the evaluation period is not used as a means of blocking additional gTLDs for reasons other than technical concerns.

Regulation of New gTLDs Should Be Minimal

Advocacy believes that ICANN should impose itself as little as possible on the operations of new gTLDs and keep regulation of them minimal. It has long been Advocacy's concern that regulation not add inefficiencies to the market place. Regulatory inefficiencies add competitive barriers and skew the economics of an industry by imposing additional costs on businesses.

Therefore, Advocacy agrees with Position Papers A and B that new registries should be permitted to determine their own business plan. Each new registry should be permitted to

determine its own string for the gTLD, whether it is limited or general purpose, or profit or non-profit. If the number of new gTLDs is high enough, market forces will come to play and a variety of new gTLDs will be introduced, as new entrants adopt varying business plans. Minimal regulation that permits flexible business plans and innovation will benefit small businesses and allow them to compete more easily. It will also enhance the value of the Internet to the marketplace and encourage globalization.

However, there are two areas that the public interest is sufficient for ICANN to play a more active role. First, Advocacy believes that ICANN should prohibit any registrar from becoming a general-purpose registry and vice versa. The dangers of self-dealing and preferential treatment are too great. Second, ICANN should require equal access to new general-purpose registries by all registrars. Advocacy did not receive sufficient information in its outreach to determine whether similar requirements should be made for limited-purpose registries. Instead, Advocacy asks that the working group consider this question in its further deliberations.

Position Paper B raised the question of what regulations would be necessary to ensure equal access by competitive registrars and how the requirement would be enforced. Advocacy received information on this subject in its outreach that indicated that the equal access could be insured by contractual clauses between the registry and registrars, which could be required by ICANN's registry accreditation process. Also, it would be necessary for all registrars to use the same automated interface. Advocacy did not find a thorough discussion of this issue in the Interim Report and asks that WG-C consider this issue further.

Limited Safeguards Are Appropriate Before Introduction of New gTLDs

Our roundtable to discuss the Interim Report persuaded Advocacy that fundamental questions of rights and usage of domain names exists and these issues must be resolved before

the introduction of new gTLDs. Advocacy recognizes the interest that trademark holders have in the DNS. They comprise an important segment of the Internet, and their concerns should be addressed. To do otherwise is to deny realities of the industry. However, Advocacy does not believe that the interests of trademark holders should determine the future of the DNS. Instead, their interests should be balanced with the interests of domain name registrants and the interests of the Internet as whole.

Therefore, Advocacy agrees in theory with the principles laid out in Position Paper C that appropriate safeguards are necessary, are the ideal way to protect the interests of trademark holders while limiting litigation and other challenges to domain name registrants. However, these safeguards should not eviscerate other rights such as custom and use, free speech, and privacy.

First, Advocacy agrees that improved domain name registration procedures would solve many difficulties. A centralized database would lower the costs of trademark owners and other interested parties of monitoring all the new gTLDs. The need for a centralized database is further increased if there are many gTLDs as Advocacy recommends. Furthermore, new registrations could query the centralized database as part of the registration process, and a list of similar registrations would be displayed which requests that the registrant review the listed pages to ensure that the registration is not violating the legal rights of other registrants.

Advocacy recognizes that there are privacy concerns inherent in such a database. Therefore, Advocacy recommends that any database provide the user with the option of being “unlisted” just like a telephone book. A registrants name, city, state, and country would appear but not the telephone number or address. Because contract information could be needed by third parties, such as trademark owners, they should have the option of contacting the registry and

requesting the information. Upon satisfaction of good cause, the registry could then release the information directly to the requesting party. Advocacy believes that this system, or a variant thereof, will preserve privacy rights while allowing contact information to be gained for legal action. ICANN may wish to consider further protections for pages containing political speech.

Second, the UDRP, as adopted by ICANN, satisfies Position Paper C's call for a speedy and effective dispute resolution process for abusive registrations.

Third, Advocacy believes that it is prudent to wait for the decision of Working Group B ("WG-B") on the protections to be given to famous and well-known marks. WG-B is moving quickly and should release a report before ICANN's March meeting. The slight – if any – delay will be worthwhile if it allows resolution of famous name issues before the introduction of new gTLDs. Advocacy's position on this issue is based upon the assumption that a WG-B will reach conclusions at the same time as WG-C. Advocacy does not support delaying the introduction of gTLDs if the famous name issue stalls and the working group cannot reach a conclusion in a timely manner.

It should be clearly understood that while Advocacy believes safeguards are need to protect trademark rights, it is also our view that they should not be used as a means to expand trademark protection beyond current limits. Current law should be allowed to provide protection to trademarks without special provision being made by ICANN. Furthermore, certain rights should attach to registrants of domain names, which should not be wholly subordinate to the registry's interest and trademark concerns. First, a registry's ability to cancel a domain name should be limited to a specific and identifiable technical reason or a UDRP determination that the registration is abusive. Second, any other reason for canceling a registration should include the opportunity for the registrant to respond or get a court stay before cancellation. Advocacy

believes that authorization for new gTLDs should include provisions that give registrants security in their domain name.

Conclusion

After reviewing the Interim Report and receiving input from small businesses, Advocacy believes that Position Papers A, B, and C all have worthwhile elements that should be incorporated into a final whole. Advocacy supports the introduction of an unlimited number of new gTLDs added at a gradual pace, following a limited introduction and evaluation period, as outlined in Position Paper A. Advocacy concurs with Position Paper B's proposal that ICANN define the technical criteria for the evaluation beforehand and commit to introducing additional gTLDs if the criteria is met. The registries for new gTLDs should be allowed to choose their own gTLD string and to operate as a limited or general-purpose gTLD and on a for profit, non-profit basis, as they see fit. Finally, Advocacy believes that limited safeguards for trademark holders is appropriate as long as the safeguards do not expand trademark rights and are balanced with the interests of registries and domain name registrants.

Sincerely,

/s/_____
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