Internet Corporation for Assigned Names and Numbers

20 October 2003

Via E-mail and Fax

Bruce Tonkin
Chair, GNSO Council

Re: Request for Initiation of Policy Development Process

Dear Bruce:

I hereby make a formal request to the GNSO Council that it commence a GNSO Policy Development Process designed to produce recommendations to the Board for a timely, transparent and predictable process for dealing with proposed future new "services" or significant actions by TLD registries that, because of their architecture or operation, could impact the operational stability, reliability, security or global interoperability of the DNS, that registry, or the Internet

Protecting the operational stability, reliability, security and global interoperability the Internet is, of course, the principal mission of ICANN. As set forth in our Bylaws,

> The mission of The Internet Corporation for Assigned Names and Numbers ("ICANN") is to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems

This goal is repeated in the Core Values of ICANN, as set forth in the Bylaws. Indeed, the very first Core Value is:

1. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.

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But other relevant Core Values counsel great care in seeking that objective. These include the following:

> 2. Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to those matters within ICANN's mission requiring or significantly benefiting from global coordination.
>
> 5. Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment.
>
> 6. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.

Finally, other Core Values speak to the processes that should be used to reach these objectives, including the following:

> 4. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making
>
> 8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.
>
> 9. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.
>
> 10. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.

Finally, the Bylaws recognize the difficulties in seeking to conform to these Core Values in the wide variety of fact situations where they may be employed, and provide guidance in how to deal with the tensions or inconsistencies that may appear to be present in some situations:

> These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances. Because they are not narrowly prescriptive, the specific way in which they apply, individually and collectively, to each new situation will necessarily depend on many factors that cannot be fully anticipated or enumerated; and because they are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible. Any ICANN body making a recommendation or decision shall

> exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values.

Under Section 1(b) of the GNSO Policy Development Process (PDP), the GNSO Council may initiate a Policy Development Process. Once supported by an appropriate motion from the GNSO Council, the Staff Manager will create an Issues Report to be delivered on or before the 15th day following the properly supported motion. This Issues Report will set out the clear ties to ICANN's Mission and will follow the guidelines provided within the PDP. As you are aware, the various registry agreements between operators of TLD registries and ICANN prohibit the offering for a fee of any registry service (as defined in the agreements) that is not specified in the agreement (including its appendices). We have two recent examples where these contractual provisions have come into play – the so-called wild card and wait listing products created by VeriSign, the registry operator for .com and .net. Similar issues could easily arise in the future with respect to other registries. Our experience to date makes its clear that there is a need for more thought to be given to the appropriate processes to be followed in such cases in the future, and in analogous circumstances that might have similar effects.

Actions taken by a TLD registry operator that could affect the operational stability, reliability, security or global interoperability of the Internet should be carefully reviewed before they are implemented, to ensure that any adverse impact is either eliminated or minimized. Any process created to deal with these issues must recognize the legitimate competitive interests of the registry operator, the legitimate interests of third parties in the stable operation of the DNS, the registry and the Internet, and the derivative actions or reactions that such a change might promote. In addition, it must create accountability within a clear and transparent process. These goals may occasionally or frequently be in tension. There may also be wide variations in opinions on the likelihood of adverse impacts on the various parties and networks that might be affected. Finally, consideration must be given to how to create such a process without leaving it open to capture or undue influence by existing or potential competitors of the registry operator, or allowing unnecessary disclosure of confidential business information. To this end, the ICANN staff will arrange for the GNSO to receive expert advice from a relevant organization or body that can advise on these competition issues.

We urge the GNSO to follow this guidance, and to take advantage of all of ICANN's Staff resources. Staff is committed to assist you in any way possible including providing and seeking expert advice on specific issues that may arise as part of this PDP.

I request that the PDP be conducted as quickly as possible, under the GNSO's new streamlined process, and that it be completed no later than 15 January 2004. Your help in addressing these real issues facing the Internet community will provide a valuable service to ICANN.

Best regards,

Paul Twomey
President and CEO
ICANN