



**International Chamber of Commerce**

*The world business organization*

## Policy statement

### **Principles for an electronic commerce–friendly domain name system**

*Policy Statement prepared by the ICC Domain Names Taskforce*

The International Chamber of Commerce (ICC) is the world business organization. It is the only representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world. Founded in 1919, it represents today thousands of member companies and associations, both large and small, from over 130 countries. The ICC's purpose is to promote international trade, investment and the market economy. It is actively involved in formulating private sector rules and guidelines for electronic commerce, and operates the foremost international arbitration service for dealing with commercial disputes.

The ICC has a respected history of developing global, self-regulatory policies, guidelines and practices and a solid track-record of successfully introducing and promoting self-regulatory schemes. The ICC has been actively involved in developing global initiatives to facilitate electronic commerce and has set up a special broad-based Electronic Commerce Project (ECP) to define appropriate rules, in which over 500 companies world-wide are participating. Recent ECP and associated initiatives have included: GUIDEC, privacy model contracts and guidelines, Revised Online Advertising Guidelines, framework of rules for dematerialized trade, model electronic sales contract, E-terms<sup>1</sup>. The ICC Court of Arbitration has extensive experience in developing and implementing alternative dispute resolution procedures and is currently studying its application in the field of electronic commerce.

#### **The Internet**

The phenomenal growth of the Internet as an electronic information medium is well documented. It is clear that this growth is increasingly being driven by mainstream businesses establishing an on-line presence and by ordinary consumers who want to take advantage of the increasing range of services and sources of information available. Datamonitor, the commercial research business, has recently estimated that in Europe alone, on-line retail sales will grow from just over \$100m a year in 1997 to over \$4.5 billion in 2002. Price Waterhouse has also suggested that worldwide e-trade over the Internet could reach over \$400 billion in the same year<sup>2</sup>. In this environment, it is business which will provide the investment necessary

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to develop the underlying global information infrastructure and the global information services for the future. It is also businesses who are likely to be the principal users of domain names as they seek to create an Internet identity and on-line brand recognition.

## **Domain Name Administration**

The future of Internet domain name administration has been the subject of considerable debate over the last two years. The ICC previously issued a "Statement on trademarks and the Internet"<sup>3</sup>, in which it made a number of suggestions for features required for the domain name system to meet business needs. The ICC has also been represented at the various WIPO hearings on proposed changes to the domain name system and draft dispute resolution policies.

The US Administration, which has historically been indirectly responsible for overseeing DNS administration, has undertaken extensive consultation and issued requests for comment, including a "Green Paper", entitled "Technical Management of Internet Names and Addresses"<sup>4</sup> on proposals for changes to DNS administration. The need for changes to the current system has been driven by: a) dissatisfaction about the absence of competition in domain name registration; b) concern over conflicts between trademark holders and domain name holders; c) demands for a more formal and robust management structure; and d) demand for greater international participation in Internet administration to reflect the increasing proportion of internet stakeholders residing outside of the US.

The US administration has now concluded its consultations with the publication of a so-called "White Paper" entitled "Management of Internet Names and Addresses" (Docket No: 9802120368146-02 dated 5 June, 1998) -which sets out its own final recommendations<sup>5</sup>. The White Paper calls for the creation of a new private-sector, not-for-profit corporation to assume the responsibilities of the existing IANA as a self-regulatory, governing body to set policies for administration of the domain name system.

## **ICC Response**

The ICC welcomes the publication of the White Paper and supports the Policy Statement that the domain name system should be administered by a not-for-profit corporation (now frequently referred to as "the new IANA") formed by private-sector Internet stakeholders. The ICC endorses the principles of stability, competition, private-sector coordination and international user representation. However, the White Paper leaves open the key issues of who should have responsibility for the creation of the proposed new corporation and how members of its Interim Board are to be selected. The Interim Board will have responsibility for taking fundamental policy decisions on contentious issues of domain name administration which will have profound consequences for business use of the internet. The ICC believes that it is essential for business interests to be appropriately and sufficiently represented at every stage -



in the incorporation process, on the Interim Board and on the subsequently elected Board.

The administration of the domain name system (DNS) is itself an essential element in the broader context of Internet governance as a whole. The ICC's focus is obviously not limited to consideration of the DNS issues in isolation. As a truly international and cross-sectoral business organization representing commercial parties with an interest in the Internet, including business users generally, carriers and service providers as well as major trade mark owners, the ICC offers a much wider commercial perspective and is well-qualified to represent the business constituency at every stage on all issues of governance.

To facilitate comprehensive stakeholder input into the process of formation of the new IANA, the ICC itself has supported and is represented in the ad hoc group of professional, trade and educational associations called the International Forum on the White Paper (IFWP) - which has organised regional meetings in the US, Europe and the Far East specifically to provide stakeholders with an opportunity to discuss the key issues involved in transition of the DNS administration into the private sector.

In order for the Internet to become an effective and successful medium for electronic commerce, the domain name system must facilitate and *increase business* and consumer confidence in Internet transactions. It therefore has to be structured and administered to meet consumer and business needs.

The ICC accordingly supports those recommendations in the White Paper which are directed to that end. More specifically, the international business community believes the following principles should particularly apply:

### **Principles for an electronic commerce-friendly domain name system**

1. The domain name system must have operational stability, integrity and security and be supported by a predictable legal environment (i.e. there must be confidence about how different stakeholder interests are secured.)
2. Business interests from the various regions of the world should have a sufficient voice in any entity administering the domain name system - and specifically at all stages in the incorporation and operation of the "new corporation" proposed in the White Paper commensurate with the reality that it is business which will increasingly be the primary source of future investment in the Internet and which will comprise the most significant market for domain names<sup>6</sup>.
3. New gTLDs should be created where necessary to improve the functionality and utility of the DNS for businesses and consumers as a whole, rather than just to increase business opportunities for new registries themselves; new gTLDs should be adequately scalable to



meet future demands; must facilitate fair competition and limit the potential for conflicts; must not jeopardize system stability; and should be phased in to allow time to review the benefits/effects of their introduction.

4. Brand names and trading styles must be protected, in particular, to reduce the scope for fraud and misrepresentation and the risk of confusion of the public. Consumers must have confidence in electronic transactions through a secure infrastructure and the ability to rely on established brand identities, trade marks, trade names and corporate reputations as guideposts of trust and reliability. Developing this level of consumer trust in transactions will spur electronic commerce and enable new markets to be opened with competition from new entrants by developing a critical mass of e-consumers. The importance of brand recognition for consumers and commercial operators must therefore be taken into account in the structure and operation of the domain name system<sup>7</sup>. Specifically:
  - a) policies for the addition and operation of any new gTLDs must recognize business and consumer concerns regarding trade marks and trade names;
  - b) within the constraints of technology, the domain name system should enable entities wanting a presence on the Internet to have a domain name by which the public can easily identify them;
  - c) there should be sufficient flexibility to allow different legitimate claimants to the same trade mark, trade name or sign to exploit this as a domain name, while ensuring adequate means to differentiate between them ;
  - d) registration policies should prohibit cybersquatting, warehousing, piracy and any such misappropriation of trade marks or trade names in domain names;
  - e) "famous", trade marks should be accorded
  - f) the system should allow persons or entities with intellectual property rights, trade marks, trade name or other distinctive signs, to intervene as early as possible to protect their interests; and
  - g) appropriate jurisdictional options for trademark owners must be preserved; in particular, jurisdictional choices should not be restricted to the advantage or disadvantage of the businesses of one country relative to those of any other country.
5. As the Internet is an intrinsically global system of communication, there must be globally representative participation in the formulation of policy concerning the DNS, as well as in technical, operational and administrative functions, so that no one country has *de facto* control over those functions.
6. There must be international coherence between the different systems of allocation of domain names in different registries (for both generic top level domains (gTLDs) and country code-top level domains (ccTLDs)). Consistent procedures must be implemented

by all registries and registrars, including baseline requirements for trade mark dispute resolution procedures and requirements for accurate and complete information in domain name applications<sup>8</sup>.

7. An internationally coherent and effective legal framework should be established to address problems arising out of the use of trade marks, trade names and other distinctive signs on the Internet, and potential conflicts with domain names. More specifically, the following issues should be addressed at an international level in a forum such as WIPO<sup>9</sup>:
  - a) jurisdictional conflicts between the territorial nature of trademark law and the international scope of the Internet;
  - b) the protection of famous marks on the Internet;
  - c) the effects of new gTLDs on trademark holders;
  - d) the international prevention of cybersquatting, warehousing and hoarding of trademarks as domain names; and in the longer term, appropriate further international harmonization of trademark laws.
8. Effective and timely dispute resolution mechanisms are essential. Dispute resolution policies for all registries should be consistent and there should be a choice of fora for dispute settlement. The ICC Court of Arbitration could provide an alternative dispute resolution forum.
9. The White Paper recommendation that more effective use be made of the US country code domain should be extended to country code domains (ccTLDs) generally. Differences in allocation rules; failure to structure the domains to reflect the realities of the business environment and to facilitate general business use; anti-competitive and abusive monopoly practices; and other inefficiencies, which are exhibited to a greater or lesser degree by many country code administrations, mean that the ccTLDs are not being utilised as efficiently or effectively as they could. Internationally consistent, market-oriented organisation and operation of ccTLDs could reduce the pressure on gTLDs and reduce the potential for undesirable conflicts over domain names.
10. Initiatives to develop search systems allowing users to locate sites without relying primarily on domain names could help relieve pressure on the domain name system and reduce the potential for conflicts with trademarks and should therefore be encouraged.

The ICC looks forward to providing further input from the international business community on the future development of the domain name system.

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## FOOTNOTES

- 1 Further details of these initiatives are available at <http://www.iccwbo.org>
- 2 Information from the Financial Times Guide - net.gain, June 1998
- 3 ICC Document 4501843 dated 15 May 1997
- 4 <http://www.ntia.doc.gov/ntiahome/domainname/022098fedreg.htm>
- 5 <http://wwwv.ntia.doc.gov/ntiahome/domainname/C-5-98dns.htm>
- 6 see the White Paper proposals for Structure of the new corporation.
- 7 see the White Paper Revised Policy Statement on Trademark Issues.
- 8 see the White Paper Revised Policy Statement on Trademark Issues.
- 9 See the White Paper proposals for THE TRANSITION