ICC informal contribution on key issues regarding the reform of ICANN's structures to take account of the impact of the new gTLD programme

ICC's Commission on the Digital Economy and task force on the Internet and Telecommunications are pleased to contribute the most important issues that our cross-sectoral and geographically diverse membership has identified with respect to the impact of the new gTLD programme on ICANN's structures, based on our informal survey results.

A scheduled review of the Generic Names Supporting Organisation (GNSO) is planned for 2013 and the ICANN Board is now simultaneously seeking input from the various ICANN Support Organisations (SOs), Constituencies and Advisory Committees (ACs) on the wider impacts of the gTLD programme. This ICC contribution highlights several areas of concern for our members and provides specific elements and priorities that will need to be considered in the review of the GNSO and other structures of ICANN.

ICC's membership spans both the contracted and also the non-contracted party houses of ICANN, although the majority of ICC's membership is comprised of non-contracted parties. To develop this input, we surveyed members on a range of questions about the impact of the new gTLD programme on the ICANN structures. The goal of this contribution is to provide substantive input on areas where global business across sectors have identified areas of common interest as well as to provide the range of views where there is no consensus.

Executive Summary
- Survey results show that the new gTLD programme will require changes to ICANN's structures and functioning; a range of views on specifics were expressed and where enhancements will be needed
- ICANN participants are more likely to engage in numerous stakeholder groups/constituencies as they will have dual or several interests
- Dual interests and participation in stakeholder groups/constituencies may require representation by separate participants from any one organization
- The creation of 'observer groups' within stakeholder groups/constituencies may not meet the needs of cross participation/new participants
- ICANN participation is increasing as a result of the new gTLD programme in many ways
- Voting rights within Supporting Organizations and Constituencies may become a key issue
- There may be impact on the development, implementation and adherence to consensus policies

The impact of the new gTLD programme and required changes to ICANN's structure and functioning

The majority of ICC members believe the new gTLD programme will require changes to ICANN's structures and functioning. Specific areas of concern and priorities include:

- The contracted parties group could become significantly larger than every other group. As a result, to ensure that the various aspects of their business are represented, companies will likely need to join more than one constituency and or stakeholder group as a way to protect and advance multiple interests. It remains to be seen whether the current structure will remain flexible enough to manage the changing needs of participants and whether the GNSO will need to be changed in some fashion.
- The current GNSO structure will need to be reviewed to ensure it can accommodate the rapid increase in stakeholders and their multiple roles, while retaining its focused mission and global responsibilities as a public interest multistakeholder organization.
- ICANN structure and functioning must be enhanced to ensure:
    1. Increased efficiency and scalability;
    2. Better global communication; and
    3. More predictability of outcomes.
- It will be important to consider how single registrant and restricted TLDs are represented within the ICANN structure and some members believe it could result in the need for a new constituency within the Registries Stakeholder Group (RySG). If it is determined that single-registrant TLD registries need a unique constituency there may be a need to review how weighted voting works in the changed environment.
- Many of the existing players will now have a much broader commercial interest. For example some business users are also likely to be actively involved in registry and registrar operations and will also need to be more proactive with intellectual property issues. Registry operators will also become active registrars and ccTLD operators will also run gTLD registries. There will be many more players involved and the existing demarcation lines will quickly blur again suggesting a total review of the current stakeholder groups may be appropriate
- Several of the traditional registries will be providing backend registry services for new registry applicants. As a result there may be inherent conflicts where an entity acting as a backend provider and its contracted partner, the registry applicant, must sit in the same constituency, but with a voting structure that has a weighted voting component. And pure backend providers, who are likely to emerge in the coming years, may have very different needs from actual registries.
- Functioning: With an increased number of new gTLDs, there may be a need for ICANN to implement better compliance and enforcement.
- A variety of registry business models—open, open-restricted, closed, government, community etc.—will be taking part in the ICANN community moving forward. These changes will require the organization to adjust accordingly.
- The introduction of new gTLDs creates the potential for conflicts of interest involving companies that will now be operating registries. As the name space changes, so too might the structure of ICANN. Innovation does not only occur at the registry level, but also at the level of governance. The GNSO will need to evolve and adapt to the changing composition of its participants and all stakeholders' interests.

ICANN participants are more likely to engage in numerous stakeholder groups/constituencies as they will have dual interests

Members noted the following:

- Companies/organizations may have several interests, not just dual interests.
- This is another reason to review the structures, processes and behaviour
- Dual interest may not necessarily mean the interests are contradictory but may address different aspects that are handled by different groups within a company or within the GNSO.
- ICANN participants would rather not pay more dues to engage in multiple stakeholder groups / constituencies – particularly when (for all practical purposes) a company can only vote in one, and some constituencies have weighted voting components in their voting procedures. The ICANN community should consider whether there is a need to create a streamlined structure that offers all stakeholders a more meaningful voice within the total community.
- Many companies will operate registries as a small part of their overall business. They will not fall neatly into one constituency group.

Dual interests and participation in Stakeholder Groups (SG)SG/Constituencies: may require representation by separate participants from any one organization

- The structures already face this issue and it will become a larger issue with the introduction of the new gTLDs.
- The solution may or may not require separate representation from any one organization in different SG/constituencies.
- The added costs and resources are a concern for companies .This choice should be left to individual companies to decide how their staff will interact at ICANN.
- Separate participation may be advisable, but it is not sufficient to address potential conflict of interest concerns. In the GNSO, companies should only have voting rights in one constituency/SG as is currently the case.

The creation of 'observer groups' within SGs/Constituencies may not meet the needs of cross participation/new participants

- Observer groups could help companies if they are forced to choose a constituency group, but may also add to the complexity of an already complex structure in terms of both process and participation. That would need to be weighed against the benefits of allowing a participant to get all of the information and participate (but just not vote) as an observer.
- Observer groups, standing alone, may not solve the issue and only add to the complexity of an already complex structure both process-wise and from a participation standpoint.
- Observer groups may meet the needs of cross participation/new participants if participation in multiple SGs/Constituencies by an individual and/or an organization was not permitted.

Other adjustments needed to be considered as a result of dual interests

- Assure rapid distribution of minutes and/or recordings of meetings in the groups.
- One fundamental issue to be solved is the possibility of one party blocking progress in policy development just because that would not be favourable to the business interests of that party.
- Transparency in representation, and clarity, with respect to participation in various constituencies is critical. Participants should be required to state publicly who they

are representing and fully disclose actual or potential conflicts of interest, both with respect to their initial decision to join a constituency and in all substantive decisions made within the constituencies. Similarly, consultants and outside counsel should be required to disclose conflicts. ICANN might consider retaining a single place for such conflict of interests to be posted, updated and disclosed in a transparent manner to the entire ICANN community.

- No one individual or organization should be able to hold a leadership position in more than one SO/Constituency at a time. Proxy representation and voting rules should be clearly defined.
- It needs to be recognised that some parts of the existing organization will rapidly increase membership (registries/registrars and Intellectual Property lawyers particularly) driven by new commercial demands and fears. They should be allowed to grow and participation encouraged, but this growth and increased participation should not undermine the overall effectiveness and success of the multistakeholder model.
- The potential impact of dual representation in multiple constituency organizations needs to be considered.
- The ICANN bylaws and constituency/SG bylaws need to be reviewed and possibly amended to allow for the creation of new Stakeholder Groups and/or Constituencies. If the new groups are to be given constituency status, they must be given an opportunity for meaningful representation on the GNSO. Otherwise, we have the status quo for all practical purposes.

ICANN participation is increasing as a result of the new gTLD programme including but not limited to the following:
- Brand holders and new registries
- Possibly IP lawyers
- Stakeholders around the globe with different cultures and language expertise
- Commercial interest groups (including those listed above)
- Users, governments, corporations, organizations, non-profit groups, NGOs and other parties impacted by the new gTLD program.
- Applicants, IP Lawyers, Registries, Registrars and other 3rd party service providers (e.g., data escrow agents, consultants, branding companies, etc.)
- The broader business community now has a better understanding of how ICANN can impact its business as a result of the new gTLD programme, although there is still room for improvement, particularly in developing countries.
- The current model of complex organizational process and large in-person meetings may not be sufficiently scalable. ICANN needs to keep finding better ways to communicate outward to a broader base of constituents and to solicit meaningful input into the policy development process as well.

The question of 'voting rights' within SOs/Constituencies may become a key issue
- Most of the real work is done without voting rights being needed. However, for the larger issues which are becoming more important, such as nominating ICANN board members, GNSO council seats, and large scale policy issues, voting is important and will be viewed as necessary to advance certain goals.
- Each Constituency/SG should conduct an accurate and meaningful evaluation of its existing policies and procedures including how it allocates voting rights in a fair and reasonable manner. An entity who belongs to multiple Constituencies/SGs should exercise voting rights in one Constituency only. The weighted voting component

within the Registry stakeholder group may need to be examined and reconsidered if the evidence shows that the current system places one class of voting stakeholders at an overall disadvantage compared to other classes of voting stakeholders.

- Some proxy representatives and companies with many related companies could represent hundreds of "members", thus one individual could have substantial influence over vote outcomes.
- Voting rights and effective, meaningful collaboration are going to become major contentious issues with additional participation and needing to look at issues from a variety of perspectives.
- Multiple representations must not facilitate multiple voting rights for any organization within the GNSO. It should be limited to one vote in whatever constituency an organization/entity selects. Their choice should be openly stated and vote shopping across various constituencies on a per issue basis must be forbidden.

Participation in one or more stakeholder groups/constituencies may demand a common set of rules to address multiple inputs from any single party

There will need to be a common understanding of how an organization is allowed to act within the process and this needs to be uniform across all of ICANN not just by one SO or AC without being overly bureaucratic. A standard procedure may need to be put in place that is meant to increase accountability and transparency and promote participation by organizations that have a vested interest in multiple avenues of policy development within ICANN.

This is an opportunity to rethink a better way to structure and participate in policy development within ICANN. Issues will involve multiple viewpoints in the community and developing policy in the current silos could be harder and harder to accomplish. It may be better for ICANN to evolve to something closer to the way that the IETF manages their development process and that is for policy to be issue and not structure driven. Those that care about a particular issue work on it instead of each organization working in isolation trying to develop ideas that then feed up through the GNSO process that is overly bureaucratic should be avoided and changes should be considered that produce more optimal outcomes. As many ICANN initiatives impact a broad range of stakeholders, for any changes that are implemented, there would need to be safeguards in place to ensure that any one sector of the community cannot drive issues to conclusion at the expense of others.

It would thus be advisable to establish a consistent set of rules to address the issue of any party that participates in multiple constituencies. This may require bylaws changes within the various groups.

There may be impact on the development, implementation and adherence to consensus policies

- There will be a large number of new participants, and from a wide range of commercial interests. The consensus process will need to accommodate potential time-lag in reaching consensus, as well as ensuring capture is not possible from anyone stakeholder group in the TLD space.
- The number and diversity of inputs will be greater and thus, will potentially slow down development.
- There is a danger that the interests of one class of stakeholders will dominate the process and make it harder to implement reasonable protections and safeguards for DNS users.
- As more groups come to the table with new, old, and hybrid ideas and concerns, the community may find it more difficult – under the current structure and processes – to

uphold consensus policies. That said, depending on how the bylaws are amended, ICANN should still be able to preserve consensus policies while allowing for the expansion. Participants, however, will need to recognize that a change may be needed before this happens.

It is unclear whether the impact on some Constituencies will be far greater than others
- Some members believe that all constituencies will be impacted equivalently.
- Some members identified the CSG and Registry group, or the constituencies within the GNSO, or the business and IP constituencies
- It is likely that the contracted parties' house, and in particular the Registries Stakeholder Group and the IPC, will feel the brunt of the impact. There are some who argue that the IPC should actually be an advisory board to the Board of Directors and the GNSO instead of a constituency.

Changes to the structure and functioning of ICANN may impact the structure of the existing ICANN Board but it is not clear how or when
- The functioning of ICANN should not change from its mission and responsibilities as reflected in the Bylaws. The structure of ICANN is a living structure that should accommodate the adjustment of stakeholder participation, and not become a trade association. If the structure is adjusted appropriately, the structure of the existing board should remain similar focusing on getting high quality Board members with a range of expertise including in areas of business, law or technology that add value to the community, board experience similar to the ICANN model, and understanding of the external environment.
- Membership on the Board has become more diverse in recent years, but it will be important to ensure there is sufficient representation of user concerns and the broader external environment.

The changes to the structures and functioning of ICANN are not likely to require more ICANN staff support and resources
Most ICC members believe that changes to the structures of ICANN will not necessarily require more ICANN staff support and resources but that the new gTLD programme may require additional staff and resources particularly in the areas of compliance and enforcement. Some members believe additional staff resources to address compliance issues in particular will be necessary.
- The mechanisms for reviewing the structures of ICANN exist, including in the bylaws, and the AoC review mechanisms. Some members believe that the review and any changes based on the impact of the new gTLD programme should be possible to accommodate in the current staff and resources.
- The number of issues is likely to continue to increase and the policy development process will be complex. In addition, it is important to expand the outreach to interested parties and ensure more meaningful input from these parties into ICANN's processes.
- ICANN staff numbers have grown rapidly over the recent years. Careful attention should be paid to reorganising and refocusing resources to fit changing demands as they arise. The focus must be on maximising efficiency of existing resources before any decision is made to increase further.

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The International Chamber of Commerce (ICC)

ICC is the world business organization, a representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world.
The fundamental mission of ICC is to promote open international trade and investment and help business meet the challenges and opportunities of globalization. Its conviction that trade is a powerful force for peace and prosperity dates from the organization's origins early in the 20th century. The small group of far-sighted business leaders who founded ICC called themselves "the merchants of peace".

ICC has three main activities: rule setting, dispute resolution, and policy advocacy. Because its member companies and associations are themselves engaged in international business, ICC has unrivalled authority in making rules that govern the conduct of business across borders. Although these rules are voluntary, they are observed in countless thousands of transactions every day and have become part of the fabric of international trade.

ICC also provides essential services, foremost among them the ICC International Court of Arbitration, the world's leading arbitral institution. Another service is the World Chambers Federation, ICC's worldwide network of chambers of commerce, fostering interaction and exchange of chamber best practice. ICC also offers specialized training and seminars and is an industry-leading publisher of practical and educational reference tools for international business, banking and arbitration.

Business leaders and experts drawn from the ICC membership establish the business stance on broad issues of trade and investment policy as well as on relevant technical subjects. These include anti-corruption, banking, the digital economy, marketing ethics, environment and energy, competition policy and intellectual property, among others. ICC works closely with the United Nations, the World Trade Organization and intergovernmental forums including the G20.

ICC was founded in 1919. Today it groups hundreds of thousands of member companies and associations from over 120 countries. National committees work with ICC members in their countries to address their concerns and convey to their governments the business views formulated by ICC.

ICC Commission on the Digital Economy

Business leaders and experts develop and promote the continued and stable growth of the Digital Economy, and further adoption of its underlying ICT foundation, through regulatory advocacy of key business positions and best practices through ICC's Commission on the Digital Economy.

Through its members who are ICT users and providers from both developed and developing countries, ICC is recognized in expert circles as the global consensus voice for private sector expertise on policy matters that drive the Digital Economy. It also provides the ideal platform for developing global voluntary rules and best practices for this area of interest to companies worldwide. Dedicated to the expansion of secure ICT-facilitated trade, ICC champions the liberalization and regulatory harmonization that are required to achieve a free flow of information across all borders.

ICC led and coordinated the input of business around the world to the United Nations World Summit on the Information Society (WSIS), Geneva 2003, Tunis 2005, and continues this effort in the activities established in the Tunis Agenda through its initiative, Business Action to Support the Information Society (BASIS http://www.iccwbo.org/basis).