Selected BC existing positions regarding proposed topics for GAC-Board Brussels meeting, 28-Feb-2011

1. Procedures for Sensitive Strings (incl requirements for governments to pay fees)

Dec-2010 BC comment on proposed final Guidebook (attached)
(also at http://forum.icann.org/lists/5gtld-guide/msg00026.html)

- Concerned that confusion and controversy may result from subjective and undefined aspects of the Limited Public Interest and Community objections. Requested definitions for terms such as 'generally accepted' and 'substantial opposition' (p.7)

- The BC understands that ICANN may need to outsource objection and evaluation tasks during the new gTLD application process. But a decision to outsource services does not enable ICANN to escape accountability for decisions made by outsourcing vendors. ICANN's Board must be the final resolution body for disputes that arise during evaluation and objection processes. (p.7)

- Regarding fees applicants must pay to respond to an objection: Applicants are rightly expected to underwrite the draw on ICANN resources triggered by seeking a gTLD or by objectors asking that the application be denied. However, if an application is contested, it ought not trigger a second fee just so that the applicant can defend the rationale already included in their original application. (p.8)

2. Root Zone Scaling

Jul-2010 BC Comments (http://forum.icann.org/lists/bc-gnso/pdf7bS90kfqkn.pdf):

- The BC position is to support "an orderly rollout of new gTLDs in-keeping with the requested implementation of the GNSO Final Report on the Introduction of New gTLDs, i.e. with market differentiation."

Dec-2010 BC comment on proposed final Guidebook: (attached)

- The first batch should be limited to significantly fewer than 500 applications, in order to test the operational readiness of newly designed application processing and objection / contention systems.

3. Market and Economic Impacts

Jul-2010 BC Comments on DAGv4 (http://forum.icann.org/lists/bc-gnso/msg01352.html):

- The BC position is to support "an orderly rollout of new gTLDs in-keeping with the requested implementation of the GNSO Final Report on the Introduction of New gTLDs, i.e. with market differentiation."

4. Registry/Registrar Separation (vertical integration)

Sep-2009 BC statement (http://www.bizconst.org/Positions-Statements/Position-08-2009_Registry_Registrar.doc)

- Maintain status quo separation of Registrars and Registries
- Waive separation for TLDs "intended for internal use"

Aug-2010 BC statement (http://forum.icann.org/lists/bc-gnso/pdfoF21ENSQ61.pdf)

Re-stated and clarified Sep-2009 position:

- Oppose changes to any separation safeguards, and to maintain the 15% limit on cross-ownership interest between registrars and registries.

- No separation requirement for TLDs "intended for internal use". Clarified that "internal use" was a term used for a range of entities that were under control of the single registrant and "not for sale to the general public". At the time, BC discussions of "internal use" included the following entities:

  o Divisions and product names for a single registrant (e.g. copiers.canon)

  o Employees of a single registrant, for use in 2nd level domains and email addresses

  o Subscribers, customers, and registered users of a single registrant, subject to approval and control by the single registrant.

- The BC requests further exploration of the range of internal entities for which a single registrant may distribute and manage domains within its TLD.

Dec-2010 BC comment on proposed final Guidebook (attached)

  Requested changes for single-registrant TLDs (pages 9-12)

- Subject to approval from relevant national governments, a Single-registrant ('dot-brand') TLD should be allowed to register both two-letter abbreviations and full country and regional names at the second level. (e.g., Canada.Canon or Haiti.RedCross).

- Single registrant registry operator must use ICANN accredited registrar, but the Registry Agreement should not unduly restrict single registrant ('dot brand') TLDs from using only a wholly-owned or closely affiliated registrar to register and manage names that it controls. (e.g., for divisions, product lines, locations, etc.)

- Upon termination of its registry agreement, a single registrant TLD should not be subject to forced re-delegation by ICANN. In situations where a single-registrant owns or controls all second level domains, an expiration or termination of the Registry Agreement may lead to the closure of the gTLD or transfer to a new entity by a bankruptcy court or administrator instead of transition to a new operator.

- The Code of Conduct should not restrict singe registrant TLDs from using an owned or closely affiliated registrar to register and manage names that it controls. (e.g., for divisions, product lines, locations, customers, affiliates, etc.)

- Single registrant TLDs should not be required to allow unaffiliated registrants to hold registrations in a branded gTLD. Third-party registrations in a single registrant TLD could cause consumer confusion and in extreme cases be a vehicle for fraud.

5. Protection of Rights Owners and Consumer Protection Issues

Jul-2010 BC Comments on DAGv4 (http://forum.icann.org/lists/bc-gnso/msg01352.html)

and Dec-2010 BC comment on proposed final Guidebook (pages 1-3):

- URS (uniform rapid suspension) needs to be quicker, have more certainty, and provide longer suspension period for the name

- TM Clearinghouse only works during sunrise and only with exact string matches.   And TM owners bear all the costs of the Clearinghouse and still have to pay for defensive registrations.

- Post-delegation dispute resolution procedure (PDDRP) requires too high a burden of proof (must show "specific bad faith"). Needs sanctions against the registry.

- Should require use of a trademark in order to enter the TM Clearinghouse database (p.15)

- Should require use of a trademark in order to use TM in a post-delegation dispute process (p.16)

Oct-2010 BC comment on recognizing new UDRP providers (http://forum.icann.org/lists/acdr-proposal/msg00004.html)

- BC cannot support approval of this or any other UDRP accreditation application at this time on the grounds that no new UDRP providers should be accredited until ICANN implements a standard mechanism for establishing uniform rules and procedures and flexible means of delineating and enforcing arbitration provider responsibilities.

Dec-2010 BC comment on proposed final Guidebook http://forum.icann.org/lists/5gtld-guide/pdfpWA9bxOgob.pdf

- The Registry Code of Conduct does not expose an exhaustive list of abuses, nor does it identify the data required to detect the abuses.   Moreover, it does not expose the compliance mechanisms that will help protect registrants. (p.13)

- The Registry Code of Conduct should restrict abuse of proprietary data to acquire unregistered names, whether that occurs as front-running or by other inappropriate methods. (p.13)

- Regarding registry compliance audits: Non-payment of registry fees shall not be a reason for ICANN to delay a registry audit that is otherwise called for.   In situations where the Registry Operator must pay audit expenses, ICANN should ensure that delays in payment do not delay or undermine a compliance audit. (p.14)

Law enforcement due diligence recommendations: Due Diligence and Registrar Accreditation Agreement

Dec-2010 BC comment on proposed final Guidebook (p. 4):

- The cybersquatting disqualification applies only if the applicant or named individuals were involved. Cybersquatting has been documented at affiliates and subsidiaries of the registrars and registries who are likely to be applicants for new gTLDs. ICANN should expand disqualification criteria (k) to apply to affiliates or subsidiaries of the applicant.

6. Post-delegation disputes with governments, incl use and protection of geographical names

Dec-2010 BC comment on proposed final Guidebook (p. 10)

- Subject to approval from relevant national governments, a Single-registrant ('dot-brand') TLD should be allowed to register both two-letter abbreviations and full country and regional names at the second level. (e.g., Canada.Canon or Haiti.RedCross).

7. Legal recourse for applicants

8. Providing opportunities for all stakeholders including those from developing countries

Dec-2010 BC comment on proposed final Guidebook (attached)

- A variety of support resources are available to gTLD applicants and should include a fee reduction for additional versions of the applied-for string in IDN scripts and other languages. (p.5)

ICANN proposed this organization for the Brussels meeting:

PROPOSED ORGANISATION OF GAC-BOARD MEETING TOPICS

	Topic	GAC Leads	Board Leads	ICANN Leads
1	– Objection Procedures, including requirements for governments to pay fees – Procedures for the Review of Sensitive Strings – Early warning to applicants: whether a proposed string would be considered controversial or to raise sensitivities (including geographical names)	Germany/Hubert Schottner U.S./Suzanne Sene	Bruce Tonkin	Amy Stathos*
2	– Root Zone Scaling	U.K./Mark Carvell Netherlands/Thomas de Haan	Suzanne Woolf	Joe Abley
3	– Market and Economic Impacts	EC/Bill Dee U.S./Suzanne Sene	Ray Plzak	Kurt Pritz*
4	– Registry/Registrar Separation		Joe Sims	Dan Halloran*
5	– Protection of Rights Owners and Consumer Protection Issues – Law enforcement due diligence recommendations: Due Diligence and Registrar Accreditation Agreement	Sri Lanka/Jayantha Fernando U.S./Suzanne Sene U.K./Mark Carvell	Rita Rodin Johnston; Ram Mohan; Gonzalo Navarro	Amy Stahos* Margie Milam
6	– Post-delegation disputes with governments – Use and protection of geographical names	Germany/Hubert Schottner Norway/ Ornulf Storm Netherlands/Thomas de Haan	Bertrand de la Chapelle	Donna Austin*
7	– Legal recourse for applicants	Germany/Hubert Schottner	Mike Silber	Dan Halloran*
8	– Providing opportunities for all stakeholders including those from developing countries	Kenya/Alice Munyua Sri Lanka/Jayantha Fernando	Katim Touray	Olof Nordling* Karla Valente