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Administration and Management of Internet Generic Top Level Domains (gTLDs)

Comments from the European Commission to the Government of the United States

1. General observations

The European Commission has considered with care and interest the recent proposals from the International Ad Hoc Committee (IAHC) regarding the Administration and Management of Internet Top Level Domains for the Internet. This question is an important aspect of a more general preoccupation felt in Europe and elsewhere as to how to ensure that the organisation and management of the Internet, globally, will become sufficiently robust, economical, transparent and non-discriminatory so as to fulfil its role in the longer term as the principal current infrastructure for information service providers and users in the Global Information Society and for Electronic Commerce.

The Commission welcomes several aspects of the Report presented by the International Ad hoc Committee, particularly:

- the initiation of a global debate on the matter and the widespread airing of information and opinion through the IAHC web site.

- recognition that Internet domain space is an international public resource subject to public trust.
- the decision to grapple with the trademark aspects of domain names.
- recognition of the need to open the management of the Internet to an internationally recognised structure which will be responsible and answerable for decisions taken in a transparent manner.
- accepting the need to create the necessary degree of non-discrimination and symmetry through the more extensive use of the .US domain in the United States of America, and full access to other current generic top level domains. (e.g. .COM).

We would also wish to express on this occasion the widespread feeling of appreciation in Europe about **the contribution that the Internet is making to the Information Society**, both in terms of individual fulfilment and in terms of economic efficiency.

The Commission would, however wish to signal its reservations and doubts regarding some other aspects of the IAHC report and to stress the urgent need for a full review of these questions with the Internet organisations and the responsible public authorities, including at the international level, before decisions are taken. These comments are set out below in relation to the corresponding chapters of the IAHC report published on 19 December 1996.

In the first instance the Commission formally regrets that the composition and structure of **the IAHC does not include any European representation**. Although the participation of the ITU and of WIPO is welcomed, this is not a substitute for appropriate European representation. A significant proportion of Internet usage can already be attributed to European activities and it is growing rapidly. Many European companies and other organisations are already fully involved in providing and using information services through the Internet. It is incumbent on the Commission to ensure that these interests are effectively represented and taken into account in the future organisation and management of the Information Society particularly as decisions which may be taken now will create the future framework for many interested parties which are not yet fully involved in the Information Society.

Furthermore, in view of the political, economic and technical importance of the matters under consideration, the Commission needs a significantly **longer period for consultation**, particularly in the light of the unsatisfactory European participation in the initial work of the IAHC. This is necessary *inter alia* because of the complexity of the issues and the wide range of interested parties in the European Union and its Member States. We can however formulate at this stage the following initial comments, which also take into account the "Final Recommendations" of the IAHC which were published on 4 February 1997.¹

¹. Final report of the International Ad Hoc Committee: Recommendations for Administration and Management of gTLDs, February 4, 1997.

The Commission also attaches particular importance to the proposals to reform the management structure of the Internet including establishing a **Memorandum of Understanding²** and the creation of a **Policy Advisory Body and a Policy Oversight Committee** responsible for the oversight and management of the Internet Domain Name System in the future although it is not yet clear to us what the respective roles of these new instruments would be. We would however note that the present proposals do not envisage significant European participation in these bodies, either.

We would also point out that if these these new structures are to be effective, they should be competent for the Top Level Domains as a whole, and not be limited to the new generic TLDs. Subject to these reservations, Commission would nevertheless be prepared to participate fully in the preparatory work for the creation of these instruments with a view to broadening their scope and geographical coverage.

Regarding the **trademark aspects** of Domain Names, the Commission is participating in the current work undertaken by WIPO, and we consider that the implementation of the IAHC recommendations should not prevent possible solutions from being elaborated in that context. Meanwhile we shall refrain from commenting in detail until the WIPO work has advanced further.

2. Nature of TLDS

The Commission appreciates the new characterisation of TLDs as National, International and Generic. We do, however have some questions as to the current balance of this structure. At present the geographical TLDs in Europe are exclusively National, whereas a number of large companies and organisations which operate Europe-wide may well wish to identify their activities at the European level. We would wish to consider ways in which this could be done, particularly as the only global TLD for commercial purposes is the US based .COM domain which is, we gather, already highly congested.

We have also noted that there is at present no Top Level Domain name appropriate for the institutions and organisations related to the European Union, either.

3. Generic TLDs

While recognising the general argument in favour of **expanding the number of TLDs** as part of the solution to a rational and efficient architecture for the Internet addressing system³,

² . Proposed gTLD-MoU, IAHC, February 28, 1997

³ . By analogy with the international structure of the telephone numbering systems.

we would wish to review the particular seven gTLDs which have been proposed by the IAHC from several points of view. We would question whether at this stage new gTLDs of a sectoral or professional character are really necessary, given the flexibility and scalability of the National TLDs which already operate throughout Europe and we question whether these proposals will reduce existing confusion in the area of trademarks, accommodate significant linguistic differences or in what way they would reduce the congestion in the existing .COM domain. At this stage suffice it to note that in so far that the new gTLDs carry professional or sectoral connotations, the choice would have to be based on thorough information and consultation in Europe as to the requirements of the users, particularly as the initial number of gTLDs is to be rather restricted.

We have noticed that the initial suggestion for a specific top level trademark domain (.TM) has been dropped and we suggest that this question should be examined in the context of a broader solution to the trademark problems which have arisen in the context of the DNS taking account of the work within WIPO which has only just begun.

This question also has to be seen in the more general context of the need to ensure, at this stage, that the structure of the Internet names and addresses is fully scalable as the use of the Internet continues to expand in the future. Qualified observers expect the Internet to become, soon, an important vehicle for global electronic commerce, including for small and medium sized enterprises and it would seem to us that some consideration needs to be given, now, to these longer term aspects⁴. For our part, the Commission has recently published a consultative Green Paper on the telephone numbering systems. Our considerations in this area will also include the Internet DNS.⁵ In Europe as elsewhere, this choice of TLDs also raises the question of the **languages and character sets** which may be employed.

4. Registries and Registrars

The Commission and the Member States have examined with attention the proposed arrangements for the allocation of Registrars for the management of the gTLDs. While we can accept the general principle of regional allocations based on the WTO regional structure⁶, and the limitation of Registrars to locations covered by the Paris Convention or the TRIPs, we consider that other aspects of this proposal need to be reconsidered.

In the first place, the Commission would not welcome the allocation of licenses to Registrars within the Western Europe WTO Region on the basis of a lottery organised

⁴. c.f. Global Electronic Commerce, White House, Washington DC, December 1996.

⁵. Towards a European Numbering Environment: Green Paper on a Numbering policy for Telecommunications Services in Europe, European Commission 1996, COM/96/590, Brussels 20 November 1996. <http://www.ispo.cec.be>

⁶. It is recognised that this proposal is preferable, as far as the European Union is concerned, to the previous suggestion based on the ITU Regions.

by the Internet organisations in the United States. We question whether the IAHC or the Internet Society has the authority under US or International Law to do so and doubt that decisions taken in this way would constitute the necessary basis for the legal and commercial stability of the eventual Registrar organisations.

We would also wish to understand in detail the basis on which the particular parameters for eligibility were chosen.

Alternatively, the Commission would envisage that when the decision is taken to expand the number of TLDs, that an appropriate number of licenses for new Registrars in Europe should be allocated on the basis of a transparent and evaluated Call for Tenders firmly based in European law and on tried and tested procedures, including full publication of the terms and conditions⁷, adequate delays for consultation and tendering and resulting in a reasonable geographical and national distribution of the Registrars and reliable arrangements for the resolution of disputes.

The Commission would welcome an increase in competition between Registrars, but we suggest that this should be based on stable, previously agreed general rules and on access by new Registrars to both new and existing TLDs.

In any event, the Commission will have to reserve the possibility of consulting further with the Internet Community in Europe and with the Member States before any action is taken in this regard and wishes to seek assurances, now, that no action will be taken to initiate such a lottery in Europe on the basis of the present recommendations.

The Commission would also wish to review carefully the access of the new Registries to the allocation of domains within the existing generic TLDs before any decisions are taken.

5. Other Name Spaces

The Commission would wish to encourage the United States' Administration and Internet organisations to take full account of the recommendations of the IAHC regarding the introduction of a widely used functional generic name structure in the United States based on the .US TLD, including the use of second level Domains.

As already indicated, any decision regarding the introduction of a specific domains for trademarks (*.TM.*) should be subject to the outcome of the WIPO exercise and other on-going consultations in Europe about industrial property in the context of EU Internal Market policy and the Information Society. The Commission has already decided to participate fully in the WIPO exercise in this area.

⁷. We note that the announced legal documents which form the basis of the proposed applications had not yet been published as of 24 March 1997.

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The European Commission would consequently be glad to know the position of the Government of the United States of America on these matters. We are sure that many of the questions and problems which we have raised are also valid in the context of the Internet in the USA and we would welcome an opportunity - for example in the context of the EU-US consultations on the Information Society - to discuss these matters more thoroughly.
