

The NetChoice Coalition

Promoting Convenience, Choice, and Commerce on The Net

Steve DelBianco, Executive Director
1401 K St NW, Suite 502
Washington, DC 20005
202-420-7482
www.netchoice.org



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Dr. Paul Twomey, President
Mr. Peter Dengate Thrush, Chairman
Internet Corporation for Assigned Names and Numbers (ICANN)

Submitted via email to 2gtld-evaluation@icann.org

Subject: Comment regarding gTLD Draft Applicant Guidebook version 2

In our comments regarding version 1 of the Draft Applicant Guidebook (DAG), NetChoice endorsed the comments of the Business Constituency and other groups raising similar concerns over abusive registrations. We also offered two suggested improvements to Evaluation question 31 of Module 2, where applicants are to describe their approach to 'minimize abusive registrations and other activities that affect the legal rights of others.'

To summarize, we recommended two changes in ICANN's approach to this critical evaluation question:

1. ***Raise the curtain.*** Provide for greater transparency and stakeholder inquiry of an applicant's proposed mechanisms to minimize abusive registrations and other activities that affect the legal rights of others.

An essential aspect of transparency is to let stakeholders query applicants about specifics and contingencies regarding their plan for rights protection. ICANN must require applicants to provide substantive responses to these queries, and to publish questions and responses for public review. Only this level of transparency will enable the stakeholder community to evaluate proposed mechanisms and compare them to superior mechanisms offered by other applicants.

2. ***Raise the bar.*** Increase the criteria for earning a minimum acceptable score on proposed policies to minimize abusive registrations.

A passing score of 1 on Question 31 should only be given to applicants whose proposed mechanisms meet registry best practices for minimizing abusive registrations. The standard, or 'bar' for minimizing abusive registrations should be set by looking at the best mechanisms employed by existing registries or proposed by other registry applicants in the new round of gTLDs.

[see NetChoice comments at <http://forum.icann.org/lists/gtld-evaluation/msg00017.html>]

At ICANN's Mexico City meeting, we learned that version 2 of the DAG does not include requested changes to improve mechanisms for rights protection or for minimizing abusive registrations. (Question 31, for instance, was not amended in version 2, other than to re-number

it as question 43.) We are now anticipating that rights protection mechanisms will be addressed in future versions of the DAG, pending the work of the Implementation Recommendation Team (IRT) and subsequent community review.

Hopefully, the IRT work will lead to new minimum rights protection mechanisms for registry applicants. In DAG version 1, no minimum mechanisms were required, and an applicant could receive a passing grade for merely describing their intended mechanisms, even if they were likely to have little effect in preventing abusive registrations.

We are therefore encouraged that the IRT will recommend specific mechanisms, possibly including a global brand registry, thick Whois, rapid take-down, etc. Presumably, some level of implementation of these mechanisms will survive through community review and board endorsement, and become minimum requirements for new TLD applications.

But these mechanisms will be designed to fight existential threats from today's abusive registration schemes, so some measures will soon become obsolete or irrelevant. Just as generals ask for weapons systems to win the previous war, ICANN may end up with defense measures that won't work against rapidly-evolving threats from notoriously clever criminal elements. ICANN must move beyond static definitions of present mechanisms, and find a way to accommodate dynamic proposals to fight new threats to consumers and brand owners.

Moreover, it's inherent in the ICANN consensus process that these minimum mechanisms will be less than consumers and brand owners want to have, and more than aspiring registries want to offer. Without a more adaptive and dynamic process, ICANN's consensus approach will settle for minimum mechanisms that will satisfy no one.

Consequently, the next version of the DAG is likely to include rights protection requirements that are minimally effective against today's threats, and not necessarily adaptive to tomorrow's threats. For that reason, we encourage ICANN to begin now with consideration of our recommendations to improve the process for application evaluation in Module 2.

Whatever mechanisms are eventually adopted as minimum requirements, ICANN should be designing a more transparent and interactive process for letting evaluators and stakeholders query applicants about how their proposed mechanisms will work against emerging threats.

More important, our second recommendation envisions a process where competing TLD applicants (and their registry operators) are rewarded for proposing ever more effective and adaptive rights protection mechanisms. New threats will evolve and vendors will respond with solutions much faster than can be accommodated by ICANN's policy development process.

The need for these kinds of process improvements can best be demonstrated by an actual example:

About a dozen members of three stakeholder groups (Business, Intellectual Property, and Registry Constituencies) met in Mexico City in March to discuss rights protection mechanisms that current gTLD operators could offer when they propose IDN (Internationalized Domain Name) versions of their current TLDs.

There's a real need for rights protection mechanisms for IDN translations and transliterations of existing gTLDs, which are a special case that's not likely to be addressed by the broader agenda of the IRT. At the same time, there is building pressure from ccTLD operators to launch their 'fast track' IDN ccTLDs while the gTLD Guidebook undergoes lengthy debate and revisions. We believe that the billions of

people who don't use the Latin alphabet deserve to have access to IDN versions of common existing gTLDs -- not just IDN versions of their ccTLD.

The specifics of this new mechanism are still under discussion, but the general idea is that current registries want to propose multiple IDN versions of the gTLDs they operate today. Being aware of the concerns of global brands and current domain name owners, some current gTLD registries are contemplating unprecedented protections for current domain name registrants.

First, current gTLD registries may impose strict limits on the availability of existing second-level address strings in any IDN versions of the gTLD that they would operate. Under this proposal, the registrant of a NetChoice.org address would be the only person allowed to register 'NetChoice' in IDN versions of .org.

Second, this proposal would apply to IDN second-level domains as well. For example, a registrant holding Korean and Arabic script versions of 'NetChoice' in the .org TLD would be the only one who could register those strings in Korean and Arabic script versions of .org.

The idea is simple: domain holders would not be required to defensively register current gTLD domain names in any IDN version of that TLD run by the same registry.

This is an actual example of innovation that could dramatically improve rights protection and minimize user confusion in the case of IDN versions of existing gTLDs. There will undoubtedly be other examples of innovations proposed by applicants seeking to improve their chances of winning a TLD contract, especially when competing with other applicants for the same or similar string. Applicants could, for example, propose security and stability mechanisms that exceed ICANN's present minimum requirements.

In the next version of the Guidebook, ICANN should design a process that actively encourages applicants to offer more than the minimum requirements, and then rewards that kind of initiative -- with more than just an extra point on a single evaluation question.

Another process improvement would be to harvest these innovations into an evolving set of 'best practices' for aspiring registry operators. Competing applicants who meet the most practice mechanisms could be rewarded with extra evaluation points.

For all of the above reasons, we wish to repeat our DAG version 1 comments and ask that they be kept under active consideration for the next version of the DAG.

Steve DelBianco
Executive Director, NetChoice

About NetChoice

NetChoice is a coalition of global e-commerce companies. NetChoice has consistently advocated at ICANN for measures to raise the integrity of users' Internet experience, while at the same time increasing the Internet's availability to the next billion users. In a hearing before the U.S. Congress regarding ICANN's approach to Internet governance, we [testified](#) about threats to the integrity of the domain name system from abuses such as fraud and cyber squatting¹.

¹ [http://www.mcgeorge.edu/documents/centers/global/ICANN Internet Governance - Is It Working.pdf](http://www.mcgeorge.edu/documents/centers/global/ICANN%20Internet%20Governance%20-%20Is%20It%20Working.pdf)