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Date 14th of april 2009
Subject Request for comments on the Draft gTLD Applicant Guidebook v2
Reference
Your reference
Our reference 2009018
Annexe

Dear Mr Twomey,

SIDN is the registry for the .nl country-code top level domain, which, with over three million registered domains, is one of the world's largest and most successful ccTLDs. SIDN also manages the Netherlands' ENUM zone 1.3.e164.arpa.

Since its creation in 1996, SIDN has been closely collaborating with the global internet community with the objective to assure availability, accessibility, stability, security, overall quality and further development of the Internet in general and the .nl name-space (and, since 2007 the 1.3.e164.arpa space) in particular.

As the Chief Executive of SIDN, I welcome the opportunity for stakeholders to give comments on the 2nd draft version of the application guidebook regarding the proposed procedure for the introduction of new generic Top Level Domains. We have also submitted comments on the 1st version of the draft application guidebook. We thank ICANN for considering our remarks and the changes that were made in the 2nd draft application guidebook that are in line with our comments. However, we have noticed that ICANN did not take any action at all with respect to several comments we have made. In this letter we repeat some of our previous comments and we add new ones.

As mentioned in our first comments, the introduction of new Top Level Domains is not a subject that one should consider lightly. Therefore we support ICANN's decision to work out in detail some overarching issues. This means, however, that we will have to wait until the

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3rd draft version of the application guidebook to see how ICANN proposes to resolve these overarching issues. Therefore our comments mainly focus on those aspects that are not part of the overarching issues.

With this submission SIDN does not assume to react to all aspects of the Draft New gTLD Applicant Guidebook, but would however like to take the opportunity to provide input that will help in assuring a sound, fair and transparent process that supports the goals of increasing competition, choice and innovation, while maintaining or increasing accessibility, stability and overall quality of the Internet .

Our remarks are the following:

1. General

In general the guidebook is clear and well written. However, for newcomers it would be beneficial to have one single repository with additional information such as a single source for the consensus policies and the background of these policies. At this moment it is rather difficult for parties not involved with ICANN to understand the logic of the current ICANN web site and the materials that can be found on it. Perhaps ICANN could review the current gTLD website in order to make the material more comprehensible to newcomers.

2. Appeal possibility and procedures

Guidebook p6-1, 6-2

The procedure states that decision to proceed to evaluate an application is entirely at ICANN's discretion. ICANN provides no appeal on any ground – in fact explicitly excludes such appeals- and the applicant has to agree not to challenge the outcome of the decision of ICANN. This is in contradiction with existing common legal practice for organizations serving the public such as ICANN. SIDN understands that ICANN has to limit appeal possibilities to make the process manageable, however, the right balance between these aspects should be found.

Guidebook p6-3

Applicants are strongly limited in their rights by agreeing with the application procedure. This is in conflict with the goal to create a clear and uncontested procedure for gTLD applications, since the outcome of the procedure in this way finally will be at the sole discretion of ICANN.

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Guidebook p1-23

The guidebook lacks information on appeals procedure against decisions of Initial evaluation, extended evaluation, objections procedure, contention procedure, board evaluation, board negotiations. It is the opinion of SIDN that ICANN should not design a procedure without appeal possibility because this is in clear conflict with common legal practice for organizations serving the public such as ICANN. SIDN understands that ICANN has to limit appeal possibilities to make the process manageable, however, the right balance between these aspects should be found.

Guidebook p1-6

ICANN does not describe a process for the following situations:

- an objector is willing to settle with the applicant if the applicant changes a substantial part of its proposal. Or,
- the outcome of a dispute resolution process is that the applicant will prevail only when it changes a substantial part of its proposal.

Will ICANN oblige the applicant to stick to its original proposal, knowing that in this case the application will be rejected, or will ICANN allow the applicant to change its proposal and re-enter it in the appropriate phase of the application process? If ICANN allows the applicant to change its proposal could it indicate what parts can be adapted (i.e. string) and what parts cannot be changed (such as community based to open, see 1.2.2.3).

3. Annual fees

ICANN has reduced the minimum annual fee from \$75.000 per year to \$25.000 per year and simplified the "per transaction" fees. However, it is still unclear what the underlying ratio is for these annual fees, specially for the "per transaction" costs. ICANN should provide an explanation for these fees, similar as it has done for the application fee. Furthermore, future registries should know in advance what services ICANN will offer in return and under which conditions and terms.

Furthermore it is the opinion of SIDN that ICANN should differentiate the fee structure based on the type of TLD proposed. The current differentiation between ccTLD's and gTLD's only will not be sufficient because the gTLD category will probably become very large and differentiated and it will be very difficult to design a single fee structure that fits all type of applicants. Below we propose different categories of TLD's next to the ccTLD's for which we will propose a specific fee structure.

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4. Registry agreement and policy development

Although SIDN understands the current reasoning behind the gTLD policy development process and the way these consensus policies are included in the registry agreement, it is our opinion that this model cannot be a model for all new TLD's. The reason for this is that the current gTLD's serve a global community for which it makes sense to have a central and ICANN based policy development process. However, future TLD's might all have different purposes and serve different communities. Unless ICANN recognises this by creating different categories of TLD's with each a different contractual framework and a policy development process we foresee an unworkable policy development process within ICANN.

Below we propose different categories of TLD's for which we propose a contractual framework with ICANN, including the way the consensus policies should be treated.

5. Obligation to use ICANN accredited registrars only

The guidebook indicates that ICANN obliges successful applicants to market domainnames using –and only using– ICANN-accredited registrars. For many types of TLDs, such as small community TLD's and single owner (.brand) TLD's this would strongly limit competition among their registrars as few ICANN accredited registrars will be interested in small (but useful) TLDs. Among SIDN's 2,200 registrars for instance a very small number is ICANN accredited, although .nl is the world's fourth largest ccTLD. It is also one of the safest and most stable TLDs.

One of ICANN's objectives with the introduction of new TLDs is to increase competition, choice and innovation. ICANN should realize that in general the effect on competition of new products or services is strongly limited if clients are forced to use the same, narrow, distribution channel (ICANN accredited registrars in this case).

Below we therefore propose different categories of TLD's for which the obligation to use ICANN accredited registrars would be valid in some cases, but not for all

6. Different categories of TLD's

Several issues related to the introduction of new gTLD's can be related to the fact that ICANN only has two categories of new TLD's (cc- and gTLD's) with a subcategory for open and community based gTLD's. However, we believe that some of the new ideas for TLD's would benefit from an approach that uses multiple categories. The introduction of multiple categories of TLD's has been put on the table during the ICANN meeting in march in Mexico

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and we think it is an approach that needs further consideration from ICANN. Below we describe how these categories could look like.

Different categories of TLD's as proposed by SIDN

1. Single owner (e.g. for companies, brands or closed communities with one owner) for one company/organization that intends to have it's own TLD. Registrations are only provided by the owner of the TLD and no registrar is involved. In principle this is very similar to owning a domain name and providing registry services for the lower level domain names.
2. Socio cultural TLD (not for profit, community based) for socio cultural purposes (to be defined¹) with a non-profit purpose that provide registry services for a well defined community. Policies are defined by the community, in a similar way as the LIC plays for the ccTLD's. This means that socio cultural TLD's are not obliged to use the gTLD ICANN contracts and to follow the ICANN consensus policies. Multiple registrars provide registrations services to registrants in a competitive environment. Registrars can be accredited by the registry but are not necessarily accredited by ICANN.
3. Community TLD's (for profit, for well described/closed communities including companies) that are very much the same as the current definition of community gTLD's in the applicant guidebook. The only difference is that it is not necessary to use only ICANN accredited registrars.
4. Open TLD's (for all other types of TLD's) with the same rules as for the current open gTLD's,
5. TLD's for intergovernmental or treaty based organizations that are very much the same as the current gTLD's. However, the TLD is not obliged to follow the ICANN consensus policies

¹ Social with the meaning of "for the public". A social cultural TLD serves the public benefit. This should be reflected in the goals of the TLD, the management and the policies. There are many different definitions of the word cultural. However, an applicant for a socio cultural TLD should clearly state what the cultural benefits of a TLD are for the community.

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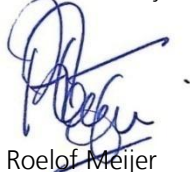
7. Preliminary report on competition and pricing

SIDN has taken notice of the ICANN report on competition and pricing. Our general opinion is that this report is too generic and does not reflect the complex economics related to the domain name system. We therefore do not comment on this report since we believe that this topic needs careful consideration, which is not stimulated with such a generic economic approach. We are looking forward to provide our comments to a more detailed and funded analysis of the economics of the domain name system and the impact of the introduction of new gTLD's on it.

I realize that ICANN has again received a large number of –sometimes quite elaborate– comments on 2nd version of the draft Applicant Guidebook.

I trust that you will judge these as proof of stakeholders' engagement and will use the input to design a process that will make the introduction of new gTLDs a success by adding value to the already unsurpassed medium the Internet is today.

Your sincerely,

A handwritten signature in blue ink, appearing to read 'Roelof Meijer', with a stylized flourish extending to the right.

Roelof Meijer
CEO SIDN