

# BITS

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FINANCIAL SERVICES  
R O U N D T A B L E

July 21, 2010

**Submitted electronically**

Re: Comment on Top Level Domains Draft Applicant Guidebook Version 4

Mr. Rod Beckstrom  
CEO and President  
Internet Corporation for Assigned Names and Numbers  
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Marina del Ray, California 90292

Dear Rod,

BITS<sup>1</sup>, the technology policy division of The Financial Services Roundtable, thanks ICANN for the opportunity to comment on its Draft Applicant Guidebook, Version 4, (DAG4) published on May 31, 2010. We offer both general and specific comments to the application processes and the Guidebook.

## **General Comments**

The following are general comments concerning the overall implementation of new generic Top Level Domains (gTLDs). In response to past DAG versions, we have commented on four areas – Trademark Protection, Economic Study, Registry/Registrar Separation and Root Scaling.

We applaud the efforts ICANN has taken to resolve the concerns we had with Trademark Protection. These processes include the Uniform Rapid Suspension (URS), the Trademark Clearinghouse (TM Clearinghouse), and the Post-Delegation Dispute Resolution Proposal (PDDRP). In addition, the new version of the Rights Protection measures included in DAG4 also provides additional protections. We believe the processes ICANN has proposed largely address our prior concerns. However, we remain concerned that even with these processes there will continue to be significant costs- particularly defensive costs – for corporations to battle cybersquatting and that ICANN must consider these economic costs before moving forward with the new gTLD program.

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<sup>1</sup> BITS provides intellectual capital and fosters collaboration to address emerging issues where financial services, technology, and commerce intersect for the member companies of The Financial Services Roundtable. The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through their Chief Executive Officers and other senior executives nominated by those CEOs. Roundtable member companies provide fuel for America's economic engine, accounting directly for \$84.7 trillion in managed assets, \$948 billion in revenue, and 2.3 million jobs.

With regard to Registry/Registrar Separation, we recognize the ICANN Board's two resolutions on March 12, 2010 addressing this issue. In Resolution 2010.03.12.17, the Board resolved, "...within the context of the new gTLD process, there will be strict separation of entities offering registry services and those acting as registrars. No co-ownership will be allowed." Although it passed this resolution to allow the new gTLD process to continue progressing, the Board did allow for further study with its Resolution 2010.03.12.18. In that resolution, it stated, "...if a policy becomes available from the GNSO, and approved by the Board prior to the launch of the new gTLD program, that policy will be considered by the Board for adoption as part of the New gTLD Program." We encourage the GNSO to continue studying this issue, with a particular focus on the possibility of a hybrid approach under which a registry can act in a limited fashion as a registrar. We believe this approach could be beneficial to community-based gTLDs both in terms of costs and in terms of ability to manage registrants.

With regard to the remaining two areas:

- **Economic Study** – In their June 2010 report, economics professors Greg Rosston of Stanford University, Michael Katz of the University of California, Berkeley, and Theresa Sullivan of the University of Michigan present a series of finding related to the new gTLD program. (See <http://www.icann.org/en/topics/new-gtlds/economic-analysis-of-new-gtlds-16jun10-en.pdf>.) While the report speaks to potential benefits, it also recognizes there may be significant costs – particularly with regard to cybersquatting defense costs. Further, the report goes on to suggest a number of additional research projects to understand fully the costs associated with the new gTLD program. We strongly urge ICANN to consider the potential costs identified in this study, and further to not make any final decisions on launching the new gTLD program without conducting the further studies suggested in the report.
- **Root Scaling** – We await a final SSAC report regarding the conclusions from the ICANN Board requested root scaling study. We suggest deferring the implementation of new gTLDs until this final report is available, and any issues it identifies are adequately addressed.

ICANN appears to continue to recognize that until these key issues reach conclusion and consensus among key ICANN constituencies, it is inappropriate to move forward with the opening of applications for new gTLDs. We do not believe these issues to be fully resolved and we fully support deferring the application process until they are.

#### **General Comments Related to DAG4**

We have been actively involved in the High Security Top-Level Domain (HSTLD) Advisory Group established by ICANN to develop a voluntary designation for high-security TLDs. We recognize that this is one component of ICANN's effort to enhance security within the Internet, and we applaud the efforts and results of the HSTLD group to date. To support the HSTLD Advisory Group's work, we have participated in the group within the context of the program being voluntary. In commenting on DAG4, however, we feel it is necessary to reiterate the positions we noted in our comments to DAG3. These include our belief that:

- ICANN should require high security verification for financial services domains. A voluntary program is not sufficient for domains, such as those offering financial services, where the likelihood of malicious conduct is very high and the nature of the services offered requires high security to protect the using public.
- We remain very concerned that an applicant's decision to pursue or not pursue verification "does not reflect negatively on the applicant nor affect its scores in the evaluation process" because we believe that:
  - For select gTLDs, including those offering financial services, lack of commitment to the verification program should result in a negative impact to the applicant.
  - It could be deemed impermissible for our "community" to file an objection to any applicant based on that applicant not committing to seek verification. We believe this presents a serious drawback to our community's ability to assure the safety of financial gTLDs.

We are very pleased to see that ICANN has included much more detail in DAG4 regarding enhanced requirement for background checking and financial verification of applicants. Likewise, we are pleased to see in section 5.4.1 (What is Expected of a Registry Operator) the requirements for a number of other key items. These include requirement for DNSSEC deployment, for Whois service, for maintaining of an abuse point of contact, and for continuity plans. Explicitly including these requirements in the Applicant Guidebook represents a significant step forward.

### **Specific Comments**

We preface each comment with the area to which it applies along with a reference to the specific section in which it is first noted. The areas on which we comment appear generally in the order in which ICANN discusses them in Module 1.

- 1.1.2.1 Application Submission Period/1.4.1 Accessing the TLD Application System/1.4.1.1 User Registration
  - These sections speak to registration of applicants into the TLD Application System (TAS), but it is not clear what process ICANN will use for other users who wish to review open applications for possible objection.
- 1.1.2.2 Administrative Completeness Check
  - The text states that ICANN will not post certain questions including some related to finances, architecture and security on TAS. It is unclear how this lack of information will affect potential objectors' ability to assess an application and its applicants.
- 1.1.2.4 Objection Filing
  - One section of this area suggests that the end of the objection period is based on the Administrative Completeness Check (i.e., "The objection filing period will open after ICANN posts the list of complete applications as described in subsection 1.1.2.2, and will last for approximately 5 ½ months."). Another section, however, suggests that it is based on the Initial Evaluation period (i.e., "The objection filing period will close following the end of the Initial Evaluation period (refer to subsection 1.1.2.3), with a two-week window of time between the posting of the Initial Evaluation

results and the close of the objection filing period.”. ICANN needs to clarify the objection filing timeframe.

- 1.1.2.7 Dispute Resolution
  - The text notes that Dispute Resolution Service Providers (DRSPs) will “...have access to all public comments received, and will have discretion to consider them.” It would seem more appropriate to provide these comments directly to the DRSPs, particularly for applications already subject to active objections.
  - We are particularly supportive of the requirement that “an applicant must prevail in all dispute resolution proceedings concerning the application to proceed to the next relevant stage.”
- 1.1.2.8 String Contention/2.2.1 String Reviews
  - String contention should include foreign language equivalents of applied for names. Thus, for example, “bank” and “banco” should be considered equivalent names.
- 1.1.6 Subsequent Application Rounds
  - Given the timings suggested in other sections (e.g., 5 ½ months for objection resolutions), is it realistic for ICANN to assume the launch of a next round of applications “within one year of the close of the application submission period for this round”?
- 1.2.1 Eligibility
  - Again, we note our support for the background checks noted in this area.
- 1.2.2 Required Documents
  - Overall, the requirements for documentation and endorsement are very positive, but we would suggest the ICANN consider asking for at least 3 years of audited financial statements versus just one for the “most recently completed fiscal year.” Multiple years of statements would serve to validate the applicant’s ongoing fiscal strength.
- 1.2.3 Community-Based Designation
  - 1.2.3.1 Definitions
    - We support the first three expectations for an applicant for a community-based gTLD as stated in this Section. The fourth expectation though (i.e., “Have its application endorsed in writing by one or more established institutions...” ) seems too narrow. We struggle to understand how one institution could be defined to comprise a community. Likewise, this wording seems unbalanced when compared to the requirements stated in Section “3.1.1 Grounds for Objection” that define a Community Objection as “...*substantial* opposition to a gTLD application from a *significant* portion of the community to which the gTLD string may be explicitly or implicitly targeted.” (Italics added for emphasis.) If it takes substantial opposition from a significant portion of the community to object, how is it possible that only one institution can represent a community in the application process?

- We suggest that during the Initial Review process, reviewers should be required to change the designation a “standard application” to a “community-based” application if it is clear the applicant intends the gTLD string to be targeted explicitly or implicitly at a specific community.
- 1.2.3.2 Implications of Application Designation
  - The text states, “Community-based applications are intended to be a narrow category...” It is not clear why ICANN would make that assumption.
- 1.2.7 Notice of Changes to Information
  - We recommend that part of the application should contractually or otherwise obligate the applicant to notify ICANN of changes.
- 1.2.8 Voluntary Designation for High-Security Zones
  - As noted earlier in this letter, we continue to believe ICANN should require high security for financial gTLDs. Minimally, the lack of high security should be grounds for a community or public objection.
- 1.4.1.2 Application Form
  - We suggest ICANN encrypt the application data in transit across the Internet (i.e., use HTTPS) and while it is at rest in storage at ICANN – at least for selected information such as financials.
- 1.5.1 gTLD Evaluation Fee
  - Can ICANN provide a table of the 2000 Proof-of-Concept Round applications? Are these again eligible for re-application?
- 2.1 Background Check
 

The text states, “Identified issues with an individual named in the application will be handled on a case by case basis...” We would prefer a more systematic approach given the importance of the background checks noted and the importance of only applicants of good background being approved. The risk of criminal activity within the Internet environment is growing and the mitigation of the risk of participation in the gTLD environment by criminal actors is a vitally important area for us.
- 2.2.3.1 Definitions
  - The “Security” section of this area is very minimalist. We recommend either direct inclusion of other security related requirements or at least reference to other areas of the Applicant Guidebook containing those requirements (e.g., to Section 5.4.1) be added.
- Attachment to Module 2, Scoring (Page A-3)
  - How will applicants be notified that there is communication to them from the evaluation teams available at the “online interface”? Will the evaluation teams notify applicants via email or other method to check the interface? It seems impractical to require the applicants to login continually to check for updates or questions from the evaluation teams.

- 3.1.1 Grounds for Objection
  - Please see earlier comments for 1.2.3 Community-Based Designation/1.2.3.1 Definitions noting our concern regarding the inconsistency between this section's requirements for a community-based objection versus for application.
- 3.1.2.4 Community Objection
  - We believe the text defining a community is well written.
- 3.2 Filing Procedures
  - The "Rules for Expertise of the International Chamber of Commerce" to be used for the Community Objections appear to be missing from the Attachment to Module 3.
- 3.3.4 Selection of Expert Panels
  - By definition, we find it hard to understand how a "panel" can consist of only one person. We believe each panel should consist of at least two individuals.
- 3.4.4 Community Objection
  - Please see earlier comments for 1.2.3 Community-Based Designation/1.2.3.1 Definitions noting our concern regarding the inconsistency between this section's requirements for a community-based objection versus for application.
- 5.4.1 What is Expected of a Registry Operator
  - As we note earlier in this letter, we believe this is an important section. It incorporates many requirements we suggested in our comment letters to earlier DAG versions. However, we do have one specific comment.
    - "Implement start-up rights protection measures" subsection – We like the concept of the Trademarks Rights Service. We suggest that rather than make either it or the Sunrise period optional, ICANN require both services at startup.

We appreciate ICANN's demonstrated commitment to refine the gTLD expansion plan, its willingness to accept comments on DAG3, and its willingness to consider our comments. If you have any further questions or comments on this matter, please do not hesitate to contact the undersigned or Paul Smocer, Vice President for Security of BITS at [PaulS@fsround.org](mailto:PaulS@fsround.org) or 202.589.2437.

Sincerely,

Leigh Williams  
President