

2009-10-07 DRAFT STEP BY STEP

The supporters of the the step-by-step proposal for new gTLDs are:

.BCN, .PARIS, .BERLIN, .HAMBURG, .KÖLN, .LAT, .NAI, .QUEBEC, .CYM, .EUS,
.GAL, .BZH, as well as CORE & ECO e.V.

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1. EXECUTIVE SUMMARY

This proposal addresses a significant problem faced by many ICANN stakeholders interested in new top-level domains. Ongoing delay in opening an application window for new top-level domains creates a critical burden on applicants, their supporters, stakeholders, investors and communities of interest.

The solution is to open an early application window via which applicants can pass through a streamlined version of the application process.

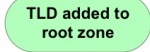
This process does not change the application fee, nor any of the requirements for all applicants, as set out in the draft *Applicant Guidebook*. If an objection is raised to any application, on the existing grounds contained in the *Applicant Guidebook* by an objector who has standing, the application would be held over until the full window opens.

Implementing the streamlined process dispenses with the need for a complicated evaluation process that incorporates contention and objection processes with auctions and extended evaluations.

The process would significantly enhance an applicant's chances of turning their plans into the reality of an operational top-level domain that serves their supporters, stakeholders, investors and communities of interest.

An applicant who is ready to submit to the streamlined process can use the Step-by-Step process, aware that objections will put them into the main application round. The onus is on the applicant to ensure, for example, that they have consulted with their communities, that they have support of their governments, that they understand any possible contention for their top-level domain string, and that they have funds in place to undertake the process and implement a new registry operation under the conditions of the proposed ICANN Registry Services contract.

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2. PROPOSED BOARD RESOLUTION

We propose the following ICANN Board Resolution:

Whereas the Board recognizes the work of ICANN stakeholders and staff in developing the policy and implementation plans for the introduction of the next round of top-level domains;

Whereas the introduction of new top-level domains has taken place in 2000 and 2004 without identifiable security or stability affects on the domain name system architecture;

Whereas there has been thorough and highly detailed examination of the introduction of a third round of new top-level domains through a comprehensive policy development process which confirmed ICANN's intention to introduce more top-level domains through a robust, objective and orderly application process;

Whereas there has been detailed discussion and public comment on two versions of the draft Applicant Guidebook from a wide range of stakeholders whose different views have been accommodated;

Whereas the additional four 'overarching issues' present some wide ranging questions that have been examined and on which accommodations and solutions have been proposed that should not delay the whole process;

Whereas there has been detailed discussion of the introduction of a fast track country code internationalized domain name process;

Whereas ICANN is prepared to consider applicants who can submit qualified applications immediately and who will be significantly disadvantaged by any further delays in opening the application window; it is therefore resolved that

The Board instructs the Staff to open an application window that allows applicants to apply for a new top-level domain using a streamlined threshold model for the assessment of those applications.

It is also resolved that should an objection be made on any of the existing grounds for objection contained in the Applicant Guidebook, by an Objector with Standing, the application would be held over until the opening of the full application window in 2010.

3. GETTING THE PROCESS RIGHT?

Step-by-Step supporters recognize, like many other stakeholders in the ICANN environment, the importance of getting the new top-level domains application process right.

Getting it right is not one point in time. The Step-by-Step process advocates a simplified (not simple), cost effective (not free), easy to understand (not push button) process that enables a range of applications to be assessed in a window beginning December 2009.

The second version of the Draft Applicant Guidebook sets out a clear path for the process, subject to comprehensive public comment and input by an array of interested stakeholders.

While the May 7, 2009 updated announcement of a firm date for the opening of an application round pleased the Step-by-Step supporters, it is clear from the public record on new top-level domains that there has been significant slippage in all deadlines set for the opening of the process.

Understanding that there are always delays in major change processes, Step-by-Step supporters believe that late in Q1 2010 will be too late for many already prepared applicants as they have waited on the promised opening of the next round since February 2006, when the new TLDs policy development process commenced.

4. WHY TIMELINES ARE IMPORTANT

Step-by-Step signatories believed the ICANN Board's June 2008 Paris implementation schedule for the application process after the GNSO Council's policy development was finalized. Even taking into account the inclusion of the overarching issues discussion that we address below, the delays are critical to some applicants.

The progress that has been made since June 2009 on the *Draft Applicant Guidebook*, the responses to the new TLDs Consultation Process on IRT and other issues such as malicious content are encouraging. The commitments made by the Board to continue with the process are important to potential applicants, most particularly in the ICANN Sydney meeting's public forum.

Applicants have made their investment plans, negotiations with suppliers and potential customers, and operational commitments on the basis of ICANN promises. Several may fail as a consequence of the delay in opening a new top-level domain name application round in Q1 2010, as they can no longer sustain their efforts over such an extended timeframe. This is not a competitive marketplace where only the best resourced can hold out. This process is about developing new communities, new content, new uses of the Internet, many of which are in test phases and are not yet commercial.

The failure or compromise of the application process presents serious risk to all applicants and it is an avoidable loss. This loss is addressed through the Step-by-Step proposal.

Even though there have been two separate rounds of new top-level domain applications, this application process is untested. ICANN may be confronted by an unbounded volume of applications. No one has a clear and true idea of the number of applications. Opening a small window for specific applicants mitigates against the effect of opening a floodgate on an

unprepared organization, most particularly with respect to analysing objections and string contention.

5. THE SOLUTION -- OPENING THE WINDOW

- Opening the window will create trust within the process of implementing a predictable cycle of new TLD application cycles;
- Opening the window will enable applicants to become operational with minimal risk to the integrity of the broader application process; and
- Opening the window will spread the load of evaluating a large number of applications in a bigger window. This is beneficial for ICANN's operational stability.

6. IMPACT OF KEEPING THE WINDOW CLOSED

- It impossible to mobilize and sustain resource on a moving promise of action when applicants cannot prepare serious solutions with a timeline which shifts with each ICANN meeting. Is this an effective outcome from a three year development cycle? No.
- While the ICANN process is currently optimized for complex applications with mass market business models, simpler applications by public interest/public benefit organizations, such as linguistic and cultural communities, are at risk of exiting the ICANN process. Is this beneficial for creativity and innovation? No.
- Stakeholders and investors may leave the process because they can no longer sustain their preparation activities. Is this good for ICANN's reputation as the distributor of publicly held resources? No.
- The reputation and integrity of businesses with their partner financial institutions, their investors, and their communities will be significantly diminished, if not lost altogether. Is this a good result for ICANN stakeholders? No.
- If there are further delays, businesses will realize their plans elsewhere. The idea of the DNS as the single unified root is one of the central reasons for ICANN's existence. This unifying concept is in danger if ICANN cannot expand the root in a logical and predictable way.

7. THE STEP-BY-STEP PROPOSAL IS POSITIVE FOR STAKEHOLDERS

- ICANN's registry contract provides certain levels of protection, however, city administrations and other "sponsoring" organizations may choose to provide a higher

level of protection.

- For example, the community of Catalan cultural institutions which set the policy for the .cat registry have decreased the likelihood of problems identified in the IRT discussions about defensive registrations and other trademark rights abuses.
- The constraints and accountability frameworks are different and more robust within a given community of interest. This is the case in the management of the TLD and the name registration policies at the second and third levels.

8. STEP-BY-STEP ADDRESSES THE OVERARCHING ISSUES

The new gTLD Consultation Sessions in New York and London have addressed many of the concerns of a wide variety of stakeholders. CORE has provided detailed commentary which is incorporated below.

Significant work has been done through the IRT process to address concerns around the minimization of end user confusion. These issues are ones that can be addressed in "post application process" work and shouldn't have a direct bearing on the application process itself. This should be incorporated in any draft registry contract that is posted for applicants as part of the application process.

Step-by-Step supporters recognize the importance of each of these overarching issues and the efforts of the Board to ensure these issues are addressed correctly. We have dealt with each in turn and illustrate that none of these issues should delay the opening of an application window for new TLD applicants by December 2009.

ISSUE I: INTELLECTUAL PROPERTY AND TRADEMARK PROTECTION

Representatives of Step by Step signatories have attended all of the new TLD Consultations Sessions. They have had direct input into the development of appropriate and implementable mechanisms to protect the rights of brand owners to balance the needs of those who want to implement new top-level domains. We understand that the ICANN Board needs to balance the interests of a diverse set of stakeholders. The fundamental goal of new TLDs is to allow the DNS to adapt to evolving needs of existing and many new users. At the same, the process needs to remain true to the foundation stone of a functioning and efficient DNS. That is ICANN's primary responsibility. The following comments address each of the ideas contained within the IRT Working Group's report.

IP Clearinghouse

We support the creation of a cross-TLD mechanism allowing both exclusion of registrations and automated monitoring of registrations for IP rights holders. CORE proposed, as early as 2000, a

“trademark-exclusion mechanism” across TLDs as part of its .nom application (the .tmx service). The current proposal for an IP Clearinghouse has the benefit of trying to implement these concepts. Our support comes with the following additional suggestions:

The *Globally Protected Marks List* is a worthy idea that is impossible in practice. An enormous amount of time has been spent trying to devise a protection mechanism for famous trademarks. However no globally acceptable set of criteria has been agreed upon. The criteria proposed by the IRT are useful but also as arbitrary and prone to endless discussion as any alternative set. As the IRT has experienced such difficulty in finalizing a globally-agreed GPML’s set of criteria, a simpler and equally effective standard should be established to just protect specific, for example, opt-in trademarks. We urge the IRT to consider past experiences in which IP claim systems, watch systems, and registration policies interfered with each other so markedly that it made protection meaningless.

We remain unclear about whether watch services are compatible with the IP Clearinghouse proposal and we question how compatible the proposal will be with existing services. While there may be a need for a centralized database of rights, it is less clear that there is a need for a centralized provision of (paid) services from it. We urge ICANN to consider the cost and competitive consequences of such a system.

We appreciate the list of other rights that may be included in the IP Clearinghouse concept and we consider that Designations of Origin must be treated for the purposes of the IRT Report in the same way as registered trademarks. While unregistered trademarks, family and personal names, shop signs or other categories might be protected in certain legal systems and might be relevant to certain new gTLDs, designations of origin are a global system with equivalent value and risks. Registration procedures for designations of origin might be different than those needed for trademarks but all the mechanisms described in the IP Clearinghouse (and also the Uniform Rapid Suspension Procedure) should be available.

Uniform Rapid Suspension Mechanism

The proposed URS sets a higher standard than the UDRP, which we support in principle. However, the URS must not subordinate the rights of communities to their own names, or linguistic or cultural institutions to their own names, or cities, regions, and countries to their own names, to the claims of holders of marks in some foreign jurisdiction. The URS must not reduce policy differentiation between ICANN market products, and in particular, it must not simply raise the bar for .com-like products other than Verisign’s.com.

Thick WHOIS

The purpose of the “thin WHOIS” model is to allow registrars to create services that would otherwise only be possible if offered by a registry. As few registrars have marketed sponsored registries, and few registrars have shown interest in marketing community-based, or more generally, policed registries, we see no loss of utility in a thick WHOIS. We concur with the recommendation, though for reasons other than those of the IRT Working Group.

Use of string confusion algorithm

We have already expressed our reservations about the usefulness of this mechanism. The relevant question is not similarity but confusion and this cannot be determined by an algorithm but only by human appreciation. The use of the algorithm would raise issues in cases such as .com and .co. Conceptual construction, meaning and use are as relevant as visual similarity. For

example, .coop can perfectly coexist with the Italian supermarket brand Coop. For even greater conceptual differentiation and unlikely confusion, .cat and Caterpillar's "CAT" brand can also coexist. We only hope ICANN does not spend more time and resources on this tool that has limited practical value and the results of which are open to significant challenge.

ISSUE II: ECONOMIC ANALYSIS

While we support the conclusions of the Compass Lexecon study, we have additional comments to make.

There is a need for new top-level domains.

It was suggested that there should be visible demand for the registration of individual new domain names. However, this is not the correct question to ask in the implementation stages of a new top-level domain application process.

Individual interest in certain domains is much less important than the organization of the name space. For instance, the domain "champselisees.paris" has much greater value to the Paris community if all well-known local place names under .paris resolve to useful information. The domain "architect.berlin" has greater value if the domain "hairstylist.berlin" also resolves to the neutral list of sources where the respective service is available. The domain "bankofamerica.bank" has inestimable practical value for security and consumer protection, if and only if, all domains under .bank are strongly vetted and resolve to the only bank that can be expected to trade under that name. All this is possible only if registration and usage policies are implemented in the TLD so that the public can easily understand the guarantor of those policies.

As the benefits of new TLDs outweigh the costs, we must conclude that there is a pressing need for an organized, ongoing process that enables the launch of new TLDs. Recognizing a need to create new content and technical innovation, real applicants with business plans and new ideas have come forward to be part of that process. This means that we are witnessing tangible and pressing demand.

To be clear, the debate is not about whether there is demand for new TLD registrations at the second level that couldn't be satisfied with registration in existing TLDs.

The issue is whether there are needs that can only be answered through introducing new TLDs. In some cases, we are dealing with needs that have gone unanswered for a long time. For example, applicants who want to run TLDs that serve very specific communities of interest along linguistic and cultural lines. Locally focused domains make no sense under existing generic TLDs when the desire of the user is for locally relevant content and services. Proximity to thematic or semantic or linguistic intent brings new users to the DNS that expands the base of registrants not just duplicating the same base of registrants in existing TLDs.

The reverse argument is that registrants have indeed registered in the generic space but that they have not populated the .com/.net/.org space with relevant content. Registrants didn't feel compelled to register the domain name until .cat was implemented which is demonstrated by new users/new content/new whatever.

ISSUE III: STABILITY & SECURITY ISSUES

Step-by-Step supporters are aware of the stability and security issues which have been addressed through the new TLD Consultation Sessions and support initiatives that increase the predictability of the Internet. We appreciate that prudent operational best practices are beneficial for the registry operator, create the greatest level of trust for the registrant and for end-users of the name space and present the lowest cost for registrars.

Further, Step-by-Step supporters are aware that registries are interdependent and that inter-registry communication and cooperation are mandatory.

ISSUE IV: MALICIOUS CONDUCT

Step-by-Step supporters are all keenly aware of these issues, however, we wish to point out the following:

Step-by-Step supporters do not seek to offer "rapid update" or "instant publication", and consistent with the .cat experience, will impose a delay (pre-validation) on registrations, and a delay (post publication) on rrset (name server, address record) modification, for at least the first two years of operation, prior to switching to post-validation. The value of this policy to prevent abuse has been proven by the operation of .cat. Step-by-Step supporters are willing to accommodate legitimate load balancing requirements, for example, content delivery networks but not temporal incoherence exploits, such as fast flux hosting networks.

Step-by-Step supporters are also keenly aware that a better course of action for registry operators offering registration through third-party registrars is active engagement in the "white hat" detect, remediate and prosecute communities. Furthermore, active engagement in the development of Consensus Policies governing the conduct of registrars and registries, registry brand protection (or policy enforcement), and that the sum of these areas of activity are the best means to detect, target, and, without signal, eliminate malicious actors and their conduct.

9. MAPPING SBS TO ICANN'S MISSION AND CORE VALUES

ICANN is a not-for-profit corporation dedicated to coordinating the Internet's addressing system. Promoting competition and choice is one of the principles upon which ICANN was founded. It is doing that in a world of a growing population of 1.5 billion Internet users where diversity, choice and innovation are paramount. The Internet has supported huge increases in choice, innovation and the competition of ideas and expanding new gTLDs is an opportunity for more.

Step-by-Step supporters are among those who want their own cyber space through which they can communicate in their own languages, develop their own content and implement new business ideas beyond the existing top-level domain name registries.

The Step-by-Step proposals are consistent with ICANN's Core Values. The most important elements of ICANN's Core Values confirm the Step-by-Step supporter's contention that it is possible to open a window of opportunity for applicants to submit straightforward applications for new top-level domains.

In performing its mission, the following core values should guide the decisions and actions of ICANN:

1. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.

There are no technical impediments to expanding the domain name space. This has been proven by the introduction of .aero, .asia, .cat, .coop, .info, .jobs, .mobi, .museum, .name, .pro, .tel and .travel.

2. Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to those matters within ICANN's mission requiring or significantly benefiting from global coordination.

Opening an early window for ready applicants would unleash another round of creativity, innovation and information flow. Whilst we can only speak in detail for the Step-by-Step supporters, it is common knowledge that there is interest in addressing the music, movie, sex, publishing, motoring, banking and networking sectors. Not surprisingly many potential applicants are holding on tightly to their new ideas precisely because of the way in which the current application round is structured as a big-bang solution.

3. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.

This has been a consistent theme throughout the policy development process as evidenced by the wide range of participants in the process, the involvement of the GAC, and the numbers of new stakeholders. What is missing is the ACTION on opening a new application window that will enable the practical realization of so much promise. The development of a fast track for internationalized domain names for country code is more evidence of the attractiveness of enabling geographically, culturally relevant content to be expressed in scripts other than ASCII.

4. Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment.

Our arguments about demand for new TLDs, competition and opportunities for self-expression are set out in the following sections. We commend the findings of the Compass Lexecon study and support its findings that "ICANN's proposed framework for introducing new TLDs is likely to improve consumer welfare by facilitating entry and creating competition to the major gTLDs such as .com, .net and .org. Like other actions that remove restrictions on entry, the likely effect of ICANN's proposal is to increase output, lower price and increase innovation." However, as in most situations where there is some market impacts, timing is crucial. The opportunity to remove restrictions to entry is only one part of the puzzle and we address other elements about demand and consumer welfare in the following sections.

5. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.

We believe that in some analysis of the demand for new top-level domains there is confusion about what demand is and where it fits in this process. We have set out the Step-by-Step arguments about demand in the sections above.

6. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.

The volume of consultation needs no repetition. This is particularly true in the “Overarching Issues” discussion which the Step-by-Step team support and address in our proposed solutions.

7. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.

The decision to introduce new top-level domains was made in 2000, again in 2003 and once again with respect to the implementation latest policy development process.

8. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.

It is clear from the positions of the Step-by-Step supporters that ICANN hasn’t acted quickly enough in opening up a new application window. It has been delayed again by the introduction of the “overarching issues” stream of discussion. Any further delays could sound a death knell for some applicants who can no longer justify to their investors and supporters (many of whom are volunteers) that a new application window will open within a reasonable time.

9. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.

Step-by-Step supporters recognize that ICANN needs to be responsive to a diverse array of stakeholders. ICANN’s effectiveness is also bound up in doing what it says it is going to do when it says it’s going to do. Stakeholders make important plans based on those promises and predictions. Failure to meet deadlines, over long periods of time, unfairly prejudices a significant sector of the stakeholder community concerned with the “openness, change and innovation” that will take the global Internet to the next level of development.