

Comments on the new gTLD Proposed Final Applicant Guidebook

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1. Statement of Interest

AFNIC is a not-for-profit, multistakeholder organization founded in 1997 managing the French country-code top level domains *.fr*, *.re*, *.tf*, *.wf*, *.pm* and *.yt*. AFNIC is a member of ccNSO and a founding member of CENTR, the European regional organization of ccTLDs gathering 57 ccTLD managers.

In September 2009, AFNIC in cooperation with CORE, was selected by the City of Paris to provide back-end registry services for the *.paris* new gTLD project. In the context of future new gTLD applications, AFNIC may also be involved with providing services and support to other applicants.

2. The new gTLD process should be ready for launch in 2011

We welcome this opportunity to comment on the *Proposed Final Applicant Guidebook*.

In our comments on version 4 of the Draft Applicant Guidebook¹ (v4) we stressed that changes introduced then, addressed our main concerns and allowed for the launching of the application round in the near future. Although new original material added to version 5 (v5) will need adjustment prior to launch (see below, sections 3), we reaffirm our belief that the Applicant Guidebook can be finalized for a launch of the application process along the lines of the “launch scenario” put forward by the ICANN Board².

The recently published conclusions of the *Economic Considerations in the Expansion of Generic Top-Level Domain Names - Phase II Report* do not oppose this outcome. However, the theoretical framework that has been developed ought to inform the design of evaluation processes that ICANN has yet to detail, or that it may eventually find necessary (see below, section 4).

¹ <http://forum.icann.org/lists/4gtld-guide/msg00124.html>

² <http://icann.org/en/topics/new-gtlds/new-gtld-work-plan-28oct10-en.pdf>

3. Applicant Guidebook: we are almost there

To the question “*When do we know we are there?*” put before the GAC by a distinguished member of the Board this week in Cartagena, our answer would be: when the following two new original additions to the latest version of the Guidebook are either removed, adjusted or clarified: the enforcement of Service Level Agreements (SLA) through a new ICANN-operated monitoring system, and the batching of application evaluation.

Enforcement of Service Level Agreements

Significant changes have been made on this topic in the latest version of the Application Guidebook. For instance, ICANN intends “*to build an SLA monitoring system*”³ for key registry services which does not fit as proposed with the current contract compliance provisions.

In effect, the proposed system would replace roundtrip measurements at the Registry’s door, with a measurement made from somewhere over the Internet, therefore adding to the measure many variables that are beyond the control of the Registry. In the meantime, the Registry remains accountable to the same SLA thresholds.

It is regrettable that ICANN has unilaterally introduced this high-impact change into the Guidebook without consulting the relevant stakeholders earlier in the process. Our understanding of the unpublicized rationale is commendable, yet the solution does not lay in tying contractual compliance to this independent ICANN SLA monitoring. We are looking forward to the outcome of direct engagement with staff on this Issue.

Batching of application evaluation

Module 1, Section 1.1.2.3 “Initial Evaluation” introducing the concept of a batching of applications has been significantly rewritten. Yet, it still fails to provide any precise information on how evaluation priority would be determined. If the random selection envisioned in v4 has aptly been abandoned, v5 only states that “*this process will be based on an online ticketing system or other objective criteria*”.

What does “an *online ticketing system*” means? How is it an objective criterion for prioritization? What other criteria is ICANN considering?

We are encouraged that ICANN is implementing, if partially and under limited circumstances, the concept of an incremental approach to the processing of applications. We are also well aware of the difficulty in reaching the right fairness-to-efficiency balance when designing such a process. This is why we have proposed in earlier comments⁴ that ICANN investigates the possibility of specializing its evaluation process by groups (or batches) of like-featured applications. Although ICANN has done a lot of work in summarizing and analyzing comments, we still believe that this specific

³ Specification 3 of the Registry Agreement, Proposed Final Applicant Guidebook.

⁴ <http://forum.icann.org/lists/4gtld-guide/msg00124.html>

proposition has not received adequate attention. For instance, building on the theoretical findings of the report *An Economic Framework for the Analysis of the Expansion of Generic Top-Level Domain Names*⁵, we argued that ICANN “*would realize and prove the value of its new gTLD program by unleashing initiatives that are of evident ‘net social benefit’*”. Phase II of this economic study has just provided new objective grounds to support such an approach. We do share ICANN’s belief that “*over time, the market and community interests will sort TLD types*”⁶ and this is what the application window will provide. Once applications are received, these TLD types will have emerged.

4. Economic studies: a framework for post-application processes

Although economic studies are likely not to predict the outcome of liberalization, we believe that the numerous economic studies ICANN has conducted – of unequal value – have, overall, provided the community with sufficient data and insight on the matter at hand.

Although the latest installment of these studies⁷ would deserve some challenge, and although it did not – and did not intend to – establish whether the overall benefits of the new gTLD program would outweigh its overall costs, we believe it reinforced the analytical framework that ought to inform the processing of new gTLD applications.

Among the main findings, we suggest ICANN take seriously these propositions in the design of its post-application processes:

- “*forward, the gTLDs most likely to attract defensive registration by owners of valuable brands are standard gTLDs with open registration policies*” (p. 73)
- “*a closed gTLD devoted to a single company would likely present few infringement problems because of the ease of identifying and locating the perpetrator of the infringing activity. Companies that apply for a TLD using their own brand or company name, and that do not face string contention, are thus unlikely to generate large external costs*” (p. 57)
- “*gTLDs that offer new features or are significantly differentiated from existing TLDs have a greater chance of providing competition*” (p. 8)
- “*Are there other ways to achieve the primary objectives of the proposed gTLD, such as: (a) second-level domain names; (b) certificates; (c) software tags; and (d) filters that look at content beyond the URL and any tags? How do the alternatives, if any, compare in terms of their likely effectiveness in achieving the primary objectives of the gTLD and the costs they would impose on different members of the Internet community? How will the comparison of the gTLD and alternative solutions change over time as technological change occurs?*” (p. 22)
- “*There may, however, be a benefit from gTLDs targeted at specific geographic areas or cultural communities that have a value that these other techniques cannot create. Specifically, such TLDs could provide psychic benefits of community recognition and respect.*” (p. 40)

⁵ <http://icann.org/en/topics/new-gtlds/economic-analysis-of-new-gtlds-16jun10-en.pdf>

⁶ Staff’s analysis of DAGv4 Comments, p. 18 (<http://icann.org/en/topics/new-gtlds/summary-analysis-agv4-12nov10-en.pdf>).

⁷ <http://icann.org/en/topics/new-gtlds/phase-two-economic-considerations-03dec10-en.pdf>