

On behalf of Domain Dimensions, LLC, I would like to commend the ICANN Board, staff, and community on all of the hard work that went into preparing the Proposed Final New gTLD Applicant Guidebook. The efforts have been enormous and the results show it. The time has come now to make the final changes – dot the Is and cross the Ts – and move forward with the process.

ICANN's credibility is at stake. More than 30 months ago, the ICANN Board in Paris approved the policy of introducing New Top Level Domains. After five full draft applicant guidebooks, hundreds of committee meetings, thousands of pages of supplemental materials, and hundreds of thousands of e-mails, the time has come for ICANN to say enough is enough.

The Board should proceed with the timeline work plan that it approved and published on October 28, 2010 <http://www.icann.org/en/topics/new-gtlds/new-gtld-work-plan-28oct10-en.pdf>. The Board gave itself 30 more days after the Cartagena meeting to work out the final issues (longer if its willing to do so during the Communications Period). Let's get on with it.

The following are some specific comments on some of the issues still being discussed.

#### 1. Limited Round

ICANN is, in fact, recommending in PFAG that it introduce New TLDs in discrete, limited rounds. New TLDs will not be able to be “registered” at any time by anyone in the world as we currently have with second-level domain names. There will be a discrete window to apply for these names that will open and close. All applicants must pass a background check, meet the stated qualifications, establish that they have the technical ability to run a registry, and meet all financial criteria. They also will have to have a minimum of approximately \$1M to file a New TLD application. Therefore, this round will be limited in duration, to a discrete group of entities that can meet very limiting qualifications.

Furthermore, due to the nature of the evaluation, objection, and approval processes, all of the names that are applied for this round will, in practice, enter the root in batches or phases over a lengthy period of time.

As ICANN is committed to further rounds of New TLDs, it could use the experience of this round and make any necessary adjustments prior to future rounds as recommended in the study.

#### 2. Economic Studies

ICANN apparently now has spent \$2 million dollars on economic studies. A clear

conclusion of all of these studies is that there is a very high probability the benefits of New TLDs will exceed their costs. There is nothing in the studies that should cause further delay in the introduction of New TLDs or change the implementation plan for New TLDs.

Some anti-New TLD advocates have pointed to a point in the report that says that trademarks rights need protection in the New TLD rounds to keep attendant costs down. I'm not sure why we needed to spend \$2 million dollars to find what we had in the GNSO policy. Trademark rights should be protected and as mentioned below, the new TLD space will be the safest from a trademark perspective than any other existing TLD.

### 3. Trademark Protections

The ICANN community has worked hard to achieve an important series of trademark protections in the upcoming round of New TLDs, including a procedure to object to applications for infringing top level names, a thick Whois requirement, the URS, the Trademark Clearinghouse, a mandatory Trademark Claims or Sunrise process, and a Post Delegation Dispute Resolution Process. All of these will make New TLDs a much safer place for trademark holders than existing gTLDs and ccTLDs, including the recently introduced IDN ccTLDs. In my opinion after making some final discrete tweaks that arise out of this public comment period, the trademark overarching issue should be considered resolved.

Based on some of the public comments I have heard and read, some folks in the trademark community have backed away from their support of the compromises that were reached by the Special Trademark Issues (STI) group, as reflected by the Intellectual Property Constituency's support at the GNSO. This is unfortunate and not the best way forward after all parties participated in the STI in the spirit of compromise.

If there are some minor tweaks based on proposed changes made by ICANN (e.g. URS word length, URS panelist review in case of non-response, PDDRP definition of affiliate), let's get them in and wrap up this issue.

### 4. Recommendation 6

I am generally supportive of the treatment of Recommendation 6 in the PFAG. With that said, ICANN should examine where it is at odds with positions of the Community Working Group and the GAC on this issue and make any necessary minor updates.

### 5. Length of the Application Window

The length application window was neither included in the PFAG nor in the

GNSO policy behind New TLDs. It should be no longer than 30 days for a number of reasons. First, there is no need for such a long window in that the vast majority of applicants would wait for the end of the window to apply anyway. If there is no procedural benefit to applying early, why would an applicant pay \$185,000 to ICANN early and risk the potential disclosure of its string? If there is any procedural benefit, then every applicant would apply immediately. If most would apply at the end or the beginning of the period anyway, then we might as well keep the window open for a short period of time.

Second, ICANN first announced the introduction of New TLDs in June of 2008. Based on that announcement, many folks started planning for New TLDs at incredible expense. They have been waiting -- some more patiently than others -- to apply. It would be quite punitive to these applicants to tack on another two-month period of unnecessary waiting.

Finally, the only argument I have heard for a longer period after a full four-month communications period is that someone might hear about New TLDs for the first time during the communications period and need longer to apply. The fallacy in that argument is that it is a slippery slope -- if you hold the window open for a year maybe somewhere somebody will hear about the opportunity and be able to apply then -- where do you draw the line? The costs to folks who have been planning for the application round far exceed the cost of someone not applying because they had a five-month period vs. a seven-month period to apply. Finally, ICANN is planning on having multiple rounds of New TLDs. Thus, if a person misses this round, they always could apply in the next round.

If ICANN is convinced that an application window longer than 30 days is necessary for some unexplained reason, then there is no reason why ICANN can't start accepting applications during the communications period as long as the deadline is after the close of the period. For example, the first 60 days of the application window could coincide with the last 60 days of the communications period, still giving applicants a full 30 days after the close of the communications period to apply.

Let's stop punishing applicants by sucking them dry of all of their working capital by creating a seven-month communications/application period followed by a minimum eight-month review period piled on the years that they already have been waiting.

## 6. Base Registry Agreement

I support most of the suggested changes that have been raised by the Registries Stakeholder Group in its comments to the base agreement, and suggest that ICANN use the same consultative process that it used after DAGv.4 to resolve the remaining issues during the next few weeks.

## 7. Malicious Activity

I support and commend ICANN on its efforts to address malicious conduct in PFAG and believe that the recommendations made prior to and contained in the PFAG will be extraordinarily helpful in combating malicious conduct in the New TLD space and that this issue should be considered resolved. I am cognizant that New TLD names likely won't be registered for over a year. Combating malicious conduct is a long-term job and the community has tools to address any issues that might arise as we move forward.

## 8. Conclusion

Overall, due to the obvious hard work by the ICANN Board, staff, and community, the PFAG is very close to final form. We should make any last changes and issue the Applicant Guidebook forthwith.