

Comments on the Applicant Guidebook – April 2011 Discussion Draft

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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.

We welcome this opportunity to comment on the *April 2011 Discussion Draft* version of the Applicant Guidebook (DAGv6).

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2. Batch Processing Priority (Module 1)

Module 1, Section 1.1.2.5 “Initial Evaluation” introduced in DAGv4 the concept of a batch processing of applications. After two revisions of the Applicant Guidebook, it still fails to provide any precise information on how evaluation priority would be determined beyond the notion that “*this process will be based on an online ticketing system or other objective criteria*”.

Although such a batch processing priority may not require to be fully defined before the launch of the new gTLD process, ICANN ought to clarify as soon as possible how it intends to handle such prioritization.

Following our earlier suggestions¹ we are encouraged that ICANN agrees in its analysis of DAGv5 comments² to the need for “*more attention to “specializing” the evaluation process by groups or batches of like-featured applications*”. We look forward to seeing

¹ <http://forum.icann.org/lists/4gtld-guide/msg00124.html> and
<http://forum.icann.org/lists/5gtld-guide/msg00051.html>

² <http://icann.org/en/topics/new-gtlds/summary-analysis-proposed-final-guidebook-21feb11-en.pdf>

the results of how this solution is being “*contemplated to gain efficiencies in the process while allowing a fair and consistent evaluation across the set of applications*”.

3. Additions to Evaluation Criteria (Module 2)

Additional details provided to the Evaluation Criteria (Attachement to Module 2) are welcome. They mostly provide with a higher degree of clarity in terms of what is expected from applicants.

However, for Question 39 “Registry Continuity”, DAGv6 advises that applicants provide “Definitions of Recovery Point Objectives and Recovery Time Objective”. In the absence of a standard definition of these concepts, ICANN ought to provide clarification as to what is precisely expected from the applicant.

4. Additions to the Registry Agreement and its Specifications (Module 5)

Art. 2.8 - Protection of Legal Rights of Third Parties

A new provision reading “*Registry Operator shall take reasonable steps to investigate and respond to any reports (including reports from law enforcement and governmental and quasi-governmental agencies) of illegal conduct in connection with the use of the TLD*” creates a new obligation that is resource intensive and potentially overreaching.

The scope of this obligation to investigate and respond ought to be better defined as well as and its associated notion of illegal conduct (e.g. illegal content on the supported website, trademark infringement, public order offence etc.).

Today, with respect to *.fr*, AFNIC allows anybody to report whether a domain is considered to be illegal in its self or harmful to public order pursuant to the French penal code (e.g. justifying or denying crimes against humanity, inciting racial discrimination, hatred or violence, child pornography, etc.). Yet, so far, among the numerous reports received, and despite the resources assigned to their processing, the vast majority did not qualify for any action on the part of AFNIC, as a registry, under the legal terms metionned above. Most of the reports were actually misplaced trademark infringement claims or content takedown requests.

Art. 2.15 - Cooperation with Economic Studies

The scope of the data to be requested to the Registry Operator, including “*confidential data*” should be better defined. Precisions on the use, storage and destruction of such data by ICANN or its designee should also be discussed.

We would like to inform ICANN that under French law³, entities based in France which seek to transfer personal data (such as name, address, telephone number and email address) to a non EU-based entity must comply with requirements that strictly regulate such transfer and require adequate protection of this data (storing, processing, anonymization etc.). As a consequence, under French law, such provision of the registry agreement may not be sufficient to ensure full disclosure of data to ICANN. Additional guarantees and contractual arrangements may be required.

Specification 4 - Cooperation with Economic Studies

Specification 4 requires that Registry operators provide detailed information about the registrants including personal information. We would like refer ICANN to our comment on DAGv3⁴ to inform ICANN that this provision is not applicable as is under the French legal framework mentioned above.

5. Appreciation to ICANN, Final timeline

Finally, we would like to take this opportunity to express our appreciation to the ICANN staff, Board and community for the continued effort in try to bridge differences in approach and interests, while aiming for the launching of an orderly, efficient and beneficial new round of gTLD applications.

We believe the timeline proposed by the Board in San Francisco to be realistic and achievable. There will need to be refinement of the process along the way, including after the launch of the application round. This is understandable by all applicants and understood by many.

What prospective applicants now need, above all, is the Final timeline.

³ Act N°78-17 of January 6, 1978 on Data Processing, Data Files and Individual Liberties amended by the Act of August 6, 2005 relating to the Protection of Individuals With Regard to the Processing of Personal Data

⁴ <http://forum.icann.org/lists/3gtld-guide/msg00081.html> (section 5).