

# ALAC on New TLDs

## From ICANNWiki

### New Generic Top-Level Domains

*A Draft ALAC Response to the Questions Posed by the GNSO* The Bold text below comes from the Terms of Reference approved by the GNSO Council on 2 December 2005. The plain text is an attempt to answer the GNSO's questions.

ICANN has set a deadline of January 30 (extended to 31 January 2006) for first-round papers on the subject. Material from this wiki page will be entered as a submission shortly before that deadline.

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## 1. Should new generic top level domain names be introduced?

**a. Given the information provided here and any other relevant information available to the GNSO, the GNSO should assess whether there is sufficient support within the Internet community to enable the introduction of new top level domains. If this is the case the following additional terms of reference are applicable.**

COMMENT:

New top-level domains enhance the ability of users to identify themselves and the content they create on the Internet. They allow natural communities to express their common interests under a common moniker. They allow persons, companies, and communities from a variety of backgrounds, cultures and languages to identify themselves and their content with an appropriate label that has meaning to them.

ICANN should not “designate” new TLDs but instead should accept and evaluate applications submitted from members of the worldwide Internet community to create and operate new top-level domains.

The questions “how many” and “with what frequency” do not and should not have precise answers. ICANN should accept all applications from qualified entities that either benefit the public interest or enhance competition in the registration of domain names. ICANN should accept and evaluate the applications on their merits, against objective criteria, as soon as practicable given the natural constraints of ICANN’s time, budget, and available personnel. Rather than accept applications at set times, the application process should be a standing part of ICANN’s work. Applicants should be free to submit applications whenever they believe they have completed an application that meets ICANN’s published, objective criteria.

For the foreseeable future, the primary constraint on the introduction of new TLDs will not be technical limits on the number of entries in the root zone file but ICANN’s ability to review and approve applications with its available personnel. Even if ICANN charges an application fee designed to cover the costs of additional evaluation staff, a new evaluation process will move slowly at the beginning due to a lack of institutional experience with the process. Over time and with experience, ICANN should be able to move to a process that approves qualified applicants within a reasonable time, in a predictable manner, and at a reasonable cost to applicants that covers ICANN’s actual time and expense.

Despite long-time stasis, the question is backwards. Introduction of new generic Top-Level Domains -- part of ICANN's initial charter -- should be the default response, to be delayed further only if there are compelling reasons against it.

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I used to remember all the domain names of interest a few levels deep until the recent proliferation of extra names. Then again, i still do know all those that count. Although there are bureaucrats who would like to leave their stamp on the internet, most users will stick with using .com .net and .org for the most part.

So now with .museum, the Smithsonian has to fork out for another domain registration and Microsoft has to shell out for .biz. So what will happen with more names? Probably more of the same – companies or organisations who are jealous of their trade names will just accumulate more domains and everybody else will scramble to get what's left in the .com .org .net and country level spaces.

it seems to me that what most of us want to use are the original generic unrestricted TLDs and given the choice, that's what we will continue doing. It seems to have worked well so far and i for one am not sure why we need to change anything.

If we do need some new TLDs though, I would like to be the first to suggest: .terror .crime .bureaucracy and .everything (i imagine that these may be in the sponsored category).

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I think that it is not the business of ICANN to determine whether new TLDs are useful - it is the business of the applicants, that take their risk, and either fail or succeed. Moreover, the line of reasoning "most people will go for net/com/org anyway" fails to see the many non-business reasons why some people would like to establish a new TLD. In particular, ICANN should pay more attention to the political and social implications of establishing a cultural presence on the Internet (see .cat), which are likely to be the main driver of new applications. Also, there might be imaginative uses for the DNS (.name, in a certain way, was one of them) that are not covered by the traditional, unrestricted, first-come first-served TLDs. (--vb.)

## 2. Selection Criteria for New Top Level Domains

**a. [Taking into account ] the existing selection criteria from previous top level domain application processes and relevant criteria in registry services re-allocations, develop modified or new criteria which specifically address ICANN's goals of expanding the use and usability of the Internet. In particular, examine ways in which the allocation of new top level domains can meet demands for broader use of the Internet in developing countries.**

**b. Examine whether preferential selection criteria (e.g. sponsored) could be developed which would encourage new and innovative ways of addressing the needs of Internet users.**

**c. Examine whether additional criteria need to be developed which address ICANN's goals of ensuring the security and stability of the Internet.**

COMMENT:

The introduction of new TLDs should serve public interest not particular interests. To expand the use and usability of the internet it is important, that generic TLDs are not restricted to a certain group of domain name applicants (eg. arbitrarily chosen by the sponsor of the TLD). If the name of a new TLD has a general meaning, such as “.god”, “.food”, “.love” etc., the use of such a TLD has to be open for everyone. By sponsoring and running a generic TLD one must not any longer gain the right to choose its users (as it already happened with .travel and others).

The continuation of this policy of restricted TLDs would cause unsolvable conflicts: What, if the first sponsor for a new TLD “.god” belongs to some fundamentalist branch of a religious group and wants only members of this group give the right to use it? “God” belongs to everyone, even to atheists, “food” is important to every human being and cannot be restricted to eg. food companies, love not to marriage brokers...

Communication is a matter of public interest and generic TLDs, as platforms for worldwide communication, must be

open to everyone.

The idea, that a Top Level Domain guides people through the world of communication like an index-system in the library does not work. The meaning of a Top Level Domain gives some guidance to the users, but the meaning it has to the users differs, especially in a global world. The meaning and usage of a generic TLD cannot be strictly defined in a top down process by those who come first and have the money to start a TLD. This is not what internet communication is about. People want to have the free choice to use a TLD what they think serves their communication-interests. A generic TLD lives from the bottom-up, from the creativity of the people and their will to express themselves and do business in a free manner.

Different languages, cultures and legal systems set a limit to a clear defined restricted use of generic TLDs. For example: “.pro”: What is it supposed to mean? "Pro" – instead of “against”? Eventually, this is the most logic interpretation of “pro”. So that TLD might be restricted for advocacy groups. It is not. Especially non-english speakers have to learn it is about professionals, sort of. To be an expert of your profession is not enough to register.

“...Registered Names are restricted to persons and entities that are credentialed by appropriate entities (such as through governmental bodies and professional organizations) to provide professional services within a stated geographic region (a “Licensing Jurisdiction”)...”

How do you make totally different systems of education, professional certifications and organisations worldwide compatibel? This is impossibel. Who in all the different countries of the world are the appropriate entities going to give these credentials? The “appropriate entities” differ too much to make any sense to a reliable internet-users guidance.

TLDs cannot accomplish what generations of politicians did not achieve – make the political and social systems compatibel and in all languages understandable. Restrictions to the use of generic TLDs do more harm to the creativity and freedom of expression by the users than giving them real guidance through the labyrinth of the internet.

No process for creating a list of reserved strings for TLDs could create a complete set given the myriad cultural, religious, legal and political reasons that a particular string might not be appropriate for designation as a TLD. The process itself would take significant time, the results would be outdated immediately, and the persons creating the list necessarily could not take account of any unique circumstances presented by a specific future application.

Rather than create a list of reserved strings ab initio, ICANN instead should allow applicants to propose the TLD strings of their choice, ranking them in order of preference. The filing of a new TLD application should be followed by a public notice and comment period, which would include the opportunity to challenge any of the strings listed in the application, for any reason. The decision to approve a specific TLD string would require weighing the benefits of the string to the segment of the Internet community designed to be served by the new TLD against the harm that would be done to the challenger and others similarly situated. This will necessarily require a case-by-case analysis. ICANN should ask the GNSO to create a dispute resolution process, to be administered on a cost-recovery basis by an appropriate international body, that would provide recommendations to the Board on whether the choice of TLD string is appropriate in light of the concerns expressed by any challenger.

The level of protection given to trademarks and other asserted rights in strings necessarily will depend on the purpose of the TLD and the string selected by the applicant. For example, reservation of pharmaceutical INNs in a health care-oriented TLD would be appropriate, perhaps even necessary, but those pharmaceutical INNs would not need to be reserved in a TLD such as .TRAVEL or .JOBS. Accordingly, the appropriate protection for trademarks and other asserted rights should be decided on a case-by-case basis. The application process, however, should advise applicants to (a) take account of the concerns of putative rights-holders when submitting an application and (b) propose an appropriate reservation policy and dispute resolution procedure that protects those rights. Inadequate protection for rights-holders legitimately affected by a new TLD would be a reason to reject the application.

Alternatively, proliferation of new TLDs could diminish the expectation that use of every string in a domain name had been approved by its trademark holder, lessening the importance of policing/reservation of names because they would not be assumed to be serving trademark functions.

However it would be an uncertain move to not give consistent protection to trademarks and other asserted rights in all

TLDs, even in a TLD such as .JOBS. Bayer.JOBS, microsoft.JOBS or citibank.JOBS could be used, if not protected, to attempt scams on unwitting surfers. The practice of a sunrise period(s), reserved only for trademark and other asserted rights holders, would be a first step in providing the requisite protection. Other means of protecting rights-holders should certainly be included in the administration of a new TLD.

Whatever model is used, the TLD's proponent registry will probably want to educate Internet users about the TLD and its uses -- to encourage registration and use of the TLD. If the registry implies that all .jobs registrations are made with the authority of the trademark holder, then permitting other registrations could be contributory infringement. On the other hand, if it makes no such claims but says that no trademark status is implied, then it's as logical for users to expect to find complaints about Microsoft's hiring practices and pay for temp workers when they follow a URL to microsoft.JOBS, and those looking for official sites will know to rely on other indicators to assure they're in the right place.

===I disagree with the following section===:

*New TLDs may not necessarily broaden the use of the internet in developing countries. Many persons in these countries are orientated towards .COM names, due to past publicity. Many developing countries already have their ccTLD, but sometimes there is poor use of that or the global .BIZ domain to build (websites) in. To help developing countries make better use of the internet, as far as domain name administration is concerned, ccTLD management should be examined for effectiveness and transparency. This examination, and a means for the public at large to easily but formally table issues they may have with the management of such ccTLDs (with the ccTLD as well as ICANN), should be routine/periodic (every year?). ICANN may also wish to (i) offer guidance to ccTLD management in the marketing of their domain names and (ii) offer a common fund to assist such administrations with publicising their ccTLDs and educating the local populations.*

The generic TLDs are an important element of globalisation. They offer the unique place in the world where the service and the price are the same to anyone, irrespective of the country of citizenship or residence or legislation. Some people banned from their own ccTLDs (there is a number of ccTLDs where individual users cannot register a domain name), can always get this basic service from generic TLDs. The domain names are identifiers of communication, the right to those identifiers is nowadays one of Human Rights. While I do agree that each nation should have a correct ccTLD service, I decline to ICANN any right to supervise ccTLDs, and make any comments on how they are managed. That is a slippery road, giving ICANN political power to make judgements about sovereign countries - very unwise, and totally unacceptable. This role of judge fits much better to the civil society - and why not to the At Large people from all countries. I urge the At Large to make comparative studies of ccTLDs services to citizen in all countries and to compare how legal systems treat individuals with regard to domain names. This indeed could have a big impact.

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Looking at the TLD's we have so far, the only ones that have any appeal either are clones of .COM and .ORG, or else offer certification that their registrants are members of a category that users care about, like .EDU certifying post-secondary schools. See a blog entry by Paul Hoffman and John Levine (<http://weblog.johnlevine.com/ICANN/whydom.html>) outlining some strategies to unclog the TLD application process.

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I think that the questions above are all wrong! They are as if ICANN was the God of the Internet and was graciously accepting suggestions on how to create the world. On the other hand, it is the Internet that has to decide, through individual initiatives, whether a new TLD is desirable, and ICANN, as a steward of the DNS, should only verify whether the introduction of such new TLD does harm, and otherwise approve it.

It would be important to clearly state a principle of non-discrimination, that if a given category of new TLDs is approved, then applicants that meet the same conditions (as well as technical/financial reliability conditions etc.) have a right to approval as well. For example, there is a clear demand for "national" TLDs (see the already approved .cat) and possibly also for "local" TLDs (see the .berlin bid). ICANN should determine a reasonable list of criteria through which an entity can be determined to be an acceptable applicant for this kind of TLDs (for example: approved by local and national government; entity has a clear national historical identity; entity has a recognized national language; etc.) and then abide

by it. Similarly, "city" TLDs could be allowed for, say, all cities with at least 1 million inhabitants; and so on. (--vb.)

### 3. Allocation Methods for New Top Level Domains

**a. Using the experience gained in previous rounds, develop allocation methods for selecting new top level domain names.**

**b. Examine the full range of allocation methods including auctions, ballots, first-come first-served and comparative evaluation to determine the methods of allocation that best enhance user choice while not compromising predictability and stability.**

**c. Examine how allocation methods could be used to achieve ICANN's goals of fostering competition in domain name registration services and encouraging a diverse range of registry services providers.**

COMMENT:

Auctions are a bad idea; they would work if TLDs could only be oriented towards making as much money as possible by selling domain names, and it's clear that's not what people expect. FCFS seems to be the reasonable way to go, as long as care is taken not to give away strings that have meanings too broader than that used by the applicant (i.e. awarding ".god" to the Catholic Church is a wrong idea).

Also, I think care should be taken to ensure that application fees are affordable to anyone, including developing country applicants and non-profit organizations. You should only pay a small fee for the "initial evaluation" part, and once ICANN determines that your application fits the criteria and is approved, you can be asked to pay more money for the actual negotiation and implementation parts; otherwise, rejected applicants subsidize the process for accepted ones.

Moreover, I think it is reasonable to imagine low scale TLDs run with simple open source software and (relatively) limited hardware (think of eu.org, a venture who has been successfully operating and giving away for free thousands of domain names for almost 10 years now). You shouldn't prevent this from happening by requiring applicants to pay 50'000\$ (or even 10'000\$, for what matters) just to submit the first enquiry. (--vb.)

### 4. Policy to Guide Contractual Conditions for New Top Level Domains

**a. Using the experience of previous rounds of top level domain name application processes and the recent amendments to registry services agreements, develop policies to guide the contractual criteria which are publicly available prior to any application rounds.**

**b. Determine what policies are necessary to provide security and stability of registry services.**

**c. Determine appropriate policies to guide a contractual compliance programme for registry services.**

COMMENT:

The following *\*explicit\** contractual condition should be included in any contract in which ICANN delegates any decision-making authority over a TLD:

"In consideration for the delegation by ICANN of authority to act as ICANN's designated agent for the making of certain decisions concerning the TLD, the contractor agrees that any such authority will be exercised in accordance with the provisions of ICANN's Bylaws concerning decision-making by ICANN and its constituent bodies, including but not limited to those provisions concerning openness, transparency, procedures designed to ensure fairness, and independent review."

(I've posted a detailed explanation of the reasons for this proposal in the ALAC public forum at [1] (<http://forum.icann.org/alac-forum/msg00137.html>). -- Edward Hasbrouck)

AmericaAtLarge: Input on New gTLDs available at [2] (*http://AmericaatLarge.us*)

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