



May 20, 2013

Via Electronic Mail

comments-base-agreement-29apr13@icann.org

Re: Public Comment on Proposed Final New gTLD Registry Agreement by Google

We appreciate the opportunity to comment on ICANN's Proposed Final New gTLD Registry Agreement.

Google currently has 98 active gTLD applications through its subsidiary, Charleston Road Registry (CRR), which was established to provide registry services to the Internet public.

In general, Google finds the Proposed Final New gTLD Registry Agreement a significant improvement on the version of the contract included in the Applicant Guidebook (AGB). Through its discussions with the registry/applicant negotiating team, ICANN has addressed a number of long-standing issues in the agreement and we appreciate the effort of both ICANN and participants in the negotiating process to develop an agreement that we believe should be acceptable to most applicants.

We remain troubled by the process by which ICANN introduced the Extraordinary Amendment¹ process into the agreement; however, many of the concerns stated in our February 26, 2013, Public Comments² against ICANN's Revised New gTLD Registry Agreement have been addressed. In addition, we have ongoing concerns about the Public Interest Commitment (PIC) system and the associated PIC Dispute Resolution Process (PICDRP), and believe that ICANN may be able to streamline ongoing negotiations by making further adaptations to the agreement for certain classes of applications. However, none of these issues should prevent the current contract from being approved and signed by willing applicants.

Improvements to the Registry Agreement

The revised Registry Agreement corrects a number of long-standing flaws compared with the version contained within the AGB. To highlight just a few of these improvements, the revised

¹ See Section 7.6(e-h) of the Proposed Final Registry Agreement

² <http://forum.icann.org/lists/comments-base-agreement-05feb13/msg00036.html>

agreement:

- Provides a mechanism for resolving conflicts with local or national laws, a key issue for applicants with significant operations outside the U.S.;
- Clarifies the registry's ability to reserve names for its own use and throughout the registry's startup process;
- Improves the treatment of confidential information; and
- Makes a number of processes, ranging from change of control to amending the Registry-Registrar Agreement less burdensome on the registry operator.

We heartily endorse all of these changes and thank ICANN for the opportunity for good-faith discussion with the community to arrive at these improvements.

Extraordinary Amendment Process and the Policy Development Process

Google has always been and remains very committed to the multistakeholder model and to the Policy Development Process (PDP) that sits at its core. We are resolute in our belief that the PDP is the appropriate mechanism for proposing new or potentially changing established policy and should be used as such. Therefore, mechanisms such as the Extraordinary Amendment Process should be developed through the PDP rather than introduced into an existing Agreement and posted for Public Comment. Additionally, we believe that the Extraordinary Amendment Process is both cumbersome and unlikely to be used; therefore, the added complexity in the contract is unnecessary. Having said that, the various amendment processes are now reasonably scoped and should no longer serve as an impediment to us signing the agreement.

PICs and the PICDRP

We remain convinced that ICANN should not introduce a complex dispute resolution process for enforcement of PICs. As stated in our previous Public Comment on PICs and the PICDRC³, we believe that ICANN can and should enforce PICs through its existing contract enforcement mechanisms. If needed to allow for such enforcement, it may be reasonable to work with the community to establish standardized commitments that ICANN is comfortable enforcing and that simultaneously serve to fulfill any requirements imposed in response to the GAC's recent advice on safeguards.

Standardized Variant Agreements for Special Classes of Registry Operator

Google believes there is value in considering general situations where a standardized variation of the New gTLD Registry Agreement could be used for specific classes of Registry Operator, such as brands. This fact is already recognized in the inclusion of variant language for Intergovernmental Organizations and government entities. If standardized variant language was

³ <http://forum.icann.org/lists/comments-draft-picdrp-15mar13/pdfu5w19QbRxe.pdf>

developed to address unique circumstances posed by certain classes of Registry Operator, it would prevent ICANN from having to negotiate the same set of terms for those Registry Operators repeatedly, creating operational efficiencies and freeing up resources to focus on any situations in which unique exceptions to the base agreement may be warranted. In general, we are supportive of the suggestions made in the public comment posted by Elizabeth Swezey of Fairwinds Partners⁴ on behalf of a number of brand applicants; these suggestions may serve as a useful basis for specific contractual variants for brands.

Conclusion

In summary, we applaud ICANN, the Registry Negotiating Team and the community for the work that has gone into developing the Proposed Final New gTLD Registry Agreement. We feel the New gTLD Registry Agreement is a significant improvement over the version contained in the guidebook. We recommend ICANN allow Registry Operators to begin signing this agreement as soon as possible.

Sincerely,



Halimah DeLaine Prado
Director, Legal
Google Inc.

⁴ <http://forum.icann.org/lists/comments-base-agreement-29apr13/msg00012.html>