

Dear Sirs,

In order to put our comments on the auction process in perspective and because this process is the final step of the long gTLD program (“the Program”) we believe it is worthwhile to consider the initial purpose of the Program. The gTLD Applicant Guidebook (“the Guidebook”) clearly lays out ICANN’s vision when it states¹ “*The new gTLD program will open up the top level of the Internet’s namespace to **foster diversity, encourage competition, and enhance the utility of the DNS***”. Those three principles (listed in these comments at paragraphs I., II. and III.) form the very reason why we believe the auction rules would benefit from the proposed amendments (set out in paragraph IV.).

For the purposes of providing context to our submission, Artemis Internet, Inc. (a subsidiary company of NCC Group) has invested significant time, resource and effort into the development of a new gTLD (.secure) to enhance the security of the Internet, including collaborating with 30 leading global companies willing to define and follow an innovative set of online security policies. We offer the following comments on the rules and processes of the auction (“the Rules”).

I. The importance of diversity

We strongly believe some TLDs are, and should be, meaningful. While the link between .com and “company” has all but disappeared, there is little chance that words like “secure”, “pay” or “kids” will mean anything else over time and **being able to use them as TLDs should be a testament to diversity**. ICANN management itself indeed publicly stated² that the Program “means new businesses, new marketing tools, new jobs, and new ways to link communities and share information”. In the same spirit, our application for .secure was specifically designed to enhance security in this namespace, both on the policy and on the technical level. Meanwhile, a quick look at the public portion of some other applications shows that at least one company has devised all of its applications, representing dozens of top level domains based on different generic words each with a specific meaning, using one single set of identical answers.

Regrettably, diversity plays no role in the outcome of the contention process, and instead the applicants are left entirely to themselves. The Guidebook states “*In the absence of resolution by the contending applicants*” the contention will be solved at an “auction of last resort”, with no regard for the meaning of the string for Internet users, the content of the application or the advertised use of the gTLD.

Of course ICANN maintains that “*Applicants are encouraged to resolve string contention cases among themselves prior to the string contention resolution stage*” but such principle requires the other party to be willing to negotiate and to do so reasonably. Probably unanticipated at the beginning of the program, the fact is that so-called “portfolio applicants” with their vast financial resources have no reason to “*resolve string contention with contending applicants*” since they are in an advantageous position when the auction comes down to price, despite having little link or relevance to the Program or its aims.

¹ See “Preamble – New gTLD Program Background”, p2

² Statement from ICANN President & CEO on Reveal Day: <http://newgtlds.icann.org/en/announcements-and-media/announcement-13jun12-en>

Critically, the outcome of an expensive auction round will surely not have the same impact on applicants whose business is not predominantly focused on the gTLD itself.

With the current process in place it is quite possible that the Internet will be dominated by a handful of companies who chose speculation over innovation. While a full-blown “beauty-contest” was impossible to implement for more than a thousand applications, we would submit that the aim for diversity in respect of the immediate implications of some applied for terms warrants much more than a generic criteria and a significant amount of money.

II. Encourage competition

Competition is so important to the Program that ICANN has repeatedly stated³ that “*one of ICANN's key commitments is to promote competition in the domain name market [...] while ensuring Internet security and stability. New generic Top-Level Domains (gTLDs) help achieve that commitment by paving the way for increased consumer choice by facilitating competition among registry service providers*”. Yet, the top five applicants in the Program⁴ collectively account for one third of all Top Level Domains requested in May 2012. As a result, if these applicants were to each win only one-third of their contentions, then nearly half of all of the non-brand gTLDs on the Internet would be operated by only five companies. As a result, **the Internet infrastructure would be less competitive by the end of 2014 than it was in 2012.**

Perhaps even more troubling when ICANN’s aim was to ‘encourage competition’ is that those 592 applications – many of which are competitive requests for identical terms – are mostly for generic dictionary words that each have a unique meaning for Internet users, as recognized by the ICANN board itself⁵. Consequently, TLDs formed of widely used words like Books, Music or Play could become the sole property of a handful of companies, several of which are extremely active on the markets commonly designated by those terms. Even though those TLDs may be available to competitive third parties to register domain names – now that several of those applicants have decided to abandon the concept of “closed generics”⁶ – any individual or company deciding to register a domain name in .Books or .Music would still have to follow the domain name policies controlled ultimately by a direct competitor, resulting in an extension of the influence already held by the owner of the gTLD.

III. Enhance the utility of the DNS

Ever since the first new Top Level Domain launch in 2000⁷, ICANN has maintained that a key criteria to judge whether a new extension would have to be approved was its ability to “provide an enhancement of the utility of the DNS”

³ See for example, Faq on new gTLDs §1.2 <http://newgtlds.icann.org/en/applicants/customer-service/faqs/faqs-en>

⁴ By number of applications, see, <https://newgtlds.icann.org>

⁵ See NGPC resolutions on June 25th 2013: “a string consisting of a word or term that denominates or describes a general class of goods, services, groups, organizations or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those of others” (<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-25jun13-en.htm#2.c>)

⁶ See NGPC resolutions and scorecard on September 28th 2013: <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-28sep13-en.pdf>

⁷ Part of the so-called “August 15 Criteria” – See for example <http://archive.icann.org/en/tlds/report/report-iiib1a-09nov00.htm>

Accordingly, we would like to remind the ICANN Board of the comment made by the representative of the European Commission from the Government Advisory Committee⁸ during their official meeting with the NGPC in Buenos Aires⁹. There, the representative stated that *“ICANN should aim to maintain but also enhance the level of consumer protection and confidence in extensions. ICANN could therefore take the social and community implications of such strings into account”, adding that “It is our understanding that domain names such as .secure, .safe, .security risk being awarded to applicants based only on the price they are willing to pay in an auction. We therefore recommend that the ICANN board, in the interest of fostering innovation and protection, does not allow purely commercial interests to prevail in the delegation of these domains”.*

Some applications are designed to provide further utilisation of the DNS whereas the explicit purpose of many applications¹⁰ for several similar terms¹¹ is “To provide a unique and dedicated platform for the Applicant while simultaneously protecting the integrity of its brand and reputation”.

IV. Suggested improvements to the auction process

We fully acknowledge the time and effort spent by the ICANN Community to reach the level of consensus necessary to finalize the Guidebook and agree that it is the common set of rules that ICANN and all of the applicants have to abide by for the Program to succeed. However, the Guidebook was finalised before the identity of applicants or their strategy were known. Reading the Guidebook, it appears that ICANN intended for the “auctions of last resort” to be just that, while it has transpired that it will be beneficial for some applicants to sit and wait for such auctions. As a result we submit that the Rules could be improved to reflect on the landscape as it is now and respect the spirit of the Program, rather than remain bound to a document that has been substantially modified already.

As general auction principles have already been widely used in numerous settings where ‘public assets’ are to be sold, ICANN would not have to invent anything new nor “move the goalposts” and modify the core tenants of the Guidebook in order to level the playing field between portfolio and innovative applications. For example, as part of its auction process to award the “golden frequencies” of its 4G/LTE spectrum, the French Government decided¹² to apply a coefficient multiplier to bids from applicants that were willing to commit to specific uses of the spectrum and additional service levels. Thanks to the coefficient, bids with a smaller monetary amount but with a bigger commitment on usage and service levels were able to compete with pure monetary bids.

⁸ See Applicant Guidebook §1.1.2.7 “The GAC may provide public policy advice directly to the ICANN Board on any application”.

⁹ <http://buenosaires48.icann.org/en/schedule/tue-gac-board>

¹⁰ As evidenced in their answers to question 18(a) of the Applicant Guidebook “Describe the mission/purpose of your proposed gTLD”

¹¹ See for example, with .Safe: <http://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadapplication/949?t:ac=949>

¹²

http://www.arcep.fr/index.php?id=8571&L=1&tx_gsactualite_pi1%5Buid%5D=1278&tx_gsactualite_pi1%5Bannee%5D=&tx_gsactualite_pi1%5Btheme%5D=&tx_gsactualite_pi1%5Bmotscle%5D=&tx_gsactualite_pi1%5BbackID%5D=26&cHash=2b661b56fe

If ICANN were to apply such concept, the change to the principles laid out in the Guidebook (which specifically envisions the possibility of a change to the draft Rules¹³) would be minimal: (i) a monetary auction would still be the determining factor at the last resort, (ii) the highest bidder (following the application of the coefficient multiplier) would still win, as provided by Clause 46 of the Rules and (iii) it would not change the evaluation process that has already taken place for the given TLD. All participants in an auction would be allowed to benefit from such coefficient depending on the content of their application against the fundamental purpose of the Program to open up the top level of the Internet's namespace to **foster diversity, encourage competition, and enhance the utility of the DNS.**

As a result, our recommendation is that ICANN should adopt a simple coefficient strategy in order to assess and 'rank' applications for certain contested strings. Using an independent coefficient appears to be the best way to respect the spirit of the Program as it would allow ICANN to (i) give more relevance the contemplated use of the TLD (ii) foster competition by reducing the sole impact of financial means in the process, and (iii) recognize the potential enhancement the TLD would bring to the DNS, as originally intended.

In closing we would like to thank the ICANN board for listening to the community of which a significant portion¹⁴ has expressed the need for a change in the auction process as contemplated in the Guidebook. We are confident that this comment period will allow for an even better process that will fully take into account the spirit of the Program.

Yours faithfully

Rob Cotton, CEO, NCC Group plc

Alex Stamos, CTO, Artemis Internet, Inc.

¹³ See Section 4.3.1 of the Guidebook: "The detailed set of Auction Rules will be available prior to the commencement of any auction proceedings. If any conflict arises between this module and the auction rules, the auction rules will prevail".

¹⁴ During the Buenos Aires Public Forum, as evidenced in the transcript:
<http://buenosaires48.icann.org/en/schedule/thu-public-forum>