

United States Postal Service Comments on the New gTLD Program Implementation Review Draft Report

The United States Postal Service (“USPS”) is an independent establishment of the Executive Branch of the United States Government. As such, USPS runs on customer-generated funds and does not utilize U.S. tax revenue in its operating budget. The USPS has been designated by the United States to fulfill the operational requirements for the exchange of international mail pursuant to the Universal Postal Union Acts. The USPS accordingly fulfills the Acts by serving as a designated operator and exchanging international mail with the UPU’s 192 member countries’ designated postal operators. The UPU is a United Nations specialized agency comprising representatives of these 192 countries and their territories which is responsible for the organization and improvement of international postal services.

USPS appreciates the opportunity to comment on the New gTLD Program Implementation Review Draft Report (the “Report”).

The request for public comment specifically mentions the following sections:

- Application Processing
- Application Evaluation
- Objections Procedures
- Contention Resolution
- Transition to Delegation
- Applicant Support
- Continued Operations Instrument
- Program Management

The solicitation of public comment further states as follows:

“In particular, ICANN is seeking comments on the lessons learned for each section, which have been summarized in Annex 1 of the draft Program Implementation Review report. Many of the lessons learned are considerations for future application rounds, and ICANN welcomes the community’s input on how the implementation of future rounds could be improved upon.”

Based on its experience with first round procedures, USPS has input into the Program Implementation Review Draft Report which it hopes will be helpful to the process. Some background regarding this experience may be helpful. USPS filed Legal Rights Objections to seven different applications for .MAIL. In addition, USPS supported the Community Objections filed by the UPU against .MAIL as an active stakeholder in the UPU community. While these objections were denied, it is important to note that the ICC panelist found that the UPU community was a valid community and certified it as such. *Universal Postal Union v. Victor Dale, LLC*, ICC Case No. EXP/494/ICANN/111 (consolidated with EXP/496/ICANN/113, EXP/497/ICANN/114 and EXP/500/ICANN/117) at p. 19 (Feb. 4, 2014); *Universal Postal Union v. Amazon EU S.A.R.L.*, ICC Case No. EXP/495/ICANN/112 at p. 18 (Jan. 20, 2014).

USPS believes its comments are relevant to several sections of the Report, namely Application Processing, Application Evaluation, Objection Procedures, and Transition to Delegation.

Application Processing and Evaluation – Name Collision

USPS comments with respect to name collision bear directly on the notes at pages 198-199 of the Report which provide as follows:

2.4. a - As directed in the NGPC's 30 July 2014 resolution, "work with the GNSO to consider whether policy work on developing a long-term plan to manage gTLD name collision issues should be undertaken."

2.4.b Based on the outcome of the GNSO's work, consider inclusion of the Name Collision Management Framework in the next application round prior to accepting applications.

With respect to the changes to name collision policy that occurred after the new gTLD application window was launched in 2012, USPS notes that significant resources were allocated by new gTLD applicants, USPS, and the UPU in relation to .MAIL applications as described above. Ultimately the .MAIL Top Level Domain was frozen indefinitely due to conclusions reached by the ICANN Board based on a study by outside experts identifying significant name collision risk. We understand this name collision risk was identified early on by the Security and Stability Advisory Committee. Therefore, recommendations to be added after 2.4.a and 2.4 b above should include:

(1) Consider whether the name collision issue should have been resolved with reference to the SSAC recommendation prior to the opening of the application window, thereby avoiding wasting of resources by numerous parties and

(2) Consider whether the ICANN Board should be required to treat SSAC Advice with any special level of deference in connection with the next round of gTLD applications and to seek and implement such advice well prior to launching a next round, and more specifically with respect to the name collision issue.

With regard to name collision, USPS notes that in his report to GNSO Council provided in the most recent ICANN meeting in Dublin, the SSAC Chair stated that the ICANN Board did not follow SSAC Advice with respect to name collision. (See transcript of October 18, 2015 SSAC session with GNSO in the Dublin meeting at page 6, Confirmation # 5684433.).

USPS appreciates ICANN Board and community action leading to the New gTLD Policy Committee ("NGPC") resolution of July 30, 2014, which directed staff to defer delegation of the so-called "high risk strings of .HOME, .CORP, and .MAIL" indefinitely. USPS further recognizes that, per page 118 of the New gTLD Subsequent Procedures Preliminary Issue Report, the GNSO Council advised that the issue of the appropriate ongoing name collision framework should be examined in the broader context of future rounds of new gTLDs.

Application Evaluation and Community Interests - .MAIL

As a standing Resolution of the NGPC and therefore of the ICANN Board itself, the indefinite deferral of .MAIL is considered by USPS, as a stakeholder in the global mail community which is a regulated community of public interest, to be a safeguard against consumer confusion and

fraud which is likely to result in the event that the .MAIL TLD were awarded to any entity other than the UPU or an authorized stakeholder of the UPU community. Thus, if the deferral of .MAIL is called into question in relation to implementation of any subsequent round of gTLD applications, USPS notes that the UPU community should be consulted in the process in order to avoid the wasting of resources that occurred in connection with the first round applications for .MAIL.

Accordingly, an appropriate additional recommendation in relation to the Application Evaluation process for any future .MAIL application would be a requirement to consult the UPU community with respect to any such an application as follows:

In connection with the PDP for subsequent rounds of new gTLDs, seek additional input into the possible future delegation of .MAIL from the UPU community as recognized by the ICC.

Application Evaluation and Objections Procedures - Closed Generics

USPS notes that the GAC has advised that all “closed generics” should be operated “in the public interest” and that the GNSO Council has been charged by the ICANN Board with undertaking policy work in this regard. USPS further notes that in relation to the term “mail”, there is an established community represented by the UPU that is well positioned to evaluate whether a closed .MAIL TLD can be operated “in the public interest”. This is not likely to become an issue given the Resolution of the NGPC deferring delegation of .MAIL indefinitely. However, USPS notes that there may be certain so-called “generic” Top Level Domains that invoke community interests as a part of public interest evaluation while not necessarily qualifying for a Community Objection. Thus, in connection with Implementation of the Application Evaluation process, USPS comments that the recommended implementation procedures going forward include a broader Public Interest Objection process that encompasses policy considerations applicable to Closed Generics as follows:

A Public Interest Objection process should be established to challenge an application for a so-called “closed generic” in the event such application does not meet the standard for operation “in the public interest”.

In this regard, the USPS further notes that the definition of “closed generic” as adopted by the NGPC should be reviewed, in particular because this definition was not adopted pursuant to a GNSO policy process. As the Report points out, the ICANN Board has requested policy input from the GNSO counsel on this issue. USPS believes that such policy consideration will not be complete without a review of the NGPC definition of “closed generic”. Thus, USPS further recommends that:

The existing definition of “closed generics” (made by the NGPC with reference to the terms of what constitutes an “affiliate” under the base Registry Agreement) should be re-examined prior to commencement of any additional new gTLD rounds.

The USPS thanks ICANN staff members for their hard work in relation to the New gTLD Program Implementation Review Draft Report and looks forward to the incorporation of the above additional comments. Separately, USPS supports thorough review of the first round of

new gTLDs prior to launching a next round of applications as contemplated by the initial 2007 Final Report Introduction of New Generic Top Level Domains. We understand that there are a number of formal reviews underway in addition to the new gTLD Implementation Review Draft Report and believe input from these reviews will be critical to determining the needed policy and implementation improvements.

Respectfully submitted,

United States Postal Service