

FairWinds Partners Public Comment on the Preliminary Issue Report on New gTLD Subsequent Procedures

October 2015

FairWinds Partners would like to acknowledge the extensive work undertaken by the New gTLD Subsequent Procedures Discussion Group and the efforts of ICANN staff to put together the “Preliminary Issue Report on New gTLD Subsequent Procedures.” We appreciate the opportunity to offer comments on the report and to provide input into the subsequent Policy Development Process that will follow.

While the Preliminary Issue Report does a thorough job of outlining a number of important questions that must be tackled in future policy development, there is one issue in particular that we believe will be critical for understanding the basis on which other policy issues should be addressed. That is the topic outlined in section 4.2.15 of the Report, Different TLD Types.

As the Preliminary Issue Report acknowledges, and as those who have been involved in the New gTLD Program are aware, the 2012 application round resulted in more distinct types of applications (and later, gTLDs) than had been anticipated by the Applicant Guidebook, which only contemplated two types: “standard” and “community-based.” The emergence of these new and innovative types of applications was a positive development for the Domain Name System, but necessitated the creation of iterative and sometimes ad-hoc processes and policies. It should be assumed that applicants for gTLDs in subsequent rounds will be similarly diverse and will continue to apply for new and unique kinds of gTLDs. Policy development for future gTLD rounds should seek ways to account for these diverse types of gTLDs in a way that streamlines the application and evaluation processes, but preserves fairness in the overall process. A driving goal of the policy development process should be to make policies and processes sensible for different application types to continue to foster diversity and innovation.

In particular, the largest group of these “new types” of gTLDs that emerged in the 2012 round was .BRAND gTLDs. Corporations that applied to operate closed gTLD registries corresponding to their trademarked terms submitted nearly half of all of the applications for unique gTLDs in 2012. Given statements made since 2012, it is clear that brand owners will be active participants in subsequent rounds as well. As such, creating policies that reflect the unique nature of .BRANDs will allow for a more streamlined and predictable process in future gTLD rounds.

In the context of the Preliminary Issue Report, there are a number of sections that should be expanded to account for the fact that .BRANDs are likely to comprise a significant portion of applications. These include the following:

- 4.2.8 Accreditation Programs – Corporations are highly likely to partner with technical service providers to operate their .BRANDs, and so the participation of corporations in future rounds should be considered when determining whether accreditation programs should be implemented.
- 4.3.1 Reserved Names – The nature of .BRANDs, where the corporation is the only owner and user of all domain names, should be considered when examining whether or not to amend the existing policies or create new policies around reserved names.

- 4.3.2 Base Contract – The creation of Specification 13 of the new gTLD Registry Agreement should be a major consideration in determining whether different gTLD types, like closed .BRANDs, should have a modified Registry Agreement.
- 4.6.2 Applicant Reviews: Technical/Operational and Financial – The policy development process should consider whether established corporations, especially publicly traded companies, should have to provide different information to justify their financial viability than other types of applicants.

By making sure to acknowledge .BRANDs and other different types of new gTLDs in the policy development process for subsequent rounds, the ICANN community has the chance to create a more efficient and streamlined process that will continue to foster growth and innovation in the domain name system. Again, FairWinds appreciates the work undertaken by the New gTLD Subsequent Procedures Discussion Group and supports the ongoing efforts to improve policies and commence subsequent gTLD rounds that will allow future .BRAND operators and other applicants to enter the new gTLD space in a timely and predictable manner.