

Comments of Time Warner Inc.

Time Warner Inc. (“Time Warner”) appreciates this opportunity to comment on ICANN’s paper entitled “New gTLD Program: Aspects of an Expressions of Interest and Pre-Registration Model.” See <http://www.icann.org/en/public-comment/#draft-eoi>.

Time Warner does not support adoption of the model set forth in the EOI paper. At best, it is entirely premature to set an expressions of interest (EOI) phase in the new gTLD process. This is because basic questions concerning the rollout of new gTLDs are yet to be decided. It would be the height of imprudence to encourage competitors to pay for a slot at the starting line when ICANN has so much more to do to responsibly decide who may compete in the race, how long the course will be, what path it will follow, and where the finish line will be situated.

In particular, ICANN should base its decision on whether to launch new gTLDs, and if so how and when to launch them, on the best possible empirical data about the domain name marketplace, and on a wide range of informed analyses of that data. Surely the stakes of the venture, with its potential to transform – for good or for ill – how people around the world communicate, work, shop, play and learn, demand nothing less. But to date, ICANN has done very little to gather the needed empirical data, much less to expose it to analysis. The foundation upon which ICANN could responsibly open, perhaps as soon as a mere four months from now, an EOI phase, at least as outlined in the paper, is entirely lacking.

The paper states that “issues regarding who can apply (e.g., vertical integration) and what strings are available for delegation (e.g., relaxing the 3-character requirement) should be resolved” before an EOI phase opens. EOI Model, at 7. This formulation greatly understates the extent to which these issues remain unresolved. For example, we believe it remains an open issue whether the new gTLD launch should be restricted to IDN character strings, so as to focus on the goal of serving populations that have historically been excluded from full participation in the Internet in their native tongues. While we know that ICANN staff’s preference is to open the launch both to ASCII and IDN character strings, we also know that there is no empirical basis for concluding that that this is the most effective way to harvest the benefits of the launch while minimizing the costs. Until that empirical basis has been demonstrated and subjected to analysis, there is no justification for allowing any new gTLD applicant to reserve irrevocably a place at the starting line, merely by sending in a check for US\$55,000 along with skeletal information about the applicant and the new gTLD character string it proposes to establish.

While the EOI model paper minimizes the issue of who would be eligible to apply, it does acknowledge the “concern that moving forward with an EOI process will be perceived as moving forward without having resolved the overarching issues.” EOI Model at 9. But it dismisses this as a “perception risk” that “can be addressed generally with messaging to convey the need to get it right before launching.” *Id.* This is not a PR

problem, but a real one. If applicants are allowed to pre-register long before the application window opens, they will inevitably form a privileged lobby of advocates with “skin in the game.” This lobby’s goal will be to prevent the resolution of any unresolved issue – “overarching” or not – in a way that disqualifies or in any way disadvantages a pre-registered application. This is a sure recipe for distortion of the rest of the process for developing the standards and criteria for evaluation of new gTLDs.

Last October, in light of the breadth and range of difficult unresolved issues, ICANN wisely decided to abandon a stated timetable for the new gTLD process, including a target date for opening the application window. The EOI model proposed would reverse that prudent decision. Instead of giving itself (and the community) the time to “get it right before launching,” the EOI model would bind ICANN to open the application window “18 months from the closing date of the EOI submission period,” *id.* at 12, or else face the prospect of paying millions of dollars in refunds to pre-registrants. This arrangement would give ICANN an overwhelming perverse incentive to resolve difficult issues based on the calendar, not on their merits.

One additional striking concern about the model the staff is proposing is that it seems to allow – and perhaps even to welcome, on economic grounds – the “flipping” of starting slots from pre-registered applicants to third parties. *Id.* at 8-9. To the extent this is allowed, the pre-registration process will become little more than an arena for speculation; the actual applicants will be those who bought slots from pre-registrants. This practice would also eliminate any value gained from having the EOI process “enabl[e] an early start on the due diligence portion of the evaluation.” *Id.*, at 14.

In short, now – or even four months from now – is not the time to sound the starting gun for the new gTLD race, nor even to sell places in the starting blocks. An EOI phase at a much later point in the process might make sense. Time Warner recognizes the value for ICANN “to obtain reliable data for use in connection with issues such as root scaling or operational readiness.” *Id.* at 10. Some form of EOI process could help provide the data ICANN needs to forecast actual demand, so that it could more efficiently plan the staffing additions and consulting contracts that need to be put into place to carry out the new gTLD launch. But that step cannot be taken in a responsible manner now. Any EOI phase should occur much later, after all the major open issues are resolved.

Instead of expending time and resources on designing an EOI phase at this point, ICANN must develop a credible and persuasive answer to a question it has only just begun to ask: how to structure the rollout of new TLDs in a manner and at a pace that is most likely to address consumer need without exposing those consumers to further harm. After that question is fully answered, and the answer is buttressed by a comprehensive economic analysis of the domain name marketplace, it may be time to return to the issue of an EOI phase to the new gTLD launch. Until then, further consideration of that issue should be deferred.

Thank you for considering Time Warner's views. Please feel free to contact us if we can provide further information.

Respectfully submitted,

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