

January 18, 2010

To: ICANN (draft-eoi-model@icann.org)

Re: Comments on the Expression of Interest Process for new gTLDs

MarkMonitor believes that the ICANN Board and Staff should either i) reconsider the establishment of an Expression of Interest (EOI) process in connection with the introduction of new gTLDs, or, ii) allow enough time for the consideration of its usage. Creating an EOI process at this stage in the development and launch of new gTLDs is an unwise procedural move that does not respect ICANN process (see “Top 3 Reasons to Just Say No to ICANN’s Current EOI gTLD Proposal”, Michael Palage) and is a distraction from the fundamental threshold gTLD issues that remain largely unresolved.

Were the ICANN community to continue with creating and executing the EOI process against the advice of many, MarkMonitor would ask that the resulting product and process ensure that the EOI would:

- 1) provide equal advantage to all applicants;
- 2) is not used to demonstrate actual economic demand;
- 3) not distract the community from resolution of the overarching issues;
- 4) respect the ICANN bottoms-up, consensus driven process.

1. Provide equal advantage for all applicants

Creating a process for accepting Expressions of Interest from parties intending to apply for new gTLDs will be “tricky waters” to navigate. It is clear that how information is revealed, when it is revealed, what part of an application is required and other factors such as a requirement for fees will advantage different parties in different ways. The objectives for this process must be analyzed and clearly defined in order to make sure that this process does not create any inequity that might damage or reward those considering filing applications during this initial process.

Many brand rights holders are interested in the potential of this process because it could save them money and time as they consider their strategies in applying for a gTLD. Rights holders are looking for the following benefits and information from the EOI process:

- a) understand what contention sets may arise from a potential application
- b) determine whether or not they’ll need to apply defensively
- c) determine how to adjust application strategy based on the EOI data, including changing strategy from no application to opting to submit an application, or, desire to submit an EOI and later opt to apply or not
- d) understand who they may potentially contend with and develop a strategy for contention, including legal or procedural within the ICANN gTLD guidelines.

Many brand rights holders are concerned that domain name speculators have had large venture capital infusions that may fund rampant speculation during the EOI submission period. Lower fees and documentation requirements will enable speculation for far less money and trouble. EOI policy decisions should avoid advantaging speculation because it will further skew the data from any inferred requirements of an EOI while potentially disadvantaging rights holders without the same “deep pockets”.

Other types of organizations may have different goals for the EOI process. Non-profit organizations will be underserved both in the EOI and gTLD process because of the financial barriers placed upon them.

It would be helpful if the ICANN Board and Staff could provide specific objectives and criteria for this program before specifying the details of its implementation – this would provide for a more orderly and fair process.

2. Is not used to demonstrate actual economic demand

The EOI process will not represent actual demand for gTLDs. Many organizations will feel compelled to submit an application during the EOI process although they have no desire to apply for a new gTLD. They may submit an application to enable a defensive application, and as an additional measure to the objection process, due to the mandatory requirement for the submission of an EOI in order to be eligible to apply for a new gTLD. This will skew the EOI data and provide ICANN with false information about actual demand. Furthermore, as mentioned in Section 1, speculators may use the lower requirements for fees and documentation to create more applications.

Therefore, an EOI may only generate relative demand rather than actual demand because of defensive action and speculation.

3. Does not distract the community from resolution of the overarching issues

The ICANN community has been working for years along with Staff and the Board to deliver a safe new way to implement new gTLDs. There are still many threshold issues to resolve (including among others consumer risk and protection (see MarkMonitor STI comments), security and stability of the Internet, and economic demand) before we can feel secure that it is safe to launch new gTLDs.

Adding yet another process on top of these “overarching” issues and the authoring of an Applicant Guidebook is burdensome and untimely. Before pursuing this effort we should define the objectives as called for in Section 2 and assure ourselves that the benefit will be realized before further applying our attention to the effort proposed.

4. Respect ICANN process

Lastly, many have questioned whether the process to establish an EOI respects the historical and mandated ICANN bottoms-up and consensus-driven process. We must therefore ask ourselves whether:

- a) enough input has been solicited, analyzed and acted upon;
- b) appropriate stakeholder groups have been consulted;
- c) required bodies with responsibility for oversight have approved this initiative.

The potential for harm to consumers, contracted parties and brand rights owners is too great for us to now create new processes and policy at this late stage in the new gTLD process.

Summary:

We ask the ICANN Board and Staff to carefully consider the implications of an EOI process as well as its objectives and the distraction it might cause before implementing such an initiative or reconsider whether the process is necessary.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Fred Felman", with a long, sweeping horizontal line extending to the right.

Frederick Felman
Chief Marketing Officer
MarkMonitor