

DEMAND MEDIA COMMENTS ON EXPRESSION OF INTEREST IN NEW gTLDs

We appreciate this opportunity from ICANN to comment on the “expression of interest in new gTLDs,” a new idea for a “way forward” with new gTLDs. The intentions and goals of expression of interest advocates are well-placed. However, even though we are just as eager as anyone for the launch of new gTLDs, we believe proceeding with an expression of interest phase will only distract from the real tasks at hand, the completion of the applicant guidebook and launch of new gTLDs.

In our view, drafting and implementing the rules for an expressions of interest step would be a difficult and time consuming task that will shift ICANN’s resources from finishing the TLD applicant guidebook. If ICANN decides, after this brief comment period, to proceed with a formal expression of interest phase for new TLDs, we must acknowledge there will be an enormous amount of work to complete. Rules for applicants will have to be devised; community input will need to be received on the draft rules; and of course, fair worldwide notice must be given, lest ICANN be accused of “gaming” the gTLD application process for ICANN “insiders.” Furthermore, a contract for applicants will have to be drafted and vetted by lawyers. All of this would require a tremendous amount of bandwidth, while the ICANN staff is attempting to simultaneously work towards resolution of “overarching issues” and the production of a final applicant guidebook. While the stated intent of expressions of interest is to facilitate the introduction of new gTLDs, we believe they will have the opposite effect.

In addition, ICANN must consider that an expression of interest regime will mean increased uncertainty for businesses, communities and investors planning to participate in new gTLDs. Applicants and their investors will be asked to commit financial and human capital to new gTLDs before knowing the final guidebook rules governing their investment. How is this a fair and reasonable request?

We have commented separately that we think DAG version 3 is “in good shape and lays out reasonable rules under which all gTLDs applicant can operate.” However, since we’ve been told there will be a DAG Version 4, no one knows what the *final* rules will be. What if rules change that effect applicants’ ability to compete and operate an effective gTLD business? What if no registry-registrar integration is allowed? What if the rules are changed to be even more favorable for incumbent registries? What if the final guidebook contains unworkable community rules that seriously impact our competitive chances for certain strings we’ve invested in through the expression of interest process? Will a brand owner want to submit an expression of interest for their dot brand TLD when they don’t know how all their Trademark and brand issues will be handled?

The bottom line is that all of these “open questions” raise a great deal of uncertainty for potential gTLD applicants---uncertainty that can affect business and, just as importantly, investment decisions. There is a high degree of business risk if \$50,000 or another significant sum is required to express interest in each string; particularly for companies that may be seeking several strings. Furthermore, the expression of interest process could subject ICANN to waves of litigation from parties who missed the opportunity to participate in the expressions of interest, as

well as from those who have who have expressed interest but want their money back because the final gTLD rules have changed the game and are adverse to their interests.

One specific justification for expressions of interest is they would assist ICANN in estimating the number of new gTLDs and thus help ICANN address root scaling concerns. In our opinion, this is unnecessary. Assuming gTLD applications are received as contemplated by the current DAG process, not all new gTLD application will be processed at once and not all new gTLDs will be launched into the root at the same time. This is not unfair because each application can have different issues (more or less “objections,” financial and technical verification issues, auctions, etc.), so some applications will take longer than others to process. As new gTLDs are absorbed into the root in a measured manner, there will be ample opportunity to asses any issues of root scalability. If a “time out” is necessary, that can be accommodated. However we don’t think it will be necessary because most of us who are deeply involved in the business of new gTLDs know there is simply not enough capital and interest to produce the thousands of new gTLDs that some people “warn” the community about.

Many people have been working for years to create greater competition, consumer choice and innovation with gTLDs. We are almost home and can see the gTLD light in the window. So, please, don’t place another roadblock in our way. Instead, let’s all drive a little faster and wrap up the applicant guidebook and launch new gTLDs.

Sincerely,

Jeffrey Eckhaus
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