AFNIC

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Comments on an Expression of Interest procedure for new gTLDs

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1. Statement of Interest

AFNIC is a not-for-profit, multistakeholder organization founded in 1997, managing the French country-code top level domains *.fr, .re, .tf, .wf, .pm* and *.yt*. AFNIC is a member of ccNSO and a founding member of CENTR, the European regional organization of ccTLDs gathering 57 ccTLD managers.

Recently AFNIC, in cooperation with CORE, was selected by the City of Paris to provide back-end registry services for the *.paris* TLD project. In the context of future new gTLD applications, AFNIC may also be involved with providing services and support to other applicants.

2. Support for the implementation of an EOI procedure without delay

Although we wished the community was given more time to comment on this complex subject matter, we understand the need for a prompt feedback on the part of ICANN Staff. Indeed, we deem absolutely necessary for the ICANN Board to seize the opportunity of its next meeting to approve of an EOI plan that, in principle, would have the potential to put the new gTLD process back on track and finally realize ICANN's pledge to opening the new gTLD space.

In Seoul, ICANN's CEO Rod Beckstrom expressed the commitment of ICANN to addressing the so-called overarching issues before opening the application window for new gTLDs. As we understand, these issues are : the unproven overall consumer benefit from the introduction of new gTLDs, the argument about the effects of changing the Registry/Registrar separation regime, the disagreement about trademark protection mechanisms and anti-abuse policies, the uncertainty around root scaling, and finally the concerns about public order and morality.

For each and every one of these issues, a properly designed EOI process would have the potential to inform the debate in such a way that : 1) the stakes involved could be radically clarified and 2) the stakeholders could be provided with the definite and relevant data they have lacked until today in order to come to reasonable agreement on policy details.

As a strong believer in pragmatic approaches, AFNIC adamantly supports such an EOI initiative. It very well fits with the incremental approach to gTLD applications that AFNIC had defended in its recent submission on DAG v3[1]. As a matter of fact, and as we believe a properly designed EOI would show, different gTLD applications may present completely different risk profiles with respect to each of the overarching issues that currently plague the gTLD process. For some applications, so-called overarching issues may even simply be irrelevant. For instance, we cited the case of an application such as that of *.paris*, stating that "*recognized social-purpose gTLD projects, such as those of capital cities or cultural and linguistic communities, can provide immediate proof of social and economic benefit to their community, guaranteed protection against Intellectual Property abuse, and negligible impact on the DNS root due to their limited number. In particular, the governance structure and policies that prospective operators of such TLDs would have to design in order to secure the support of their relevant public authorities, added to the legal framework to which these authorities are accountable, can clearly and convincingly show how abuse would be improbable if not impossible altogether.*"

In any event, if ICANN is truly committed to opening new gTLD and solving the issues such a process raises, as it has pledged on many occasions, now is the time to resort to pragmatism. The Expression of Interest process is THE opportunity.

3. Comments on EOI issues identified by ICANN

1) How do we ensure that participation in the EOI accurately represents the level of interest?

Before answering this question, ICANN's objectives with the EOI process ought to be clarified. If ICANN is truly committed to both opening new gTLDs and solving the overarching issues, which AFNIC believes is the case, then ICANN needs an exhaustive and exact representation of the "level of interest" in the Internet community. Otherwise, debates on overarching issues will be allowed to return to business as usual, that is arguing over potentially inexistent problems, and the new gTLD program will continue to derail.

The level of participation to be secured therefore is that of every single party that has a proven and serious interest in one ore more gTLDs, and only these parties. That is, applicants that are able to demonstrate a well-defined project, with proven benefits to well-identified targets, and who are seriously considering applying for a gTLD. This is the absolute requirement to be enforced in order to gather the one and only actionnable set of information ICANN and the community needs.

These serious applicants are most likely to be organizations that have already invested considerable resources in following or participating in the development of the new gTLD program at ICANN. They most likely have been working on their application since the publication of the first versions of the Draft Applicant Guidebook. They most

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[1] http://forum.icann.org/lists/3gtld-guide/msg00081.html

certainly were preparing to apply for their gTLD(s) in the first half of 2010. Additionally, serious applicants could also very well be organizations that have come on board the process more recently. In such cases, should they be serious, be assured that newcomers will find plenty of well informed partners who will be able to jump start their effort and infuse all the necessary knowledge into their project.

All in all, serious applicants are ready. They are waiting on ICANN. They actually have been seeking a more predictable process in order to advance the planning of their project.

How does ICANN secure the participation of every single serious applicant, and only them? Taking as a given a reaffirmation of ICANN's commitments to opening the gTLDs and addressing the overarching issues, AFNIC believes that a properly designed EOI would implement the following three principles :

– **EOI would be part of the gTLD application process, and may need to be made mandatory** for applicants contemplating delegation of a gTLD within the current round (although we are aware of difficulties such a requirement could imply).
– **EOI would require a significant deposit**, which would count towards the gTLD application fee, and which would only be refundable under very specific conditions, including the failure of ICANN to subsequently open application windows within predefined timeframes.
– **EOI would require applicants to disclose to ICANN and/or to the community sufficient information**, far beyond the projected TLD string, as to inform on the precise model of operation, policies and governance of the project.

2) Should only those who participate in the EOI be eligible to participate in the first round when the program officially launches?

This would theoretically be ideal: the effectiveness of an EOI is strongly correlated to the exhaustiveness of the information it can generate.

3) Should a deposit be required for participation in the EOI?

Yes. Payment of a significant part of the already publicized gTLD application fee should be required at that stage, as the EOI deposit. An amount in the order of magnitude of 30,000 to 50,000 USD, as circulated in many other contributions, seems apt to discourage frivolous applications. It also allows for subsequent reduction of the overall application fee should ICANN eventually decide to implement a differentiated fee schedule depending on the nature or origin of the project.

4) If there is a fee, under what circumstances should there be refund?

We see three very clear cases for refund of the EOI deposit in full when :

- several applicants are running for the same TLD (a scheme would have to be devised so that applicants may chose to withdraw and their deposit be refunded)
- ICANN fails to open a first application window by the end of Q3 2010
- ICANN fails to provide relevant opportunity to all parties to take their application forward within 18 months (this includes major policy changes in the DAG which would prevent a given applicant to proceed without modifying the model or structure of its project)

5) What information should be collected from EOI participants?

Many of those who have contributed to this call for comments so far have argued that collected information should be limited to the applied-for TLD, name of applicant and contact information. We believe that such a reduced ambition would undermine the very benefit an EOI could bring to the addressing of the overarching issues.

We therefore propose that in addition to this very basic information, which would surely help to streamline the application process by allowing competing applicants to settle before entering into the subsequent steps on the application trail, ICANN require applicants to submit a detailed description of their project. This would allow ICANN, and potentially the whole community (should the applicant whish to make some of this information public), to get a good grasp of what would be the model of a given TLD and what kind of challenges or issues it would raise in reality.

5.1) What subset of applicant questions found in the Applicant Guidebook should be answered?

Given the type of information needed for EOI to be effective (left-hand column), participants in the process should be required to answer in full to the relevant questions from the DAG (right-hand column).

Information needed	# of the corresponding questions in the DAG
Applicant information	1 to 6 + 8 + 10
Applied for gTLD string	13 to 17
Nature of the project and proposed governance model	20 (mission/purpose of the TLD) 18 + 19 (community-based) 21 (geographical names)
Description of the business model	46 to 50
Description of the Registry Services	23
Description of abuse and rights protection mechanisms	35 + 36

We think each participant/applicant should provide this level of detail in order for the overall input to be significant enough with respect to the goal of addressing the overarching issues. In particular, we believe applicants ought to demonstrate precise fact-based knowledge of the expected demand for their TLD in their business model. Such material, if critically examined, would be invaluable to any economist working on the part of ICANN to study the effect of new gTLDs on overall consumer benefit. A detailed description of the nature and governance of the TLD project, along with an explanation of the anti-abuse mechanisms it would implement, would go a long way towards confirming or invalidating the concerns of ICANN and the community on issues such as trademark protection or malicious behavior. Moreover, this information could help ICANN clearly identify patterns of risk profiles in TLD projects which could eventually be given differentiated treatment down the application path.

5.2) Including applied-for strings?

Absolutely.

5.3) Should information be made public?

If the EOI were to be part of the application process, we believe that its publication standards should be consistent with current provisions included the DAG. In exchange, and in order to allow the involvement of the community, ICANN should thoroughly report on its observations at the closing of the EOI window.

6) Must the responder commit to go live within a certain time of delegation?

We believe that such a rule does not belong to the EOI but rather to the Draft Registry Agreement.

7) What are the implications for potential changes to the Applicant Guidebook after the EOI participation period closes?

By participating in an EOI process which would be an integral part of the formal gTLD application process (as a mandatory initial step on the application trail), any serious applicant would be ready to adapt to subsequent changes to the policy, provided these changes would not clearly undermine the application's model or prevent the application to proceed. In such cases, the applicant would be allowed to amend or withdraw its application, and his deposit could be returned in full.

8) What are the potential risks associated with the EOI?

We agree with the view frequently expressed that the benefits of EOI to the community outweigh the potential risks.

The major risk we have identified and about which we call on ICANN to be careful is that of further delaying the introduction of the new gTLDs.

In line with the pragmatic and incremental approach that we have been advocating, we believe that a properly designed EOI process can actually help ICANN in introducing new gTLDs more rapidly while still allowing it to proceed with caution. For instance, based on detailed expressions of interests it would receive, ICANN would surely realize that there are very specific and easily identifiable designs of gTLD projects that do not deserve to be delayed further and that could be allowed to proceed forward on the application trail. In the meantime, ICANN would benefit from an invaluable input into other more problematic types of applications for which it could resume policy making with the relevant stakeholders, but in a much more informed and efficient way.

4. Representation of prospective gTLD registry operators

As EOI participants, gTLD applicants, i.e. prospective gTLD registry operators, should be given appropriate representation within ICANN's relevant supporting organization. Going forward, given the stake that these players would have in the process, notably in the form of their EOI deposit and their investment into the development of their gTLD model, it would seem fair to expect that they have a voice in the last mile of the new gTLD policy development. An observer status granted informally to some of them would not appear to be adequate anymore once gTLD applicants, through EOI, become declared and legitimate stakeholders.