



## New gTLD Expressions of Interest: Proceed with Caution

by Michael Palage

The ICANN Board, at its October 2009 annual meeting in Seoul, passed a resolution directing staff to prepare an analysis regarding the feasibility of ICANN soliciting Expressions of Interests (EOIs) from prospective applicants for new Generic Top Level Domains (gTLDs).<sup>1</sup> ICANN staff subsequently opened a public forum seeking input from the community on a number of questions.<sup>2</sup> While this latest initiative should not distract ICANN from the remaining four overarching issues, if well executed, this EOI initiative could provide valuable insights into two of the four overarching issues: economics and root scaling. But if executed improperly, this EOI initiative will likely erode confidence in the new gTLD process and negatively impact ICANN's evaluation in the upcoming reviews under ICANN's new Affirmation of Commitments.<sup>3</sup>

### I. Let's Have a Bottom-Up, Not Top-Down Process

One of the core principles enshrined in the ICANN model is the bottom-up consensus-driven process. This process, however, is a double-edged sword: While inherently noisy, contentious and time consuming, when consensus finally emerges from this cacophony of competing voices (public and private) the results are generally well founded principles and policies that respect the global public interest. As ICANN moves forward with the Seoul EOI resolution, the legitimacy of its final action must learn from the same bottom-up community consensus processes that were followed in the 2000 Proof of Concept new gTLD round and the more recent Internationalized Domain Names (IDNs) ccTLD Fast-Track round.

#### A. 2000 New gTLD Proof of Concept – Expressions of Interest

There is precedence for use of EOIs in ICANN's relatively short history. Its first use was in 2000 as part of the new gTLD Proof of Concept round when ICANN made its first steps in the long

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<sup>1</sup> ICANN, Adopted Board Resolutions | Seoul, Oct. 30, 2009, <http://www.icann.org/en/minutes/resolutions-30oct09-en.htm>.

<sup>2</sup> ICANN, Expressions of Interest in new gTLDs: ICANN seeks input and advice, Nov. 11, 2009, <http://www.icann.org/en/announcements/announcement-11nov09-en.htm>.

<sup>3</sup> Affirmation of Commitments by the United States Department of Commerce and the Internet Corporation for Assigned Names and Numbers, Sept. 30, 2009, available at <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>.

journey toward responsibly expanding the domain name space. This call for EOIs was made at the request of the ICANN Domain Name Supporting Organization (DNSO), the predecessor to today's GNSO.<sup>4</sup>

This process produced 27 submissions from prospective applicants and other interested parties.<sup>5</sup> No costs were imposed upon gTLD applicants for submitting these EOIs and all responses were publicly posted on the ICANN website. Most importantly, in issuing the call for EOIs, ICANN clearly and properly stated that “those who submit expressions of interest will neither be advantaged nor disadvantaged in the formal application process.”<sup>6</sup> A total of 47 applications for new gTLDs were submitted to ICANN in 2000, although only 44 were processed.<sup>7</sup>

While the number of gTLD applications later filed exceeded the number of EOIs received by ICANN, the EOI process provided an indication of likely gTLDs demand, thus helping ICANN plan the application process. While a handful of EOIs filed were non-responsive to the questions ICANN originally asked, the process was nonetheless useful in helping ICANN gather the data points needed to make fact-based decisions. Seven of the EOI respondents (26%) ultimately submitted applications to ICANN during the 2000 gTLD Proof of Concept Round.

### **B. 2008-2009 ccTLD IDN Fast Track – Request for Information**

The decision to move forward with the internationalization of the domain name space made by the ICANN Board at its annual meeting in Seoul was based in large part on the hard work of the Internationalized Domain Names Working Group (IDN WG). The original charter of the IDN WG was proposed by the ccNSO, the ICANN Supporting Organization tasked with ccTLD policy development and coordination, and was approved by the ICANN Board at its 2008 annual meeting in Los Angeles.<sup>8</sup> In approving this charter, the ICANN Board specifically noted that the, “cross-community process as envisioned and proposed by the ccNSO Council, is consistent with ICANN's bottom-up, multi-stakeholder model for considering issues and recommending to the ICANN Board a course of action.”<sup>9</sup>

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<sup>4</sup> See Minutes of DNSO Names Council Teleconference, Apr. 18, 2000, <http://www.dnso.org/dnso/notes/20000418.NCtelecon-minutes.html>.

<sup>5</sup> See ICANN Yokohama Meeting Topic: Introduction of New Top-Level Domains, Expressions of Interest, July 9, 2000, <http://www.icann.org/en/meetings/yokohama/eoi.htm>.

<sup>6</sup> See ICANN Yokohama Meeting Topic: Introduction of New Top-Level Domains, June 13, 2000, <http://www.icann.org/en/meetings/yokohama/new-tld-topic.htm#V> (last updated June 17, 2000).

<sup>7</sup> Two applications (.NUMBER/.TEL/.PHONE and .WAP) were returned for failure to timely pay the application fee, and the .NYC application was withdrawn for failure to agree on the treatment of confidentiality claims, see ICANN, TLD Application Review Update, Oct. 13, 2000, <http://www.icann.org/en/announcements/icann-pr13oct00.htm>.

<sup>8</sup> See ICANN, Adopted Board Resolutions | Los Angeles, Nov. 2, 2007, <http://www.icann.org/en/minutes/resolutions-02nov07.htm>.

<sup>9</sup> *Id.*

The work undertaken by the IDNC WG was not easy; however, the cross-community process aided by appropriate support from ICANN staff was able to produce a final set of recommendations that the ICANN Board accepted for publication during its Paris meeting a mere seven months later.<sup>10</sup> Included in these recommendations was an IDN ccTLD Fast Track:

[A] request for information (RFI) [to be] sent out to all territories to gain an understanding of the interest of individual territories to participate in the Fast Track process. Participation in the RFI should however not be mandatory to be eligible for an IDN ccTLD under the Fast Track.<sup>11</sup>

In implementing these recommendations, the ICANN staff undertook a global outreach effort to all territories in the fall of 2008 to ascertain interest in the proposed Fast Track process.<sup>12</sup> Unlike the 2000 Proof of Concept where there was an unknown universe of potential applicants, ICANN had a predefined universe of 252 national governments and corresponding country code top-level domain managers. In response to the initial 252 letters, ICANN received 74 responses, 31 of which (not counting a small handful of confidential responses) indicated their intention to participate in the Fast Track process.<sup>13</sup>

### C. Next Steps Forward

Should the ICANN Board decide to move forward with an Expression of Interest process at its upcoming Board meeting, it should follow the path it has created by precedents established in similar situations. Specifically, in connection with proposed trademark safeguard proposals originally identified by the Implementation Recommendation Team (IRT),<sup>14</sup> the ICANN CEO and Chairman of the Board both wrote to the GNSO Council to request expedited feedback in connection with a limited number of issues.<sup>15</sup> Following this precedent, the ICANN CEO and Chairman of the Board should send a request to Council, along with any relevant ICANN staff generated background documents, and ask the Council for a timely response regarding the use of an EOI in the new gTLD process.

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<sup>10</sup> See ICANN, Adopted Board Resolutions | Paris, June 26, 2008, <http://www.icann.org/en/minutes/resolutions-26jun08.htm>.

<sup>11</sup> See ICANN, IDNC Working Group Board Proposal, June 25, 2008, <http://ccnso.icann.org/workinggroups/idnc-wg-board-proposal-25jun08.pdf>.

<sup>12</sup> See ICANN, ICANN Seeks Interest in IDN ccTLD Fast-Track Process, Oct. 2, 2008, <http://www.icann.org/en/announcements/announcement-02oct08-en.htm>.

<sup>13</sup> See ICANN, Governments and Country-Code Managers' Interest in the Fast Track Process, Feb. 10, 2009, <http://www.icann.org/en/announcements/announcement-10feb09-en.htm>.

<sup>14</sup> See ICANN, Public Comment: Trademark Protection (IRT Final Report), May 29, 2009, <http://www.icann.org/en/announcements/announcement-4-29may09-en.htm>.

<sup>15</sup> See Peter Dengate Thrush, Chairman, ICANN, and Rod Beckstrom, President & CEO, ICANN, Letter to GNSO Council Members, Oct. 12, 2009, <http://gnsso.icann.org/correspondence/beckstrom-to-gnsso-council-12oct09-en.pdf>.

## II. POTENTIAL VALUE

A properly implemented EOI could provide ICANN and the broader Internet community with a number of important metrics to assist in successfully implementing new gTLDs. Specific insight would be particularly useful in the following areas:

- The likely number of actual applicants in the first round;
- Ratio of ASCII versus IDN new gTLDs;
- Size of the potential zones (*i.e.*, how many domain names) in these new gTLDs;
- Type of gTLD applications (*i.e.*, brand, cultural, regional/geographic, etc.);
- Insight into the potential geographic/regional distribution of new registry operators;
- Insight into the evolution of the registration authority marketplace;
- Analysis of prospective applicants from developed versus developing countries;
- Whether currently proposed fees and timelines represent a barrier to entry for certain prospective applicants; and
- Meaningful data necessary to produce the “fact-based” economic analysis required by ICANN's Affirmation of Commitments;

## III. FRAMEWORK FOR DISCUSSION

Following the Seoul meeting, a healthy discussion has developed within the community regarding the potential viability and utility of an EOI. At least one proposal being advanced by prospective TLD applicants has proposed making participation in the EOI mandatory for all potential gTLDs applicants, with fees in the \$50,000-100,000 range.<sup>16</sup> Unfortunately, as it stands now, this proposal appears less about identifying interest among prospective gTLD applicants, and more about these prospective applicants reserving their spaces at the front of the line (aka “TLD Front-Running”<sup>17</sup>) before the rest of the global Internet community has had the opportunity to review a final gTLD Draft Applicant Guidebook (DAG). Listed below is a framework for discussion on those issues critical to ensuring the objectivity and legitimacy of the any EOI process undertaken by ICANN.

### A. Potential Costs to File an EOI

ICANN imposed no financial obligation on respondents in the 2000 new gTLD EOI and the 2008-2009 IDN ccTLD RFI. They were thus able to respond at “no cost.” Unfortunately, the proponents of the front-running approach are seeking to impose an EOI submission fee on the order of tens of thousands of dollars, claiming that this will prevent gaming and provide more reliable data points. Given that gaming *was never an issue* during the respective 2000 EOI and 2008 RFI, it is hard to see what harm they are trying to prevent. Instead the only potential

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<sup>16</sup> All cost figures herein are in US dollars.

<sup>17</sup> See, *e.g.*, Michael Palage, “New gTLDs: Let the Gaming Begin – Part I: TLD Front Running,” The Progress & Freedom Foundation, Progress on Point 16.17, Aug. 2009, <http://www.pff.org/issues-pubs/pops/2009/pop16.17-new-gTLDs-gaming-front-running.pdf>.

gaming in connection with the proposed front-running scheme is these self-interested parties trying to reserve a place at the front of the line, while using the high submission fee as a barrier to entry for prospective applicants that have not yet fully understood the potential risk/benefit analysis associated with new gTLDs.

Another argument advanced in favor of a front-running approach is that the high fee will provide ICANN with more accurate data points on the potential interest in new gTLDs, because only serious applicants would be willing to commit such large sums of money. This proposition fails for two key reasons:

1. Until ICANN produces a final Draft Applicant Guidebook, businesses that might otherwise have an interest in applying for a TLD, but whose primary business is not focused on obtaining a TLD(s) per se, are unlikely to commit substantial financial resources in the current economic climate. High fees would only serve to restrict the potential universe of prospective applicants, and to deter applicants whose budgeting processes would not permit a speculative investment in an EOI.
2. This high fee would exclude potential applicants from developing countries, less financial resourceful organizations/community, or organizations whose budget processes are not geared toward taking speculative positions such as reserving a position within a speculative future process. This is a point that the GAC has repeatedly reiterated in its various new gTLD communiqués by calling for a restructuring of the “gTLD application fee regime” to “reflect these different categories and limited financial resources available to applicants for some of them.”<sup>18</sup>

Notwithstanding the serious problems with high EOI submission fees, there may be some merit in imposing a nominal fee sufficient to discourage “ballot box stuffing.” If such a fee was to be considered by the community, it should be on the order of magnitude of \$100—the same fee ICANN was going to impose on potential applicants in versions 1.0 and 2.0 of the DAG to register and access the TLD Application System (TAS). While ICANN has removed this \$100 fee in the most recent DAG, the initial \$100 proposal provides a reasonable data point on a likely financial threshold to keep away third parties that have no real interest in actually participating in the new gTLD round.

If the ICANN community was to propose a higher fee above the \$100 range, it should be applied as a credit against any future application fee. Additionally, ICANN would have to provide for a reduction or waiver of this fee in self-declared hardship situations. This nominal fee coupled with other reasonable safeguards can minimize any potential gaming and do so without the unreasonable burden of prospective TLD applicants having to payout tens of thousands of dollars to submit an EOI.

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<sup>18</sup> See Janis Karklins, Chairman of the GAC, Letter to Peter Dengate Thrush, Chairman, ICANN, Aug. 18, 2009, <http://www.icann.org/correspondence/karklins-to-dengate-thrush-18aug09-en.pdf>.

## **B. Binding Nature of the EOI**

ICANN never required any type of binding commitment from respondents in the 2000 EOI or the 2008 RFI processes. In fact, ICANN specified that both processes were not mandatory, and that submitting a response would neither advantage nor disadvantage respondents. Unfortunately, the front running approach would make participation in the EOI mandatory for those applicants wishing to participate in the first gTLD round. This proposal would also be inconsistent with the policy advice of the GNSO Council which has always sought to create a level playing field for potential applicants.

ICANN has always made the EOI and RFI processes voluntary because, until a final policy or implementation plan is in place, it is subject to change, and this change can have a material impact on a third party's decision to go forward, or upon the ability of "intra-preneurs" within existing organizations to make an internal business case for proceeding. No credible reason has yet been put forward to justify deviating from ICANN's established precedent regarding the voluntary and non-binding nature of EOIs and RFIs. Moreover, the front running approach would likely only increase ICANN's litigation risks, by appearing to grant a license or privilege in a process which may ultimately deviate from present expectations, among other things.

## **C. Publication of Data**

Another core ICANN principle is openness and transparency. During the 2000 EOI, all submissions were made publicly available on the ICANN website. But during the 2008 RFI, ICANN permitted some respondents to request confidential treatment of their submission. During the discussion of the new gTLD EOI resolution in Seoul, a number of ICANN Board directors thoughtfully discussed how ICANN might balance its commitment to openness and transparency with the competitive nature of the domain name marketplace.<sup>19</sup>

The ICANN Nominating Committee offers an ideal model to resolve this issue. The Nominating Committee is responsible for selecting various ICANN Leadership positions each year, including a majority of the ICANN Board of directors over the course of a three-year cycle. In order to attract the best level of talent possible, while preserving the identity of those highly qualified individuals not selected, all candidate submissions are treated confidentially. To honor the principles of openness and transparency, the Nominating Committee each year releases a summary of the applications received.<sup>20</sup>

For example, Tricia Drakes, the 2009 Chair of the Nominating Committee publicly released the following statistics regarding the work of the 2009 Nominating Committee at ICANN's Seoul meeting:

- 86 Statements of Interest from candidates worldwide

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<sup>19</sup> See Transcript, ICANN Board of Directors Meeting, Oct. 30, 2009, <http://sel.icann.org/meetings/seoul2009/transcript-board-meeting-30oct09-en.txt>.

<sup>20</sup> For the recently concluded 2009 statistics, see 2009 ICANN Nominating Committee, Dec. 2, 2008, <http://nomcom.icann.org/index-2009.htm> (last updated Nov. 13, 2009).

- 71 candidates were male, 15 were female
- 10 candidates were from Africa,
- 24 candidates were from Asia/Australia/Pacific
- 23 candidates were from Europe
- 12 candidates were from Latin America/Caribbean; and
- 17 candidates were from North America

In the appendix to this article is a proposed list of questions that could be asked of potential applicants. Most notably absent is for which TLD string the applicant intends to apply. Instead, the applicant is asked to identify which category its application is likely to fall within (*i.e.*, brand, cultural, geographic, etc.). But advocates of the front running approach have been almost uniform in their vocal support of requiring EOI respondents to disclose of their intended TLD string. The broader ICANN community should take pause and ask, why?

The answer has already been clearly indentified in one of the proposals submitted by group of prospective TLD applicant frontrunners:

If the prospective applicant learns that it is the only entity applying for the string, it may reasonably presume, subject to passing all the tests in the application, and overcoming any objections, that it has an excellent chance of being awarded the TLD. It may decide therefore to undertake, among other things, any of the following activities:

- Raising money
- Marketing
- Taking expressions of interest from prospective registrants.<sup>21</sup>

The prospective TLD applicants need to know the identity of the strings so they can raise money, being marketing a TLD, taking expressing of interests from prospective registrants (aka pre-reservations)—all *before* ICANN and the global Internet community has been able to comment on and approve the final Applicant Guidebook. ICANN's credibility in the global Internet community would be impacted if third parties began taking pre-reservations and holding auctions for second level domain names in a TLD that has not yet been entered into the Root based solely on the fact that there was only one EOI for that string filed by a third party—before ICANN and the global Internet community had even finalized the DAG.

Further, disclosure of strings relating to application-specific TLD's (*i.e.* TLD's which are sought in connection with the provision of a DNS-based service incident to another technical service offering), may inspire additional gamesmanship based on disclosure of future business plans,

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<sup>21</sup> See ICANN, Expressions of Interest Working Group, Nov. 6, 2009, <http://www.icann.org/correspondence/eoiwg-to-icann-proposed-outputs-06nov09-en.pdf>.



such as is already occurring within various national trademark offices.<sup>22</sup> Historically, parties seeking to establish “priority” or other “rights” in TLD strings have increased complexity and litigation risk, based on various theories of perceived entitlement in TLD strings arising from purported commitments made during preparation for TLD application processes or on trade or service mark theories.<sup>23</sup>

Prospective TLD applicant frontrunners and other business interests made substantial capital commitments and gambled on ICANN accepting new gTLD applications in Q1 2010. Now that it has become clear that ICANN will not be accepting new gTLD applications until some significantly later date, the ICANN community must ask itself whether ICANN should create an EOI process that establishes preferential rights in the first round for applicants to recover sunk costs in speculative investments based on projections on when a diverse community would reach a final consensus on the timing of the first round of gTLDs applications. As a trustee of a global resource and facilitator of a multi-stakeholder consensus process, should ICANN place the general welfare interest of all Internet stakeholders above the specific interests of those who have made speculative investments in the ICANN process?

#### **IV. RESPONDING TO ICANN’S PUBLIC FORUM QUESTIONS**

On November 11, 2009, ICANN commenced a public forum to seek input from the community on a number of issues they have preliminarily identified in connection with an EOI.<sup>24</sup> Listed below are the responses to those questions based on the framework outlined above.

##### **A. How do we ensure that participation in the EOI accurately represents the level of interest?**

It is impossible to accurately calculate the exact level of interest in the new gTLD process, when the Draft Applicant Guidebook has yet to be finalized, and ICANN has yet to undertake the global advertising campaign it had previously promised. All ICANN can do is what it has done in connection with the 2000 EOI and 2008 RFI: engage in a non-binding EOI with nominal to no costs associated with any submissions. Both of these processes provided constructive data points that enabled ICANN to move forward with the respective initiatives.

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<sup>22</sup> See, e.g., Michael Palage, “New gTLDs: Let the Gaming Begin – Part I: TLD Front Running,” The Progress & Freedom Foundation, Progress on Point 16.17, Aug. 2009, <http://www.pff.org/issues-pubs/pops/2009/pop16.17-new-gTLDs-gaming-front-running.pdf>

<sup>23</sup> See, e.g., *Economic Solutions, Inc. v. Internet Corp.*, 2001 U.S. Dist. LEXIS 25449 (E.D. Mo. Feb. 22, 2001), available at <http://www.icann.org/en/tlds/correspondence/esi-v-icann-13nov00.htm> (.BZ/.BIZ litigation); *Image Online Design v. Core Ass'n*, 120 F. Supp. 2d 870, available at <http://www.icann.org/en/tlds/correspondence/iod-v-core-22jun00.htm> (.WEB litigation).

<sup>24</sup> See ICANN, Expressions of Interest in new gTLDs: ICANN seeks input and advice, Nov. 11, 2009, <http://www.icann.org/en/announcements/announcement-11nov09-en.htm>.



**B. Should only those who participate in the EOI be eligible to participate in the first round when the program officially launches?**

No. ICANN did not impose such a requirement in either the 2000 EOI or the 2008 RFI. There is no logical basis for imposing this restriction, other than to benefit those prospective TLD applicants that originally advocated this EOI initiative in the first place. Such a requirement would make the EOI nothing more than a “Front-Running” scheme for insiders to reserve their space at the front of the line for new gTLDs, to the detriment of others who are concerned about what the final TLD application process will entail prior to committing to an investment. In their policy guidance to the Board, the GNSO stated that applications should not be received until the community had a reasonable timeframe to review the final new gTLD criteria. This proposed EOI would violate the spirit of that policy recommendation by limiting who could apply, and directly and materially favoring those frontrunners that are now advocating this EOI process. Additionally, according a priority privilege to EOI statements opens a door to gaming based upon the value of the EOI priority positions thus gained, because such privilege confers an economic value on EOI status alone.

**C. Should a deposit be required for participation in the EOI?**

No, but a nominal fee on the order of \$100 could be appropriate. The \$100 price point was selected because that was the fee ICANN had previously proposed for interested third parties to access ICANN’s TLD Application System (TAS). If ICANN proposed a fee above the \$100 range proposed herein, any higher fee should be applied as a credit against any future application fee paid. Additionally, ICANN would have to provide for a reduction, or waiver, of this fee in cases of self-declared financial hardship (*e.g.*, for NGOs from developing countries).

**D. If there is a fee, under what circumstances should there be refund?**

If the fee were nominal (on the order of \$100), there would be no need to consider refunds.

**E. What information should be collected from EOI participants?****1. What subset of applicant questions found in the Applicant Guidebook at <http://www.icann.org/en/topics/new-gtlds/draft-evaluation-criteria-clean-04oct09-en.pdf> should be answered?**

Most of the questions in the Applicant Guidebook are non-responsive to the data points that ICANN must ascertain to make a fact-based decision. For an appropriate set of questions to ask, please refer to the Appendix of the article.

**2. Including applied-for strings?**

No.

**3. Should information be made public?**

As set forth above, ICANN should release a summary of the data received provided in a format not unlike that used by the Nominating Committee regarding the number and type of applications received for the different ICANN leadership positions.

**F. Must the responder commit to go live within a certain time of delegation?**

Non-issue: There is already a provision in the base registry agreement that requires the registry operator to pass pre-delegation requirements and be in the root within twelve months of signing the agreement with ICANN.<sup>25</sup>

**G. What are the implications for potential changes to the Applicant Guidebook after the EOI participation period closes?**

If the EOI is not mandatory or binding, and there is no fee or if it is nominal, there is little-to-no legal exposure to ICANN and little-to-no impact to prospective applicants. If, however, ICANN imposes non-refundable deposits of a substantial size, there are numerous legal/operational complexities that ICANN would have to address, thus slowing down the very roll-out this EOI is designed to expedite.

**H. What are the potential risks associated with the EOI?**

If done along the lines of 2000 EOI and 2008 RFI, there is little to no legal exposure to ICANN. Any other course of actions, however, could greatly increase ICANN's litigation risk profile, both directly and as the promoter of what may be a contentious set of competing "privileges" inherent in the EOI positions granted.

**V. Conclusion**

A properly conducted EOI could greatly aid ICANN in making fact-based decisions in resolving several of the outstanding overarching issues. But if done improperly, the EOI would erode public confidence in ICANN and negatively impact ICANN's evaluation in the upcoming Affirmation of Commitment reviews. The path forward for ICANN is a road that it has previously traveled—and one which has served it well. There is little benefit to deviating from these established precedents to benefit the narrow interests of a small number of TLD applicants whose business plans have been jeopardized because of ICANN's decision to listen to the global community by slowing down and getting things right. The ICANN Board need look no further than Paragraph 4 of the Affirmation of Commitments to remind it that "its decisions are in the public interest, and not just the interests of a particular set of stakeholders."

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<sup>25</sup> See New gTLD Agreement, Proposed Draft v.3 ¶4.3(b), Oct. 2009, <http://www.icann.org/en/topics/new-gtlds/draft-agreement-specs-redline-04oct09-en.pdf>.

## Related PFF Publications

- Michael Palage, “New gTLDs: Let the Gaming Begin – Part I: TLD Front Running,” The Progress & Freedom Foundation, Progress on Point 16.17, Aug. 2009, <http://www.pff.org/issues-pubs/pops/2009/pop16.17-new-gTLDs-gaming-front-running.pdf>.
- Michael Palage, “ICANN & Internet Governance: How Did We Get Here & Where Are We Heading?,” The Progress & Freedom Foundation, Progress on Point 16.15, July 2009, <http://www.pff.org/issues-pubs/pops/2009/pop16.15-ICANN-internet-governance-transcript.pdf>.
- Michael Palage, “ICANN’s Economic Reports: Finding the Missing Pieces to the Puzzle,” The Progress & Freedom Foundation, Progress Snapshot 5.4, June 2009, <http://www.pff.org/issues-pubs/ps/2009/pdf/ps5.4icanns-economic-reports.pdf>.
- Michael Palage, “ICANN’s Implementation Recommendation Team for New gTLDs: Safeguards Needed,” The Progress & Freedom Foundation, Progress on Point 16.10, Mar. 25, 2009, <http://www.pff.org/issues-pubs/pops/2009/pop16.10IRTgTLD.pdf>.
- Michael Palage, “ICANN’s “Go/ No-Go” Decision Concerning New gTLDs,” The Progress & Freedom Foundation, Progress on Point 16.3, Feb. 2009, <http://www.pff.org/issues-pubs/pops/2009/pop16.3gTLDgonogo.pdf>.

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## Appendix

The following is the proposed framework of questions for prospective gTLD applicants to submit in connection with any EOI submission process.

### 1. Respondent Information

- a. Name of Individual and/or Organization submitting EOI
- b. Contact information of Individual and/or Organization
- c. Is the Respondent the potential TLD applicant, or is Respondent submitting an EOI on behalf of a potential Applicant? (Check one box)

Potential Applicant

Third Party Representative

Note: Notwithstanding the proposed confidential nature of this EOI submission, there are some third parties that may be included not to submit an EOI for fear of accidental disclosure. Therefore it is proposed that third parties (i.e. law firms, consultancy firms, etc) be able to submit an application on behalf of a client. Providing this submission option is likely to increase the number of genuine prospective applicants.

### 2. Type of String to be applied for (check one):

a.  ASCII

b.  IDN

### 3. What category best describes the TLD: (check the appropriate box(es))

a.  Brand TLD

b.  Geo TLD (city or other distinct geographic region)

c.  Cultural TLD (e.g., .CAT)

d.  Generic (subject matter / interest related, not specified below)

e.  Generic (industry specific – e.g.,.AERO)

f.  Certification/Collective Membership (trade association)

g.  Financial Related

h.  Health/Medical Related

i.  Generic (do not wish to disclose specific type for proprietary reasons)

j.  Application-Layer Specific (use in implementing a technical operation, e.g. .TEL)

k.  Government(s) or International Agencies(s)

l.  Other

### 4. What do you reasonably estimate to be the number of domain names in the TLD zone file within the first three years of operation?

a.  Less than 100,000

b.  Between 100,000 and 1 million

c.  Between 1 million and 10 million

d.  Over 10 million

**5. Type of proposed distribution model**

- a.  Traditional segregated registry/registrar
- b.  Integrated registry/registrar
- c.  Hybrid
- d.  Bundled with other services
- e.  Do not know
- f.  Do not understand the question

**6. Will you be building out your own technical infrastructure or sub-contracting to a third party?**

- a.  Build out
- b.  Sub-contract
- c.  Have not yet decided

**7. Geographic region where the registry will likely be legally incorporated**

- a.  North America
- b.  Europe
- c.  South America
- d.  Africa
- e.  Asia-Pacific
- f.  Do not know

**8. Geographic region where principle registry infrastructure (SRS) will likely be located**

- a.  North America
- b.  Europe
- c.  South America
- d.  Africa
- e.  Asia-Pacific
- f.  Do not know

**9. Is prospective applicant from a developed or developing country?**

- a.  Developed
- b.  Developing

**10. Does the currently proposed applicant fee of 185,000 USD represent a barrier to entry to the prospective applicant?**

- a.  Yes
- b.  No

11. **How would you describe your current level of understanding regarding the ICANN new gTLD process?**

- a.  **Rudimentary:** Have read/heard of the new gTLD process and have a potential interest
- b.  **Basic:** Have read the material on the ICANN website and/or have participated in various webinars held by third parties
- c.  **Detailed Working Knowledge:** Have conducted a detail feasibility study into the specific technical and financial requirements based upon the current Draft Applicant Guidebook and other material
- d.  **Committed:** Have already committed substantial resources to apply for and deploy a new gTLD, (not if – but when)

12. **What is the projected lead time in potential applicant's organization to review the final DAG and then be able to make an executive decision (go/no go) with regard to an application?**

- a.  Less than 6 months
- b.  Between 6 and 12 months
- c.  Between 12 and 18 months
- d.  In excess of 18 months