

INTRODUCTION OF NEW TOP-LEVEL DOMAINS

Recommendation Status - New gTLD Committee

Numbering refers to Draft Part A – 18 June 2007

Only constituency concerns are listed, not those of Nomcom appointees.
Status as of: 26 July 2007

Principles

| # | Current Text | Level of Support | Concerns | Proposed changes, changes under discussion. Notes on concerns |
|---|---|------------------|----------|---|
| A | New generic top-level domains (gTLDs) must be introduced in an orderly, timely and predictable way. | Broad | | |
| B | Some new generic top-level domains should be internationalised domain names (IDNs) subject to the approval of IDNs being available in the root | Broad | | |
| C | The reasons for introducing new top-level domains include that there is demand from potential applicants for new top-level domains in both ASCII and IDN formats. In addition the introduction of new top-level domain application process has the potential to promote competition in the provision of registry services, to add to consumer choice, market differentiation and geographical and service-provider diversity. | Broad | | |
| D | A set of technical criteria must be used for assessing a new gTLD registry applicant to minimise the risk of harming the operational stability, security and global interoperability of the Internet. | Broad | | |

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| E | A set of capability criteria for a new gTLD registry applicant must be used to provide an assurance that an applicant has the capability to meets its obligations under the registry agreement. | Broad | | |
| F | A set of operational criteria must be set out in contractual conditions in the registry agreement to ensure compliance with ICANN policies. | Broad | | |
| G | The string evaluation process must not infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law. | Broad | | |

Recommendations

| # | Current Text | Level of Support | Concerns | Proposed changes, changes under discussion. Notes on concerns |
|---|--|------------------|------------|---|
| 1 | ICANN must implement a process that allows the introduction of new top-level domains. The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency, and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process. | Broad | BC pending | BC concern relates to issue of taking the recommendation singly as opposed to as a block. No proposed changes. |
| 2 | Strings must not be confusingly similar to an existing top-level domain. | Broad | | |
| 3 | Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law. Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industrial Property (in particular trademark rights), the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (in particular freedom of expression rights) | Broad | | discussed questions of whether #3 needs to be reviewed in the light of new wording for #6 or whether the word enforceable should be modified on July 26. Decision was to leave wording unchanged. |
| 4 | Strings must not cause any technical instability. | Broad | | |
| 5 | Strings must not be a Reserved Word | Broad | | |

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| 6 | <p>Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.</p> <p>Examples of such principles of law include, but are not limited to, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and the International Convention on the Elimination of All Forms of Racial Discrimination, intellectual property treaties administered by the World Intellectual Property Organisation (WIPO) and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).</p> | Broad | <p>NCUC several individual concerns which may be documented in individual comments in the document.</p> | <p>NCUC concern relates to inclusion of “relating to morality and public order”</p> <p>David Maher suggested replacing M&PO with public interest.</p> <p>Proposal from discussion group was accepted.</p> |
| 7 | <p>Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.</p> | Broad | | |
| 8 | <p>Applicants must be able to demonstrate their financial and organisational operational capabilities.</p> | Broad | | |
| 9 | <p>There must be a clear and pre-published application process using objective and measurable criteria.</p> | Broad | | |
| 10 | <p>There must be a base contract provided to applicants at the beginning of the application process.</p> | Broad | | |
| 11 | <p>Replaced with 20 and IG (P)</p> | ---- | ---- | <p>Left intentionally to avoid numbering confusion in constituency statements and other documentation.</p> |

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| 12 | Dispute resolution and challenge processes must be established prior to the start of the application process. | Broad | | |
| 13 | Applications must initially be assessed in rounds until the scale of demand is clear. | Broad | | |
| 14 | The initial registry agreement term must be of a commercially reasonable length. | Broad | | |
| 15 | There must be renewal expectancy. | Broad | | |
| 16 | Registries must apply existing Consensus Policies and adopt new Consensus Policies as they are approved. | Broad | | |
| 17 | A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination. | Broad | | |
| 18 | If an applicant offers an IDN service, then ICANN's IDN guidelines must be followed. | Broad | | |
| 19 | Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars. | Broad | | |

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| 20 | An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted. | Broad | NCUC | <p>NCUC recommends narrowing to only include technical and legal objections</p> <p>Recommendation from discussion group accepted</p> <p>Process and definitions explained in IG P</p> <p>Question on nature of the process: binary decision or a mediation was decided in favor of a binary yes/no decision. A general implementation guideline (R) was added to allow a cooling off period where parties to an objection could work to resolve the conflict. This resolution could be by means of the parties choosing but would not involve mediation by the objection resolution panel.</p> |

Implementation guidelines

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| IG A | The application process will provide a pre-defined roadmap for applicants that encourages the submission of applications for new top-level domains. | Broad | | |
| IG B | Application fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process. Application fees may differ for applicants. | Broad | | |
| IG C | ICANN will provide frequent communications with applicants and the public including comment forums panels. | Broad | | |
| IG D | A first come first served processing schedule within the application round will be implemented and will continue for an ongoing process, if necessary. Applications will be time and date stamped on receipt. | Broad | | |
| IG E | The application submission date will be at least four months after the issue of the Request for Proposal and ICANN will promote the opening of the application round. | Broad | | |

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| IG F | <p>If there is contention for strings, applicants may:</p> <ul style="list-style-type: none"> i) resolve contention between them within a pre-established timeframe ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and; iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels. | Broad | | |
| IG G | <p>Where an applicant lays any claim that the TLD is intended to support a particular community such as a sponsored TLD, or any other TLD intended for a specified community, that claim will be taken on trust with the following exceptions:</p> <ul style="list-style-type: none"> i) the claim relates to a string that is also subject to another application and the claim to support a community is being used to gain priority for the application ii) a formal objection process is initiated <p>Under this exception, Staff Evaluators will devise criteria and procedures to investigate the claim.</p> | Broad | | Updated July 26 to include exception (II) |
| IG H | External dispute providers will give decisions on complaints. | Broad | | |
| IG I | An applicant granted a TLD string must use it within a fixed timeframe which will be specified in the application process. | Broad | | |

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| IG J | The base contract should balance market certainty and flexibility for ICANN to accommodate a rapidly changing market place. | Broad | | |
| IG K | ICANN should take a consistent approach to the establishment of registry fees. | Broad | | |
| IG L | The use of personal data must be limited to the purpose for which it is collected. | Broad | | |
| IG M | ICANN may establish a capacity building and support mechanism aiming at facilitating effective communication on important and technical Internet governance functions in a way that no longer requires all participants in the conversation to be able to read and write English | Broad | | |
| IG N | ICANN may put in place a fee reduction scheme for gTLD applicants from economies classified by the UN as least developed. | Broad | | |
| IG O | ICANN may put in place systems that could provide information about the gTLD process in major languages other than English, for example, in the six working languages of the United Nations. | Broad | | |

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| IG P | <p>The following process, definitions, and guidelines refer to Recommendation 20.</p> <p>Process</p> <p>Opposition must be objection based.</p> <p>Determination will be made by a dispute resolution panel constituted for the purpose.</p> <p>The objector must provide verifiable evidence that it is an <u>established institution</u> of the community (perhaps like the RSTEP pool of panelists from which a small panel would be constituted for each objection).</p> <p>Guidelines</p> <p>The task of the panel is the determination of <u>substantial</u> opposition.</p> <p>a) <u>substantial</u></p> <p>In determining substantial the panel will assess the following: significant portion, community, explicitly targeting, implicitly targeting, established institution, formal existence, detriment.</p> <p>b) <u>significant portion</u>:</p> <p>In determining significant portion the panel will assess the balance between the level of objection submitted by one or more <u>established institutions</u> and the level of support provided in the application from one or more <u>established institutions</u>.</p> <p>The panel will assess significance proportionate to the <u>explicit or implicit targeting</u>.</p> <p>c) <u>community</u></p> <p>Community should be interpreted broadly and will include for example an economic sector, a cultural community, or a linguistic community. It may also be a closely related community which believes it is impacted.</p> <p>d) <u>explicitly targeting</u></p> <p>Explicitly targeting means there is a description of the intended use of the TLD in the application.</p> <p>e) <u>implicitly targeting</u></p> <p>Implicitly targeting means that the objector makes an assumption of targeting or that the objector believes there may be confusion by users over its intended use.</p> <p>f) <u>established institution</u></p> <p>An institution that has been in <u>formal existence</u> for at least 5 years. In exceptional cases, standing may be granted to an institution that has been in existence for fewer than 5 years. Exceptional circumstance include but are not limited to re-organisation, merger, or an inherently younger community.</p> <p>The following ICANN organizations are defined as established institutions: GAC, ALAC, GNSO, ccNSO, ASO.</p> | | | |

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| | <p>g) <u>formal existence</u> Formal existence may be demonstrated by: appropriate public registration, public historical evidence, validation by a government, intergovernmental organization, international treaty organisation or similar.</p> <p>h) <u>detriment</u> The objector must provide sufficient evidence to allow the panel to determine that there would be a likelihood of detriment to the rights or legitimate interests of the community or to users more widely</p> | | | |
| | | Broad | | <p>Question of detriment vs material harm reexamined on July 26. choice remains for detriment.</p> <p>Discussion held on definition of detriment and decided on July 26.</p> |
| IG Q | ICANN staff will provide an automatic reply to all those who submit public comments that will explain the objection procedure | Broad | | |
| IP R | <p>Once formal objections or disputes are accepted for discussion there will be a cooling off period to allow parties to resolve the issue before the dispute or objection before discussion is initiated. By mutual agreement of the parties, the period may either be ended or extended.</p> | Broad | | <p>This Implementation guideline was originally discussed as part of the process for objections in Ig (P). It was later generalized to cover all dispute and objection mechanisms.</p> <p>Various time ranges were discussed, e.g. 30 days for disputes under recommendations #3 and #6, and 60 days for recommendations under rec #20. It was decided that such details were better handled by the staff implementation team.</p> |