

The NetChoice Coalition

Promoting Convenience, Choice, and Commerce on The Net

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Comment regarding Draft Applicant Guidebook for new Generic Top-level Domains (gTLDs).

NetChoice has consistently advocated at ICANN for measures to raise the integrity of users' Internet experience, while at the same time increasing the Internet's availability to the next billion users. In a hearing before the U.S. Congress regarding ICANN's approach to Internet governance, we [testified](#) about threats to the integrity of the domain name system from abuses such as fraud and cyber squatting¹.

In the current draft of its new gTLD plan, we believe that ICANN has neglected to articulate sufficient processes and criteria to adequately protect consumers and e-commerce businesses from the risks of abusive registrations.

NetChoice supports comments of the ICANN Business Constituency and other groups raising similar concerns over abusive registrations. Rather than repeat those specific concerns here, we offer two suggested improvements to the draft [Evaluation Questions and Criteria](#) that ICANN published as attachments to Module 2². Namely, *Raise the curtain*; and *Raise the bar*.

1. *Raise the curtain*. Provide for greater transparency and stakeholder inquiry of an applicant's proposed mechanism to minimize abusive registrations and other activities that affect the legal rights of others.

As other commenters have noted, there is not yet sufficient detail in the draft new gTLD process to allow stakeholders to conclude whether the process satisfies their concerns about abusive registrations. But even after adding more detail, ICANN cannot be expected to anticipate every contingency and situation encountered in actual applications.

This reality makes it all the more essential that ICANN makes its evaluation process transparent to stakeholders, once live applications enter the process. ICANN's draft process promises "*a process where new gTLD applicants are required to describe their Rights Protection Mechanism (RPM) within their applications. These RPMs will be published to the community at the time applications are also made public.*"

However, transparency means more than just publishing the plans included with an application. An essential aspect of transparency is to invite stakeholders to query the applicant about specifics and contingencies regarding their plan for rights protection. Moreover, ICANN must require applicants to provide substantive responses to these queries, and to publish questions and responses for public review. Only this level of transparency will enable the stakeholder community to evaluate proposed mechanisms and compare them to superior mechanisms offered by other applicants.

¹ [http://www.mcgeorge.edu/documents/centers/global/ICANN Internet Governance - Is It Working.pdf](http://www.mcgeorge.edu/documents/centers/global/ICANN%20Internet%20Governance%20-%20Is%20It%20Working.pdf)

² <http://www.icann.org/en/topics/new-gtlds/draft-evaluation-criteria-24oct08-en.pdf>

2. *Raise the bar.* Increase the criteria for earning a minimum acceptable score on proposed policies to minimize abusive registrations.

Question 31 in Evaluation Questions and Criteria for module 2 is among those Technical & Operational criteria which “*must be scored a 1 or more or the application will fail the evaluation.*” As shown below, question 31 would be scored with a passing grade if the applicant merely “*commits to and describes protection of rights mechanisms.*”

Question	Criteria	Scoring
31 Applicants should describe how their proposal will create policies and practices that minimize abusive registrations and other activities that affect the legal rights of others. Describe how the proposal will implement safeguards against allowing unqualified registrations.	Applicant describes mechanisms designed to prevent abusive registrations, and identify & address the abusive use of registrations after the registrations are made.	2 - exceeds requirements: Protection of rights mechanisms are specified in detail for inclusion into registry agreement. Mechanisms provide registration and post-registration (beyond UDRP) protections. Mechanisms address registry start-up and on-going operations. 1 - meets expectations: Proposed registry operator commits to and describes protection of rights mechanisms. These mechanisms provide protections at least at registry start-up. 0 - fails requirements: Does not meet the requirements to score 1 or 2.

NetChoice strongly encourages ICANN to ‘raise the bar’ in order for an applicant to earn a passing grade for minimizing abusive registrations and other activities that affect the legal rights of others.

A passing score of 1 on Question 31 should only be given to applicants whose proposed mechanism meets registry best practices for minimizing abusive registrations. The standard, or ‘bar’ for minimizing abusive registrations should be set by looking at the best mechanisms employed by existing registries or proposed by other registry applicants in the new round of gTLDs.

The transparency measures described above will permit stakeholders to discover and reveal whether the applicant has truly cleared the bar for minimizing abusive registrations. Accordingly, the scoring rules applied by ICANN should not give a passing grade to applicants who demonstrably fail to meet registry best practices to minimize abuse.

Conclusion

Even before any new gTLDs are introduced, there is clearly a growing problem with phishing, identity theft, and consumer fraud – all of which are enabled by abusive and obviously fraudulent registrations.

Taken together, the two measures suggested here would help ICANN to demonstrate that the new gTLD process will at least ‘do no harm’ to the integrity of users’ Internet experience.

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