

*Dear Paul, Kurt  
and all members of ICANN Staff.*

*In response to the ICANN call for comments on the New gTLD Applicant Guidebook, we submit some observations and recommendations in an effort to collaborate on having a fair and successful round for the introduction of new gTLDs.*

*Our comments are marked in blue, organized by module.*

## **Module 1**

Introduction to New gTLDs Application Process

Reference Text: Module 1: "Introduction to New gTLDs Application Process"  
<http://www.icann.org/en/topics/new-gtlds/intro-23oct08-en.pdf>

Page 1-19, Item 1.5, Fees and Payments.

Reference Text: Annex to Module 5: "Base agreement"  
<http://www.icann.org/en/topics/new-gtlds/draft-agreement-24oct08-en.pdf>

Page 5: Article 6: Fees.

### *Comments*

- Some conditions of the RFP, specially the fees, are discriminatory and make it very difficult for non-for-profits and small communities to participate in the process.*
- The high registry fees put a heavy burden on applicants. Even in the case they can raise the necessary funds to apply, build operational capabilities, and the value-added proposal, they must first of all be prepared to pay the registry fee. Actually we don't see much room for innovative business models.*
- We recommend allowing new registries to operate only with the per-transaction component of the registry fee and no minimum fee, at least during a start-up period of 2 years.*
- We also think that the registry fees should be fairly defined, somehow in relation with the current TLDs registry fees. We think that defining much higher fees to newcomers is inequitable.*

## **Module 2**

Evaluation Procedures

On the evaluation criteria:

Reference text: Annex from Module 2: Evaluation Questions and Criteria  
<http://www.icann.org/en/topics/new-gtlds/draft-evaluation-criteria-24oct08-en.pdf>

Page A-1, Item I Second bullet:

I. Principles of the Technical and Financial New gTLD Evaluation Criteria

...

- The "criteria and evaluation should be as objective as possible".

- With that goal in mind, an important objective of the new TLD process is to "diversify the namespace, with different registry business models and target audiences." In some cases, criteria that are objective, but that ignore the differences in business models and target audiences of new registries, will tend to make the process exclusionary. For example, the business model for a registry targeted to a small community need not possess the same robustness in funding and technical infrastructure as a registry intending to compete with large gTLDs. Therefore purely objective criteria such as a requirement for a certain amount of cash on hand will not provide for the flexibility to consider different business models. The process "must provide for an objective evaluation framework, but allow for adaptation according to the differing models applicants will present." Within that framework, applicant's responses will be evaluated against the criteria in light of the proposed model.
- Therefore the "criteria should be flexible:" able to scale with the business plan, providing that plan is consistent and coherent, and can withstand highs and lows.
- Criteria can be "objective in areas of registrant protection," for example:
  - Providing for funds to continue operations in the event of a registry failure
  - Adherence to data escrow and registry failure contingency plans
- The evaluation must strike the correct "balance" between establishing the business and technical competence of the applicant to operate a registry ("to serve the interests of registrants"), while not asking for the detailed sort of information or making the judgment that a venture capitalist would. ICANN is not seeking to certify business success but instead seeks to encourage innovation while providing certain safeguards for registrants.

*Comments:*

- *We think ICANN should take a good look at these principles, and make the proper adjustments to the RFP in order to actually allow diverse business models and small, but valuable and representative communities, to participate. By not doing so, ICANN would end up with a process that is exclusionary and discriminatory.*
- *The process should allow small communities not only participate in the process with an application, but also have a well balanced and sustainable business without excessive or unjustified burdens.*

On the extended evaluation:

Reference text: Module 2: Evaluation Procedures

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

Page 2-15 – 2-16, Item 2.2

## 2.2 Extended Evaluation

An applicant may request an Extended Evaluation if the application has failed to pass the Initial Evaluation elements concerning:

- Demonstration of technical and operational capability (refer to paragraph 2.1.2.1).
- Demonstration of financial capability (refer to paragraph 2.1.2.1).

An Extended Evaluation may also result if ICANN identifies a need for further review on the following elements:

- DNS stability (refer to paragraph 2.1.1.3).
- Registry services (refer to subsection 2.1.3). Note that this investigation incurs an additional fee (the Registry Services Review Fee) if the applicant wishes to proceed. See Section 1.5 of Module 1 for fee and payment information.

From the time an applicant receives notice of failure to pass the Initial Evaluation, it has 15 calendar days to submit to ICANN the Notice of Request for Extended Evaluation through the online application interface. If the applicant does not explicitly request the Extended Evaluation, and pay any additional fees as applicable, the application will not proceed.

*Comments:*

- *We think this paragraph lends substance to some doubts. There are at least 2 types of extended evaluation that can be requested by the applicant, and 2 more that can result from ICANN's evaluation, all of them having a fee if applicable. We recommend ICANN should provide more details on the Extended Evaluation types specifically on costs and fees associated to each type of evaluation as described in the document.*
- *For example:*
  - *If an applicant must demonstrate technical capability by means of an Extended Evaluation, does he have to pay a fee?*
  - *If another applicant has to demonstrate both technical and financial capabilities, the fee would be higher?*
  - *The DNS Stability and Registry Services Review fees are the same?*

### **Module 3**

#### Dispute Resolution Procedures

##### On response filing fees

Reference Text: Module 3: "Dispute Resolution Procedures"

<http://www.icann.org/en/topics/new-gtlds/dispute-resolution-23oct08-en.pdf>

Page 3-7, Item 3.3.2.

##### 3.3.2 Response Filing Fees

At the time an applicant files its response, it is required to pay a nonrefundable filing fee in the amount set and published by the relevant DRSP, which will be the same as the filing fee paid by the objector. If the filing fee is not paid, the response will be disregarded.

*Comments*

- *We think that an applicant whose proposal has passed initial evaluation and has all the required support from pertinent communities and/or governments shouldn't have to pay for filing a response to an objection, nor any other associated costs. The applicant should have the right to defend himself from allegations without being required to pay to a third party.*
- *It's wise to charge a fee to file an objection. That helps to avoid false or bad-faith objections, but legitimate applicants, specially those who have passed initial evaluation shouldn't have to pay to respond to objections.*

## Module 5

### Transition to Delegation

With regard to the Base Agreement

#### *Comments*

- *Please specify if there are any additional costs after passing initial evaluation and clearing all objections (if any), prior to the TLD been added to the root zone.*
- *We have also some concern about the introduction of ICANN's of a mechanism by means of which ICANN could be able to make one-sided amendments to the Registry Agreement represented by the ability of the board of directors to override a GNSO's veto on a proposed change to the agreement. We think this could be corrected by removing this capacity from the board of directors.*

## Module 6

### Terms and conditions

Reference Text: Anex to Module 6: "Application Terms and Conditions"

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

Page 6-1, Item 3, last paragraph

#### Top-Level Domain Application – Terms and Conditions

3. Applicant acknowledges and agrees that ICANN has the right to reject any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to proceed with review and consideration of an application to establish one or more gTLDs is entirely at ICANN's discretion. ICANN reserves the right to reject any application that ICANN is prohibited from considering for a gTLD under applicable law or policy, in which case any fees submitted in connection with such application will be returned to the applicant.

#### *Comment*

- *We think this paragraph could lead to misunderstandings. We recommend that ICANN should clarify the reasons why it could decide not to proceed with review and consideration of applications, other than prohibition under applicable law or policy. It should also describe what would happen with any fees submitted in connection with such applications.*

#### *In conclusion:*

*We believe that the RFP as-is pictures a process that falls too far from being fair and equitable. It imposes severe restrictions and high walls to the introductions of new, innovative business models. From our perspective as a ccTLD Registry Operator of a developing country, we also believe that this process will bring benefit only to big registry operators with dotcom-like business models, preventing new, innovative and value adding business models from being added to de domain name system.*

*We are very concerned about this fact, because if in the past ICANN has faced the threat of alternate-roots that promote the introduction of new and attractive TLDs, we believe that this threat could rise again but stronger if ICANN fails in putting together a process that is open, fair and equitable for the introduction of new gTLDs.*