

# BITS

FINANCIAL SERVICES  
R O U N D T A B L E

December 15, 2008

Re: Comment on Draft Applicant Guidebook on Top Level Domains

Mr. Paul Twomey  
President and CEO  
Internet Corporation for Assigned Names and Numbers  
4676 Admiralty Way  
Suite 330  
Marina del Ray, California 90292

Dear Mr. Twomey,

BITS, the operating and technology division of The Financial Services Roundtable, appreciates the opportunity to comment on the Draft Applicant Guidebook published on October 24, 2008 by ICANN.<sup>1</sup> We offer both general and specific comments to the application processes.

## **General Status**

Over the past year, BITS, the Financial Services Technology Consortium (FSTC), the Financial Services Information and Analysis Center (FS-ISAC), the American Bankers Association (ABA) and the Securities Industry and Financial Markets Association (SIFMA), along with our sector coordinating council – the Financial Services Sector Coordinating Council (FSSCC) – have been cooperating to understand ICANN’s proposal and to undertake research around the possibility of a financial services gTLD. We are also reaching out to international financial services associations to help assure that any financial services-oriented gTLD could be safely extended internationally in a way that maintains the desired security and trust in the domain.

We recognize that ICANN’s decision to offer additional global Top Level Domains (gTLDs) presents the opportunity to create a TLD for the entire financial services industry (e.g., “.fin”), or to create multiple TLDs by sector (e.g., “.bank”, “.ins” and “.sec”). From our perspective, the primary advantage to this opportunity is that, within a trusted TLD, the financial services industry has the opportunity to create and manage a more secure Internet environment, which in turn could assist the industry to more effectively combat phishing and malware attacks. We also see additional potential benefits including reduced fraud losses, reduced security expenses and increased usage of online channels. Conversely, the

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<sup>1</sup>BITS is a not-for-profit, CEO-driven financial service industry consortium made up of 100 of the largest financial institutions in the US. BITS provides intellectual capital and fosters collaboration to address emerging issues where financial services, technology, and commerce intersect. The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for \$66.1 trillion in managed assets, \$1.1 trillion in revenue, and 2.5 million jobs.

implementation of a financial services gTLD comes with significant potential costs both at the industry and individual institution levels. At the company level, there would be direct costs and disruptive effects of migrating from “.com”. At the industry level, costs include planning and application fees, costs for an awareness campaign to educate the public, ongoing security costs, and operational expenses.

We continue to study these cost/benefit questions along with defining what the proposed operating environment would be to establish and operate one or more new, financial services gTLDs. Based on this information, our goal will be to make a recommendation to the industry regarding the appropriateness of applying for a financial services’ sector gTLD. At this point in time, however, we do not have a consensus recommendation as to whether to apply for a financial services sector gTLD. Even in the absence of this consensus, we want to ensure that ICANN takes appropriate steps to ensure that customers of financial institutions are protected from risk arising from the gTLD allocation process.

### **Draft Applicant Guidebook Comments**

Our primary concern is for the security of any gTLD that suggests by its name that its ownership is associated with the financial services industry – regardless of whether its ownership is industry-sponsored or not. Unfortunately, the history of the Internet is fraught with situations in which:

- Select registrars have exhibited a willingness to register parties whose intentions are less than honorable.
- Certain registrants clearly are using their position to defraud Internet users through the capture of their financial services account information or authentication credentials.

Apart from the industry itself applying for what appears to be a financial services-oriented gTLD, we fully expect that other commercial organizations are likely to apply for such domains. We strongly believe that the processes ICANN implements must be sufficient to assure that it grants such gTLDs only to legitimate organizations with legitimate intent to manage such a gTLD for the positive benefit of the public. A number of our general and specific comments support this fundamental concern.

### **General Comments**

We are concerned about the overall processes and costs with regard to the protection of both brand name and registered name protections. It is not clear that the applicant process, as drafted, appropriately recognizes the existing legal rights of such names. It would seem appropriate to reject automatically any use of such names other than if applied for by the legal holder of the rights to such names.

We are apprehensive that the process as established will allow for applicants to apply for gTLD names that are so specific to a particular community that they will create potential public confusion and, by extension, threats to public welfare. For example, if an organization applies for a name such as “.bank” and that organization does not truly represent the banking community, it creates the opportunity that the gTLD will confuse the public into thinking that the gTLD has legitimacy or worse yet, that the banking community has endorsed it. Further, we have concerns that if the applicant for such a gTLD is a potentially unscrupulous actor that this will further exacerbate the threat. While the

objection process may provide one opportunity for a community to protest the issuance of a particular gTLD, we have two concerns:

- The costs and efforts to file an objection present some limits to its effectiveness and potentially limit the ability of objectors to file a protest.
- The proposal does not adequately explain how ICANN would restrict gTLDs that clearly will be publicly associated with a particular community to recognized members of those communities.

In particular, with regard to the financial services industry, we would recommend that ICANN implement the following additional application controls:

- The identification and retention of certain gTLDs into the pool of names that will be unavailable for general application.
- The identification of a select group of industry associations (or regulatory agencies) to act as the “community” to make decisions regarding the approval of any gTLD’s whose names suggest they offer financial services or to endorse any applicants of such gTLDs. This consortium should be international in scope, composed of legitimate industry associations or regulatory agencies associated with the financial services industry.

Ancillary to the above point is our belief that the processes used to validate applicants (i.e., the “Eligibility” process) require strengthening to assure that applicants represent legitimate and law-abiding entities. In addition to the attestations suggested in the draft, applicants (or more accurately their principals or senior officers) also should be subject to criminal background checks.

Many of the primary processes (e.g., Initial Evaluation, Extended Evaluation, Objection) defined in the guidebook require the use of outside service providers. While we understand the economic advantages of utilizing these “contract” resources during what is likely to be a large bubble of activity, we do have several concerns with this approach. First, it is not clear how ICANN will select these service providers, or what criteria it will use to assess the appropriateness of the background of these providers and assure their total objectivity. Second, we think it is important for ICANN to explain how it will monitor the activities of these service providers to assure that they are providing fair and objective analyses, to assure that agreed-to fee structures are enforced and to assure they are properly fulfilling their contracted responsibilities.

The draft is unclear as to the actual fees ICANN or its service providers will charge for several of the application processes, including the Extended Evaluation and Objection processes. We believe ICANN needs to be more specific on the fee structure.

ICANN notes throughout the document that applications and their status will be available for viewing in the online application system; however, it appears ICANN intends this system to be only available to applicants and ICANN-appointed personnel supporting the review process. We would appreciate ICANN clarifying other sources of information regarding applied-for gTLDs to which non-applicants (i.e., potential public commenters or objectors) can go to gather information.

## Specific Comments

We preface each comment with the area to which it applies along with a reference to the section in Module 1 in which it is first noted. The areas on which we comment appear generally in the order in which ICANN discusses them in Module 1.

- Objection Filing (Section 1.1.2.4)
  - It is not clear exactly when the objection-filing period closes. The draft indicated that it will close “following the end of the Initial Evaluation period,” but we want to make sure that its closing allows sufficient time for objections to applications approved at the end of the Initial Filing period.
  - Some applications are likely to go into the Extended Evaluation process. Since the objection-filing process closes after the Initial Evaluation phase, we are concerned there will be no opportunity to file objections for gTLDs approved during later extended evaluations.
- Extended Evaluation (Section 1.1.2.5)
  - According to the draft language, an “Extended Evaluation may be required if ... one or more proposed registry services raises technical issues that might adversely affect the security or stability of the DNS.”
    - First, we would suggest the need for some added clarity on who will make decisions regarding the need for an extended evaluation.
    - Second, we would opine that the concept of security risk should extend beyond situations affecting the security of the DNS itself. We believe ICANN should extend requirements to cover additional situations involving inappropriate security or fraud risks. For example, a proposed string could confuse the public into thinking it was a safe financial site, when the applicant does not intend to install sufficient security to make it so or does not intend to use it in that fashion.
- String Contention (Section 1.1.2.7)
  - The draft defines string contention as “the scenario in which there is more than one qualified applicant ... for gTLDs that are so similar that they create a probability of detrimental user confusion if more than one is delegated.” While Module 2 speaks to some detail regarding processes for resolution of such contentions, we suggest that to the extent possible, ICANN add further formal, documented criteria for making this judgment. Further, we believe ICANN should not just consider “String Contention” issues that are semantic in nature (e.g., where two or more strings character sets may appear similar), but should broaden the definition. ICANN should also consider contention to include situations in which names use differing characters but that the public could consider being synonymous in their meaning. So, for example, a string such as “.bank” could be publicly synonymous with “.fin”.
- Accounting for Public Comment in the Evaluation of Applications once the New gTLD Process is Launched (Section 1.1.3)
  - The draft states, “Public comments received will be provided to the evaluators during the Initial and Extended Evaluation periods. Evaluators will have discretion to take the information provided in these comments into consideration as deemed necessary.” First, we would suggest that the draft clarify how ICANN will make the

public aware of applications made. (For example, will the public have access to the database of applications?) Second, we believe there needs to be better definition of the criteria evaluators will use to guide their discretionary decisions regarding consideration of public comments. ICANN could perhaps use similar criteria to what it proposes for formal objections. Third, we urge ICANN to clarify the types of entities permitted to file public comments. Does it, for example, include individuals, organizations, and trade associations?

- Transition to Delegation (Section 1.1.2.8)
  - Here and in Module 5, the draft explains that part of the transition process includes the implementation of the security planned for the new gTLD. The text suggests that the implementation of DNSSEC is an optional choice in the implementation process. Given the known implications of recent DNS cache vulnerabilities, we believe that ICANN should require DNSSEC implementation prior to transition for any new gTLD, but minimally for any that provide financial services. Further, we would propose that the group of industry associations (or regulatory agencies) that we suggested in our General Comments act as the applicant decision-making “community” also act as a body to approve the security design of any financially-oriented gTLDs prior to implementation.
- Eligibility (Section 1.2.1)
  - The draft states, “Any established corporation, organization, or institution in good standing may apply for a new gTLD.” We believe there needs to be a more definitive explanation of the term “in good standing.” In particular, as we note under our general comments, we believe the term should minimally extend to criminal history or background of the applicants. We urge ICANN to clarify if the term “organization” would include legitimate industry-level trade associations.
- Two Application Types: Open or Community-Based (Section 1.2.2)
  - The draft states that an “open gTLD” may or may not have a formal relationship with an exclusive registrant or user population. Further, it states that it may or may not employ eligibility or use restrictions. The draft further defines a “community-based gTLD” as one that “is operated for the benefit of a defined community consisting of a restricted population.” Based on these descriptions, we would appreciate clarification regarding the true difference between a situation in which an “open gTLD” does have a formal relationship with an exclusive registrant and with a particular user population, and does employ eligibility and use restrictions, and a community-based gTLD.
  - The draft also notes that ICANN expects that an applicant for a “community gTLD,” “Have its application endorsed in writing by an established institution representing the community.” We believe that the term an “established institution” requires further definitions (and perhaps examples). As we have stated on multiple occasions, we again strongly suggest that ICANN identify a select group of industry associations (or regulatory agencies) to act as a consortium designated as the “community” to make decisions regarding the approval of any gTLD’s whose names suggest a they offer financial services or to endorse any applicants of such gTLDs.
  - Regarding “String Contention,” the draft states, “Another efficient mechanism for contention resolution will result in other cases. If a comparative evaluation occurs

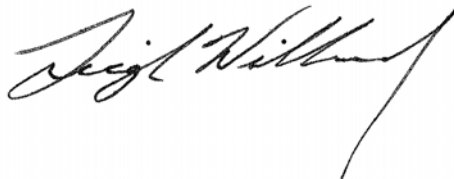
but does not produce a clear winner, the efficient mechanism will result.” We suggest that ICANN further clarify the other “efficient mechanism” that will be used including a description of the mechanism, its process and its criteria.

- For “Contract Extension and Post-Delegation,” the draft states, “A community-based gTLD applicant will be subject to certain post-delegation contractual obligations to operate the gTLD in a manner consistent with the restrictions with the restrictions associated with its community-based designation...” We urge ICANN to specify clearly those additional contractual obligations.
- In the draft’s discussion of “Changes to Application Designation”, it states that an applicant cannot change its designation as open or community-based once the applicant has submitted its application. We would like ICANN to clarify if the same applicant can apply for both an open and community-based gTLD if the applicant designates differing names for the two gTLDs. Further, we would appreciate ICANN clarifying if the same applicant may apply for both an open and community-based gTLD if the applicant applies for both with the same name.
- Required Documents (Section 1.2.3)
  - The draft states that a “Proof of good standing” is required for each applicant. Further, it states that examples of such proof include a “certificate of good standing or other equivalent official document issued by a competent government authority, if offered by a governmental authority for the jurisdiction.” Later, it states, “If no such certificates or documents are available in the applicant’s jurisdiction, an affidavit drafted and signed by a notary public or a legal practitioner duly qualified to represent clients before the courts of the country in which the applicant’s organization is established, declaring that the organization is established and in good standing, must be submitted.” While we applaud ICANN’s concern to assure only apparently legitimate organization’s apply for a gTLD, we have a series of concerns:
    - There needs to be a clearer definition of the term “good standing.” For example, does the term suggest lack of any criminal or civil convictions?
    - We believe ICANN should explicitly describe how it would vet the government authority, notary public or legal practitioner attesting to the good standing to assure its legitimacy and to assure its veracity in validating the good standing of the applicant organization. Further, we believe ICANN should add definition to the types of documents it would accept to validate an applicant’s good standing (e.g., for financial institutions a charter from its country’s banking regulator).
    - For community-based gTLDs, the document states applicants must submit a written endorsement of its application by an established institution representing the community it has named. We do not believe it sufficient for ICANN to consider one institution representative enough of a community or to represent a designated community’s support for a community-based gTLD. For example, this would suggest that one bank out of the eight thousand in the United States would be sufficient for an applicant to suggest it is deserving of a banking community gTLD. It appears to us the threshold for a community-based gTLD should be significantly higher. As we state in our General Comments, we believe a select group of industry associations (or regulatory agencies) to act as a consortium designated as the “community” to make decisions regarding the approval of any gTLD’s whose names suggest a they offer financial services or to endorse any applicants of such gTLDs.

- There is an unwritten implication that if one “institution” can endorse a community-based gTLD, one institution can also object to an application for a community-based gTLD. This would be a particularly disconcerting situation if the applied-for community-based gTLD had the support of a broad number of organizations or the endorsement of several associations representing such organizations.
- Procedures for Filing an Objection (Section 3.1.3)
  - The document states, “To trigger a dispute resolution proceeding, an objection must be filed by the posted deadline date. Objections must be filed directly with the appropriate DRSP for each objection ground”. We believe ICANN needs to be more explicit in defining as quickly as possible “the posted deadline date” or alternately in specifying explicitly the amount of time between of an application filing and the time an objector must file an objection. We also believe ICANN needs to provide specific instructions for filing objections that include which electronic system objectors will use and how objectors will obtain access to the system.
- Consolidation of Objections (Sections 1.5, 3.2.2 and 3.4.2)
  - Per the draft, in situations where an objector files a protest, both the objector and the applicant must pay a fee to cover the costs of resolution (i.e. “Objection Filing Fees”). Once ICANN resolves the objection, ICANN will refund the fees of the successful party paid. We suggest ICANN clarify how it will handle the requirements for filing fees in situations wherein it consolidates two or more objections. It is not clear if each objector must pay a full fee or if ICANN will divide the Objection Filing Fee equally between the each “consolidated” objector.

Thank you for your consideration. If you have any further questions or comments on this matter, please do not hesitate to contact the undersigned or Paul Smocer, Vice President for Security of BITS at [PaulS@fsround.org](mailto:PaulS@fsround.org) or 202.589.2437.

Sincerely,



Leigh Williams  
BITS President