



## **GoDaddy.com Comments on Draft Applicant Guidebook (RFP) for New Generic Top-Level Domains (gTLDs)**

**15 December 2008**

### **1. Introduction**

1.1. Go Daddy has closely followed the processes that have led to the draft RFP for new gTLDs, and has participated in or carefully reviewed all discussions that have followed its public posting. These include the live Q&A sessions with the GNSO in Cairo, the follow-up teleconferences, and the first consultation on the CRA International report. We also plan to attend the consultation in Marina Del Rey on Friday 19 December 2008.

1.2. Go Daddy has also been involved in both of the previous rounds of new gTLDs that took place over the last eight years. These two rounds resulted in the introduction of twelve new gTLDs (.tel will be the thirteenth, currently in Sunrise). Go Daddy has so far implemented half of those gTLDs including .info, .biz, .name, .jobs, .mobi, and .asia.

1.3. Our comments on the RFP do not center on the mechanics of the process. We do share many of the concerns that have been raised. But as a result of the experiences and observations mentioned above we felt compelled to recommend that ICANN enforce a practical limit on the number of applications accepted and the number of new gTLDs approved in the first round of this new process. Further explanation of our reasons follows.

### **2. Introducing New gTLDs**

2.1. The stable and secure introduction of new gTLDs has been a long standing responsibility of ICANN's under its Joint Project Agreement (JPA) with the United States Government (USG). Through two initial rounds over the last eight years twelve new gTLDs have been implemented (.tel is the thirteenth, currently in its Sunrise period).

2.2. We commend the ICANN Staff for the countless hours of hard work that has led us to the current draft RFP, and commend the GNSO in its tireless efforts to develop the policy it is based on. But the recent Q&A sessions and consultations have made it clear that many issues remain unresolved and we believe unknown consequences of this new process could threaten to undermine ICANN's legitimacy, if not the security and stability of the DNS itself.

### **3. Unknown Consequences of Significant Aspects of the Process.**

3.1. It is unknown how many applications for new gTLDs ICANN will receive. Estimates range from a few dozen to several hundred. Processing these applications, resolving string contention, managing dispute resolution, and monitoring the launch of possibly hundreds of new gTLDs will be an immense undertaking unlike anything ICANN has

attempted to date. To complicate matters, the process also intends to allow introduction of new gTLDs in non-ASCII scripts to support top level domains in any language (IDN gTLDs).

3.2. Go Daddy and others have concerns about ICANN's ability to coordinate and oversee such an immense project amidst all of its other responsibilities. These concerns are not unfounded. There have been serious issues associated with the two very limited initial rounds of new gTLDs, including the .biz Landrush<sup>1,2</sup> and .info Sunrise<sup>3</sup>; as well as ICM's .xxx application which has absorbed ICANN resources for a period of over three years<sup>4,5</sup>, with an Independent Review Proceeding still pending<sup>6</sup>. And although some live tests have been performed successfully, ICANN does not yet have the experience of introducing even one IDN gTLD.

3.3. Fortunately, although the introduction of new gTLDs has had its problems, there has not yet been a registry failure. However, with the introduction of possibly hundreds of new gTLDs the likelihood of a registry failure not only increases significantly, it is virtually guaranteed. ICANN has recognized this and is to be commended for the work it has done in developing a registry failover plan<sup>7</sup>, finalized following the Paris ICANN meeting in June. As the next step, ICANN has initiated a core exercise team to develop a test exercise with experienced registries and others for January 2009. The failover plan is well thought out and comprehensive, but it does call for considerable resources on ICANN's part in the event of a registry failure. Our concern is that if the new gTLD process results in dozens or possibly hundreds of new registry operations ICANN may very well find it is dealing with multiple simultaneous failures.

3.4. The past and future introduction of new gTLDs has also resulted in a call for ICANN to reconsider its existing rules regarding registry-registrar vertical separation. This request came from various stakeholders including registrars, registries, and potential applicants for new gTLDs.

3.5. Some smaller existing registries have expressed concerns about the lack of support for their gTLD by accredited registrars (although all existing gTLDs are currently supported by multiple registrars). They have suggested that the vertical separation rules be relaxed for new or smaller registries, perhaps limiting it based on the number of registrations in the registry database. Some potential applicants for new gTLDs have expressed similar ideas.

3.6. Others, including some registrars, have stated the view that competition within the registrar segment is robust but real competition is still lacking in the registry segment, pointing to the still dominate position of .com within the marketplace. They argue that relaxing the vertical separation requirements will invite more substantial applicants into the process and help to reduce the risk of registry failures.

3.7. As a result, ICANN commissioned a study of the vertical separation issue from CRA International (CRAI), a highly respected and well known economic consulting firm. The CRAI report<sup>8</sup> was submitted to ICANN and only recently posted for public comment on 24 October 2008. The report presents the possibility that some or all of the existing registry-registrar vertical separation issues may be relaxed. There isn't a clear picture yet where ICANN will land on the subject of registry-registrar separation, but we are faced with the potential prospect of a new gTLD process that could result in hundreds of

new gTLDs, dozens of new IDN gTLDs, inevitable registry failures, all occurring in a brand new market environment with some level of registry-registrar integration.

3.8. The draft RFP also calls for objection and dispute resolution processes (not yet completely defined) that did not exist during the first rounds of new gTLDs. Clearly, if there are hundreds of applicants objections and disputes are virtually guaranteed. The community and Staff have done its best to foresee the nature of possible objections and disputes, but only time and experience will reveal the actual variety, volume, intensity, and costs.

3.9. One more unknown looms large at that same time that the new gTLD process is scheduled to be in full swing – the possible termination of the JPA. The ICANN community twice this year had opportunity to express its thoughts regarding the unknown environment in which ICANN will find itself post-JPA – the mid-term review initiated by the NTIA, and the Improving Institutional Confidence consultations initiated by ICANN Board and Staff. The community comments received demonstrates there are yet many serious and well-founded concerns on their part<sup>9-12</sup>, especially in regards to the risk of external capture. It is our belief that it is premature for the USG to give up its oversight role, especially in regards to something as critical to the security and stability of the DNS and ICANN's legitimacy as the introduction of new gTLDs.

#### **4. Unexpected Consequences of Registries without Price Caps**

4.1. The proposed contractual requirements in the registry agreements for the new gTLDs do not include price controls, although they are present in the existing gTLD agreements. We commend ICANN for this decision. We believe it is a crucial move if true, robust competition is to be introduced into the registry segment of the market, as it has been in the registrar segment. However, there is a potential consequence resulting from the lack of price controls that could have a serious and negative impact on registrants of the existing gTLD registries – tiered renewal pricing.

4.2. The agreements of the existing registries contain a condition (e.g. Section 3.2(b) of the current .com Registry Agreement<sup>13</sup>) in which ICANN covenants equitable treatment of the registry operator. Based on past actions by the existing registries, primarily in regards to agreement negotiations, it is more than likely that they will use the aforementioned condition as leverage to remove the price caps in their own agreements.

4.3. The removal of price caps in the incumbent registry agreements would create the potential for these registries to set tiered renewal pricing based on the perceived or real value of a domain name. For example, the renewal price for timruiz.com may be set at a lower level (less value, lower price) than the renewal price for yellowbook.com (higher value, higher price). The price for the latter could be set substantially higher due to the fact that there is a single .com registry and the costs of moving to another gTLD (even if already owned) would be extremely high.

4.4. Our concern is primarily with the .com registry as it still holds a very dominate position within the domain name market. At the end of 2004, three years after the introduction of the first new gTLD (.info), .com registrations accounted for 71.60% of all gTLD domain names<sup>14</sup>. There are now fifteen live gTLDs opened for general or sponsored registrations. However, as of 31 July 2008 .com registrations accounted for 73.82% of all gTLD domain names<sup>14</sup>, an increase of 2.22% over 2004, and a slight

increase (0.1%) over 2007<sup>14</sup>. The combined original gTLDs of .com/.net/.org accounted for 90.27% of all gTLD names at the end of 2004<sup>14</sup>, and 91.72% as of 31 July 2008<sup>14</sup>. For anyone to claim that the introduction of the twelve new gTLDs has increased competition is arguable. The original three gTLDs still control the market, with .com by far the most dominate player.

4.5. Clearly, there is no justification for price controls within the agreements of the next round of new gTLDs. However, until there is clear evidence of competition within the registry segment, cautious consideration should be given to any request to remove price caps from the incumbent registry agreements, and in particular .com. This concern is somewhat calmed by the fact that any changes to the .com agreement continue to require the approval of the USG. However, we are uncertain how that will be applied post-JPA in an environment of dozens or hundreds of new gTLDs.

## **5. Conclusion and Recommendation**

5.1. The concerns presented above are only a subset of the numerous issues that the community has raised since the public posting of the draft RFP. It is understood that no matter how much time, thought, and effort goes into the implementation of the new gTLD process unexpected issues will arise. That is and should be expected. The process will not be perfect and will require fine tuning over time.

5.2. To date, the introduction of new gTLDs has been very limited and averaged less than two per year, just a trickle. There have been serious problems with those introductions, and many concerns and unknowns with the new process still remain. We believe it is premature to throw the floodgates wide open and encourage the Board and Staff to take a more conservative and practical approach. There is a lot of room between a trickle and a flood.

5.3. We recommend that ICANN impose a limit on both the number of applications it will accept and the number of new gTLDs that it will approve in the first round of this new process. We suggest no more than one-hundred applications evaluated on a first-come, first-served basis. If an initial evaluation indicates the application is deficient, the applicant may have some minimal period of time to correct it, resubmit, and maintain their place in the queue. Once one-hundred complete applications populate the queue, the application round closes.

5.4. At the close of the application round applications are processed on a first-come, first-served basis. If the string is unique (no other applicants for that string), the evaluation process continues as currently defined in the draft RFP. If there are other applicants (regardless of where they are in the queue), those applicants move up into consideration with the first applicant per string contention rules of the draft RFP.

5.5. Evaluators continue to move through the queue in this manner until no more than twenty gTLD applicants have been approved. Others still left in the queue maintain their position until agreements with the approved applicants are in place. If an agreement cannot be reached the applicant next in the queue would then be considered. Rejected applicants, wherever they occur in the process, will not go back into the queue.

5.6. We realize there are other considerations, but we believe it is crucial to the success of this process to place these, or other practical limits on the first round. The limits are

aligned with Principle A which calls for new gTLDs to be introduced in an orderly, timely and predictable way<sup>15</sup>, as well as with Recommendations 1 and 13, and Implementation Guideline D. A more orderly process will also enhance ICANN's ability to follow through with Implementation Guidelines, paragraph 3<sup>15</sup>.

5.7. Go Daddy is willing to discuss any of the concerns mentioned in these comments and to offer whatever assistance and support it can in implementing the recommendations above.

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