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Date 10th of December 2008  
Subject Request for comments on the Draft gTLD Applicant Guidebook  
Reference  
Your reference  
Our reference 2008053  
Annexe

Dear Mr Twomey,

SIDN is the registry for the .nl country-code top level domain, which, with over three million registered domains, is one of the world's largest and most successful ccTLDs. SIDN also manages the Netherlands' ENUM zone 1.3.e164.arpa.

Since its creation in 1996, SIDN has been closely collaborating with the global internet community with the objective to assure availability, accessibility, stability, security, overall quality and further development of the Internet in general and the .nl name-space (and, since 2007 the 1.3.e164.arpa space) in particular.

As the Chief Executive of SIDN, I welcome the opportunity for stakeholders to give comments regarding the proposed procedure for the introduction of new generic Top Level Domains.

Like you, I believe that the introduction of new gTLD's can foster choice, competition and innovation.

However, this is not a subject that one should consider lightly. The Internet has, in a short period, become fundamental to the global economy and our social lives. We share a great responsibility in protecting –virtually at all costs- what has been achieved, while striving to develop the Internet to its full potential.

With this submission SIDN does not assume to react to all aspects of the Draft New gTLD Applicant Guidebook, but would however like to take the opportunity to provide input that

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will help in assuring a sound, fair and transparent process that supports the goals of increasing competition, choice and innovation, while maintaining or increasing accessibility, stability and overall quality of the Internet .

Our major remarks are the following:

## **1 Completeness check of application**

*Guidebook (p1-3)*

The review of completeness could start immediately after submission. It does not necessarily have to wait for the closure of the application period. This would allow a faster feedback to the applicant whether his application meets all the criteria for completeness. Furthermore it is the opinion of SIDN that applicants should have a possibility to correct possible mistakes in the completeness of the applications. ICANN should allow an applicant to correct its submission within a fixed timeframe after the original submission while not extending the end of the submission period. This favors applicants that submit early in the submission period and allows ICANN to spread the workload.

## **2 Objections**

*Guidebook p1-23*

A (very) long objection period might lead to late objections, resulting in high costs for an applicant whose application is rejected based on objection in a very late stage. ICANN should take the possible abuse of objections (submitting an objection at the latest possible moment and thus forcing maximum costs at a competitor) into account when determining the objection period.

*Guidebook p3-10*

In case of an objection, the applicant is (as is the objecting party) supposed to pay an advance, while the prevailing party will have his advance reimbursed. Apart from this not being a common approach in the case of litigations, a start-up applicant, having already invested significantly in preparing the application, having paid ICANN the proposed \$185k application fee, risks being financially "brought to his knees" by numerous objections of which none might even prevail.

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*Guidebook p3-13*

Objections on morality and public order can, according to the proposed procedure, be submitted without any limit on the grounds of such an objection. This can lead to situation where applications are faced with an insurmountable number of objections, leading to very high costs for the applicant, even without considering the DRSP costs. ICANN should set limits on the objection grounds and protect applicants against abuse of objections (see also previous comment ).

### **3 Contract negotiations and board review**

*Guidebook p5-1*

The process includes "contract negotiations"? With all the details of the evaluation process as well as the financial aspects of a submission, it is unclear what remains to be negotiated.

*Guidebook p1-23*

The procedure mentions a review by the ICANN Board. The document contains no reference to the process of such a review (e.g. will it be public, will there be a vote) nor to issues subject to such a review or the criteria thereof.

### **4 Geographic names and IDN ccTLD's**

*Guidebook p2-9*

The gTLD Draft Application Guidebook lumps together country names, territory names and other geographical names like sub-national names and city names. A string intended to represent a geographical entity is required to be accompanied by a document of support or non-objection from the relevant government(s) or public authority(ies).

The ccNSO council resolved in Los Angeles, 31st October 2007, regarding the introduction of new gTLDs:

Principle on meaningful representation of the name of a territory listed on the ISO 3166-1 in ASCII

- No name of a territory listed on the ISO 3166-1 or a meaningful abbreviation of it, whether represented in ASCII script or in any recognised language, shall be available as a gTLD. This principle should be revisited once the IDN ccPDP recommendation, if any, is adopted by the Board.

Principle on meaningful representation of the name of a territory listed on the ISO 3166-1 in a non ASCII script

- No name of a territory listed on the ISO 3166-1 or a meaningful abbreviation of it, whether represented in a non ASCII script or in any recognised language

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represented in that script, shall be available as a gTLD. This principle should be revisited once the IDN ccPDP recommendation, if any, is adopted by the Board.

We urge this principle to be included in the gTLD process documents, clearly stating that the underlying principle is that *country and territory names and abbreviations thereof*, of countries and territories in the ISO-3166-1 list, in all languages and scripts should not be allowed as gTLDs until the IDN ccPDP process has concluded. When an application comes for a new gTLD that fits the criteria of “any string that is a meaningful representation of a *country or territory name* on the ISO 3166-1 in any language, it should be rejected from the process and referred to the ccTLD process. If the string in question isn’t eligible for the IDN ccTLD fast track (e.g. because it is a Latin based language) it will have to wait for the conclusion of the IDN ccTLD PDP.

## **5 Appeal possibility and procedures**

### *Guidebook p6-1, 6-2*

The procedure states that decision to proceed to evaluate an application is entirely at ICANN's discretion. ICANN provides no appeal on any ground – in fact explicitly excludes such appeals- and the applicant has to agree not to challenge the outcome of the decision of ICANN. This is in contradiction with existing common legal practice for organizations serving the public such as ICANN. SIDN understands that ICANN has to limit appeal possibilities to make the process manageable, however, the right balance between these aspects should be found.

### *Guidebook p6-3*

Applicants are strongly limited in their rights by agreeing with the application procedure. This is in conflict with the goal to create a clear and uncontested procedure for gTLD applications, since the outcome of the procedure in this way finally will be at the sole discretion of ICANN.

### *Guidebook p1-23*

The guidebook lacks information on appeals procedure against decisions of Initial evaluation, extended evaluation, objections procedure, contention procedure, board evaluation, board negotiations. It is the opinion of SIDN that ICANN should not design a procedure without appeal possibility because this is in clear conflict with common legal practice for organizations serving the public such as ICANN. SIDN understands that ICANN

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has to limit appeal possibilities to make the process manageable, however, the right balance between these aspects should be found.

## **6 Auction of contented strings**

*String contention p13*

There is no authoritative basis for ICANN to sell contented TLD's through an auction, and there are not sufficient arguments for such a revenue-generating method. Allocation of revenues from auctions is very risky and easily contended. A wide range of accusations will easily be the consequence and ICANN risks destabilization of the internet community through such use of its unique position. Would it not be better to use lottery or drawing mechanisms with no revenues for ICANN involved?

## **7 Community applications**

*String contention p22*

ICANN welcomes community applications, but in a comparative evaluation it is almost impossible to obtain 11 points out of twelve, necessary to prevail in the comparative evaluation, if the applicant is not an established organization with members. This excludes loosely organized communities from the benefits of comparative evaluation. It is our opinion that communities without a formal membership structure should be able to benefit from the comparative evaluation as well. ICANN could solve this by stating clearly what the demands are on the membership of a community. The current formulation is open to multiple interpretations.

## **8 Costs of application and annual fees**

*Costs p3*

ICANN states that the application fees are calculated on cost-recovery only. The 500 applications that ICANN itself estimates to be submitted in the first round, at \$185k per application, will mean a \$ 95M revenue for ICANN. This roughly equals 1000-1500 man years of work (or 300 to 500 man years when consultants are used). First of all, it seems unrealistic to assume that all preparatory work done so far, together with the manpower necessary to evaluate the five hundred applications will take 100 persons ten years, so the goal of "cost recovery only" does not seem to be supported by fees charged.

Secondly, getting enough staff and consultants to do the work and manage them is going to pose a serious challenge. Is ICANN sufficiently equipped and ready for this?

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*Draft agreement p5*

The annual registry fees are \$75k or 5% of revenues. As an example, the latter would result in \$600k per year for SIDN when the .nl TLD would be in the same regime, a fee that in no way would reflect the costs of actual services provided. Alternatively it would be \$0,25 per new or renewal or transfer of a domain name resulting in ca. \$150k for SIDN for the .nl TLD. Again, the goal of "cost recovery only" does not seem to be supported by fees charged.

*Draft agreement p5*

The calculation of annual fees based on the price of domain names of \$0,01 for under/above \$5,0 makes no sense at all from the cost-recovery perspective. ICANN's costs for the introduction of new gTLDs are in no way whatsoever related to the wholesale or retail prices of domains under those new top levels.

*Draft agreement p3*

Charging a registry a fee for every transfers (registrant changes registrar) cannot be supported by valid arguments. Firstly, many registries do not charge for transfers, secondly transfers require no action or service from ICANN, and thus there are no associated costs for ICANN.

ICANN should realize that with the proposed fee structure, it is sending a very mixed signal as the structure clearly is not in line with the stated objective of "cost recovery only".

Over the last two decades, one of the strongest innovation drivers of internet have been the low startup costs. The costs of publishing information on the net or collecting from or combining available information on it, are a fraction of the costs of doing the same using any other medium.

The proposed cost structure introduces significant financial barriers to entry, that might prove to be the killers of the innovations that the introduction of new gTLDs is aiming to stimulate.

Especially the minimum annual fee of \$75k and the necessity of proving financial reserves for 3-5 years will pose a financial obstacle for startups.

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## **9 Publication and reporting**

### *Draft agreement p3*

It is unclear why a registry has to publish prices on its website.

### *Draft agreement p2*

ICANN demands monthly reporting by the registry. It is unclear what the purpose of such reporting is and what the ground for such an obligation would be. Especially in the startup phase a registry should be able to focus on its business and on becoming successful. It is also clear that, in case of several hundreds of successful applications, ICANN will not have the capacity to do anything useful with such reports

### *Draft agreement p2*

ICANN demands reporting on transfers. Again, It is unclear what the purpose of such reporting is and what the ground for such an obligation would be. There is no impact on ICANN services and there are thus no costs for ICANN involved.

## **10 Technical stability of DNS**

### *effect on stability document*

ICANN states that there is "no evidence suggesting a limit to number of TLDs" On the other hand, no (non-circumstantial) proof exists that the root can handle a large number of entries in the root without the danger of instability. One does not want to determine a possible limit by closely approaching or –worse- surpassing it. Experts' opinions on this matter vary widely: some suggest that with 5000 entries, the stability of root will be threatened, others mention amounts over 100,000. Experts also do not agree on the question if instability will show itself gradually or acutely and widely. We suggests that ICANN conducts research on this topic to find out where the limits of the DNS system are with respect to the number of TLD's in the root. This research should be started before the start of the first application round.

## **11 Obligation to use ICANN accredited registrars only**

The guidebook indicates that ICANN obliges successful applicants to market domainnames using –and only using- ICANN-accredited registrars. For many community-TLDs this would strongly limit competition among their registrars as few ICANN accredited registrars will be interested in small (but useful) TLDs. Among SIDN's 2,200 registrars for instance a very

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limited number are ICANN accredited, although .nl is the world's fourth largest ccTLD, and one safest and most stable TLDs.

For the expected "brand TLDs", most of which will probably only be used by/for the brand owner himself, the obligation to use ICANN-accredited registrars appears to be simply illogical.

I realize that ICANN has received a large number of –sometimes quite elaborate- comments on the draft Applicant Guidebook.

I trust that you will judge these as proof of stakeholders' engagement and will use the input to design a process that will make the introduction of new gTLDs a success by adding value to the already unsurpassed medium the Internet is today.

Your sincerely,



Roelof Meijer  
CEO SIDN