Making Choices:
Thoughts on Implementing a Permanent gTLD Allocation Process

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The authors would like to thank the following people for their substantial input and consideration of this proposal. Not surprisingly, there isn't 100% agreement on all of the issues discussed in this document from 100% of the people involved in creating this document. This generally reflects the current state of affairs in ICANN's policy development community. For the authors, this underscores the importance of one of the primary objectives of this proposal — to each engage in the dialogue necessary to make the decisions that must finally be made.

The contributors and authors hope that this proposal will be a useful focal point that contributes to our mutual understanding and should assist in finally resolving those points that we continue to disagree on.

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Note: This document was prepared in response to the GNSO Council's call for submissions on the subject of creating new gTLDs. The most recent version of this document can be found at http://gtld.dnspolicy.org.

A living version of this document, in wiki form, can be found at the same URL.

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Taking first steps…

ICANN's various generic top-level domain (gTLD) allocation and implementation experiments have consisted of evaluating first-come, first-served applicants using a mix of subjective and objective criteria. Some of these criteria were made explicit in advance of the process, some were not. Some were implicit considerations and some were arbitrary determinations made on an ad hoc basis.

In recent times, ICANN has taken steps to increase the transparency and fairness of its actions. The new gTLD creation process is an area where ICANN could make tremendous improvements. The time has come to rationalize the policies and processes used to launch and operate gTLDs – to normalize the act to the point that it becomes an unremarkable event.

This will require development of new policy and processes, refinement of existing ones, and abandonment of others. It will require ICANN to make decisions that redefine its policies in terms that protect and serve the interests of the Internet community, registry and registrar operators, governments, business interests and, most importantly, users. It will require movement away from opaque and undefined processes, subjective beauty contests, first-come, first-served allocation methodologies and unique treatment of each gTLD application and contract negotiation. It will require ICANN to position itself as a delegator and facilitator and move away from its current role as a regulator and central planner. It will require ICANN to make decisions that are consistent with its mission to ensure the stability and security of the domain name system, promote competition and do so in a manner that is fundamentally fair to each of ICANN's stakeholders.

Setting the stage...

ICANN's policies and processes must rest on a solid foundation. This can be best established by creating a shared frame of reference that ensures that participants in the policy development process can rely on fact and shared understanding. In addition to setting out a path forward for the allocation and management of new gTLDs, this document proposes definitions for various terms that remain undefined and analyses the scope of responsibility of ICANN and its subsidiary organizations – the GNSO, ccNSO and GAC[1].

What is ICANN?

ICANN's role is defined by its agreement with the United States Department of Commerce[2] ("DOC") which stipulates that ICANN and the DOC will collaborate to carry out the following domain name system ("DNS") management functions;

1. Establishment of policy for and direction of the allocation of IP number blocks;
2. Oversight of the operation of the authoritative root server system;
3. Oversight of the policy for determining the circumstances under which new top level domains would be added to the root system;
4. Coordination of the assignment of other Internet technical parameters as needed to maintain universal connectivity on the Internet; and
5. Other activities necessary to coordinate the specified DNS management functions, as agreed by the Parties.

The purpose of the DNS is to enable a decentralized system of administering the Internet's authoritative database of hostname information. This hostname information contains the technical information necessary to enable Internet communications. ICANN is one of the few key players that make the Internet work.

ICANN is made up of several stakeholder structures, including the Generic Names Supporting Organization (GNSO), the Country-Code Names Supporting Organization (ccNSO) and the Government Advisory Committee (GAC). Each of these organizations finds its respective mandate in ICANN's bylaws[3].

ICANN's bylaws stipulate that;

- The function of the GNSO shall be limited to "...developing and recommending to the ICANN Board substantive policies relating to generic top-level domains."[4]
- The function of the ccNSO shall include "...developing and recommending to the Board global policies relating to country-code top-level domains, nurturing consensus across the ccNSO's community, including the name-related activities

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[1] The Generic Names Supporting Organization, the Country Code Names Supporting Organization and the Government Advisory Committee.

[2] ICANN web site, "Memorandum of Understanding Between the U.S. Department of Commerce and the Internet Corporation for Assigned Names and Numbers, Amendment 6", http://www.icann.org/general/amend6-jpamou-17sep03.htm .

[3] ICANN web site, "Bylaws for Internet Corporation for Assigned Names and Numbers", http://www.icann.org/general/archive-bylaws/bylaws-08apr05.htm.

[4] ICANN web site, "Bylaws for Internet Corporation for Assigned Names and Numbers", [Section X, 1], http://www.icann.org/general/archive-bylaws/bylaws-08apr05.htm#X-1.

    of ccTLDs and coordinating with other ICANN Supporting Organizations, committees, and constituencies under ICANN."[5]

- The GAC "...should consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues."[6]

These arrangements carry several implications. It puts direct management of top-level domain delegations within ICANN's scope. The GNSO's responsibility for developing policy in the area of generic top level domains is derived from this. Responsibility for policy development related to IP addressing, country-code domains and protocol identifiers and providing input on public policy issues fall to other organizations within ICANN's structure.

The GNSO has influence over policy that specifies the *types* of gTLD delegations that may be requested and granted. Neither the GNSO nor ICANN has any influence over policy related to the business model or business process used to support a Delegant. Delegations are currently administered through a system of gTLD Registries and gTLD Registrars - the gTLD domain registration system. The purpose of this system is to provide host operators with the means to register and receive a delegation of authority for a specific zone which they administer via the domain name system. There is no permanent process for requesting and receiving a top-level delegation for a specific zone that falls into the gTLD category. Rectifying this exception is the primary subject of this proposal.

Since ICANN and the GNSO are not technical standards creation bodies, neither have any direct control over how delegations technically function within the domain name system beyond specifying the standardized protocols that will be used and other very narrow exceptions (escrow, continuity, et al). For instance, past GNSO policy recommendations have included advice advocating the development of new technical standards within the IETF and stipulations that currently deployed standards continue to be used. Neither of these recommendations are inappropriate nor out of scope for the GNSO.

String-length restrictions, character set guidelines and trademark-centric string-content restrictions are all examples of the types of limitations ICANN's GNSO has imposed on delegation requests. However, this does not mean that the GNSO has any direct policy influence over the model or method used to manage delegations after they have been granted. The GNSO's influence over the operational management of a zone is limited to a very narrow and appropriate set of specifications that outline the processes registrants may use to transfer delegations to one another, choose a new registrar to interface with and so on. The GNSO's influence, and therefore ICANN's, is similarly limited with regards to the operational management of a gTLD.

ICANN's role is also shaped by its Mission and Core Values which state that *"...in performing its mission, the following core values should guide the decisions and actions of ICANN:*

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[5] ICANN web site, "Bylaws for Internet Corporation for Assigned Names and Numbers", [Section IX, 1], http://www.icann.org/general/archive-bylaws/bylaws-08apr05.htm#IX-1.
[6] ICANN web site, "Bylaws for Internet Corporation for Assigned Names and Numbers", [Section XI, 2.1], http://www.icann.org/general/archive-bylaws/bylaws-08apr05.htm#XI-2.1.

1. *Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.*
2. *Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to those matters within ICANN's mission requiring or significantly benefiting from global coordination.*
3. *To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties.*
4. *Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.*
5. *Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment.*
6. *Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.*
7. *Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.*
8. *Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.*
9. *Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.*
10. *Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.*
11. *While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations."[7]*

This creates weighty obligations for those involved with ICANN's policy development processes. In the case of creating new gTLDs, it puts a premium on preserving the operational stability, reliability, security and global interoperability of the Internet while depending on market mechanisms to promote competition. It also requires that ICANN's subsidiary bodies continue to limit their activities to those that fall within their scope of responsibility. It also requires that these organizations conduct their consideration of these matters in an open and transparent fashion.

So what is the GNSO's scope of responsibility when it comes to creating new gTLDs? It is naturally limited to crafting policy recommendations in two key areas;

1. Processes, standards and policies related to gTLD delegation and administration.
2. Specific areas of the domain name system, including;
   1. ensuring technical standards compliance for Delegants, registrars and registries, and;
   2. the ongoing management of the authoritative record of name server delegations.

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[7] ICANN web site, "Bylaws for Internet Corporation for Assigned Names and Numbers", [Section I, 2], http://www.icann.org/general/archive-bylaws/bylaws-08apr05.htm#I-2.

When taken in combination with ICANN's mission and core values, this means that the GNSO must be concerned with creating processes that lead to a broad, stable and permanent expansion of the top-level namespace. The means by which it does so will create predictability and certainty which, in addition to providing numerous benefits to users and providers, will drive the investment, innovation and adoption necessary to further ICANN's pursuit of a competitive environment.

None of this is meant to imply that ICANN's role is that of a regulator. Despite sharing superficial characteristics with proper regulators like the Canadian Radio-television and Telecommunications Commission (CRTC), ICANN's role has always been limited to coordinating the basic activity necessary to ensure the continued function of a highly distributed communications network. This coordination requires ICANN to ensure that policy is put into practice through the use of guidelines, specific minimum standards, statements of best practice, and voluntary agreements. This allows ICANN to effectively discourage undesirable behavior but also requires ICANN to ensure that it doesn't unreasonably constrain innovation. Under these arrangements anything that isn't explicitly constrained by ICANN policy, contract, guideline or standard is inherently a permitted behavior. It also requires that ICANN make no endorsement of the business models of those operating under these arrangements.

What is a gTLD?

There is no ICANN statement, policy or contractual requirement that explicitly defines what a gTLD is. The acronym has come to mean many different things to many different people. Some will tell you that a gTLD is a part of a system of navigation; others will tell you that it is a brand, and even others still will tell you that it is a mnemonic label for an IP address. Without an explicit definition, it is impossible to develop rational policy on the subject.

It is our view that a gTLD should be defined as follows;

> *A gTLD is a Generic Top Level Domain. This excludes all top level domain names that are geo-politically oriented, including country codes (ccTLDs), local (i.e. .toronto[8]), regional (i.e. .theamericas[9]) and territorial names (.biot[10]) or otherwise qualify as any other type top-level domain. There are only two types of gTLDs — chartered and unchartered. Chartered gTLDs specify limitations on who qualifies for sub-delegations within the gTLD, whereas unchartered gTLDs do not.*

Adoption of this definition will require changes to the processes used to grant new gTLDs and manage existing ones. For existing gTLDs, this requires that the notions of "sponsorship" and "sponsored gTLD" be deprecated. This needs to be done on the basis that "sponsorship" makes explicit but undue demands of the business model of the sponsor that ICANN has no place making. Sponsoring Organizations would become Delegants. The intent of this requirement is not to unnecessarily undermine prior delegations, but rather, to absolve affected Delegants of the artificial and inappropriate constraints that unduly hinder the scope and method of their business model and method of operation.

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[8] Toronto, Ontario, Canada
[9] North and South America
[10] British Indian Ocean Territory

Prospective applicants must substantially demonstrate that the proposed gTLD does not qualify as any other type of gTLD (i.e. as a country-code gTLD, geographic gTLD or regional gTLD). The process of exclusion and the policy governing its application is a responsibility of the Delegant whereas all other gTLD specific policy development activity remains the responsibility of ICANN's GNSO.

What is a Registry Operator?

Similarly, ICANN has not defined the term "Registry Operator". It is widely used to denote the operator of a specific gTLD. In the case of .biz, for example, the Registry Operator (and Sponsor) is Neulevel. In order to minimize future confusion, we propose that this term be retired and replaced with the more precise term "Registry Services Provider".

A "Registry Services Provider" can be defined as being "...*the technical coordinator of the top-level domain. It is responsible for ensuring that names continue to resolve, that records of registration are managed, modifications duly recorded and new ones entered into the zone. The Registry Services Provider assists in the development of new technical standards and implements them. It manages the registration and publication function of the registry and upholds a minimum standard of transactional and technical integrity.*"

Registry Services Providers must be accredited by ICANN. The process used to accredit Registry Services Providers should be substantially similar in form and scope to the process used to accredit gTLD Registrars. The prospective Registry Services Provider must receive their accreditation before they will be allowed to technically manage a gTLD under contract with a gTLD Delegant. The criteria for accreditation are modest — the sum of minimum standards that it takes to technically operate a registry—database capability, protocol interoperability, zone file publication, escrow capability (and commitment to do so) et cetera. There should be no limit to the number of gTLDs that a Registry Services Provider can contract with a Delegant to manage.

ICANN has experience judging the technical capabilities of registry operators. These technical criteria are mostly appropriate, and the processes used to judge them, sound. The only exception to this is the requirement that an applicant demonstrate evidence of their capabilities to offer a wide range of registry services. This capability, and the will to do so, is a business capability and a question of the willingness of the applicant. It is a non-technical question with non-technical answers. Answers to this question will require subjective evaluation. It should be removed as a requirement of the Registry Services Provider Accreditation process.

At a minimum, each prospective applicant must demonstrate their capability to ensure stable registry operation. The overarching concern in the introduction of any new gTLD is to ensure that its introduction does not affect the stability and integrity of the domain name system (DNS). It is important to ensure that the new gTLD will perform reliably and continuously.

In addition, the Registry Services Provider must ensure compliance with current and future versions of key technical standards as required by their accreditation contract or ICANN policy. Demonstrate their ability to ensure that the registry conforms to best practice and technical standards for similar scale registry operations. Applicants must

demonstrate that the registry will operate at performance levels consistent with existing gTLD operations of similar scale.

Applicants must demonstrate that they have access to adequate resources and have developed adequate plans to ensure that the registry will be operated reliably and continuously, with adequate preparation to ensure continuity of operation in the event of business or other catastrophic failure of the Registry Services Provider, where the Provider is permanently unable to fulfill its obligations to provide registry services to gTLD Delegants.

Escrow of registry data is a mandatory requirement for Delegants and Registry Services Providers. By itself escrow does not guarantee a meaningful level of continuity and certainty. Further arrangements are required. To this end, the applicant must also present a realistic and satisfactory alternative for ensuring continuity of registry operation in the event of business failure of the proposed registry. For example, this requirement can be met if the applicant can demonstrate a specific commitment from an existing accredited Registry Services Provider willing to assume support of specific gTLDs in the event of a permanent failure of the Applicant. The existing provider must be operating at a similar scale of the existing provider, illustrate sufficient capacity and capability to assume the new operations and a willing to enter into the appropriate agreements with the Delegant.

Applicants must demonstrate that the systems and technology employed in the operations of the registry can appropriately deal with the demands of the number of names they expect to manage over time. Accredited Registry Service Providers with low expectations and few names under management will not be required to scale to the same level of operational capability as those managing large numbers of names. For example, with an extremely small number of names under management, the only real technology required may be in the areas of zone file publication (consistency checks, security, et cetera) and domain name server management. Further the application review process needs to be cognizant that not all applicants will operate at the same scale and that it is not necessary that they do. Different applicants will present different plans, demonstrate different levels of access to resources and possess different operational and technical capabilities.

What is a gTLD Delegant?

Again, ICANN has no explicit policy or legal definition of a gTLD Delegant.

We propose that *"…the gTLD Delegant is the operational coordinator of the gTLD. This role includes all policy management, sales and marketing activity and oversight of the charter of the gTLD (if applicable). This organization ensures that the operation of the gTLD is consistent with the needs of current and future registrants within the gTLD through its development and application of the gTLDs charter. A Delegant should be guided by the principles of RFC 1591."*

RFC 1591 need be given greater emphasis in considerations related to ICANN's gTLD allocation policies. In the past, RFC 1591 was used to define the roles, responsibilities and expected behaviors related to the operation of a gTLD. The Internet and its namespace have evolved since this document was written and, over time, less emphasis has been put on this document by policy makers and administrators. Unfortunately, in recent years, the wisdom contained in this document has been completely ignored. The

practices advocated in RFC 1591 have very little support in current policy, and in some cases, policy explicitly contradicts the RFC.

This trend should be reversed. While it is insufficient to believe that RFC 1591 can serve as the final word on gTLD allocation and management, we should not be afraid to let the words of the past guide the actions of the future. ICANN should seek to build on the experience and wisdom contained in RFC 1591. ICANN would be well served to understand the philosophical basis for this RFC, and embed them in its gTLD allocation processes and policy.

The specific aspects of RFC 1591 that ICANN needs to preserve are;

> *"The major concern in selecting a designated manager for a domain is that it be able to carry out the necessary responsibilities, and have the ability to do a equitable, just, honest, and competent job.*
>
> *The key requirement is that for each domain there be a designated manager for supervising that domain's name space…These designated authorities are trustees for the delegated domain, and have a duty to serve the community. The designated manager is the trustee of the top-level domain for…the global Internet community.*
>
> *Concerns about "rights" and "ownership" of domains are inappropriate. It is appropriate to be concerned about "responsibilities" and "service" to the community.*
>
> *The designated manager must be equitable to all groups in the domain that request domain names. This means that the same rules are applied to all requests, all requests must be processed in a non-discriminatory fashion…No bias shall be shown regarding requests that may come from customers of some other business related to the manager…*
>
> *There are no requirements on subdomains of top-level domains beyond the requirements on higher-level domains themselves. That is, the requirements in this memo are applied recursively. In particular, all subdomains shall be allowed to operate their own domain name servers, providing in them whatever information the subdomain manager sees fit (as long as it is true and correct).*
>
> *In cases when there are persistent problems with the proper operation of a domain, the delegation may be revoked, and possibly delegated to another designated manager."*

The Delegant should seek to illustrate that they will implement these guidelines as part of the application process. A Delegants request for a gTLD should be approved so long as the Delegant intends to enter into a contract with an Accredited Registry Services Provider for management of the technical operation of the gTLD and that the application was duly considered through the specified process.

There should be no restrictions on, or preferences given to, specific business model employed or proposed by a Delegant.
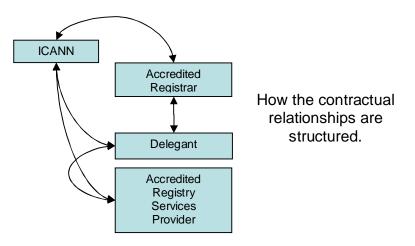
How are these parties contractually related?

The new set of relationships that this structure implies is not substantially different than those that already exist in practice. The only substantial change is that ICANN would be required to enter into a contract with the Accredited Registry Services Provider. This affords the community with a greater degree of certainty when it comes to ensuring compliance with the various standards of technical operation.

- ICANN has a contract with a Delegant governing the terms of the delegation.
- ICANN also has a contract with the Accredited Registry Services Provider governing the terms of the accreditation
- The Delegant has a contract with the Accredited Registry Services Provider governing the terms of the gTLD management contract.
- The Delegant has contracts with Accredited Registrars governing the terms of registrations entered into the gTLD.
- Accredited Registrars have a contract with ICANN governing the terms of the accreditation.

One organization may fulfill some or all of these roles. For instance, a Registry Services Provider may also be a Delegant and a Registrar. If a Delegant or a Registry Services Provider is also a Registrar, they must guarantee and ensure separation between the registrar function of their operations, and those related to the gTLD-management function of their operation. ICANN accredited Registrars must each be permitted to enter into a registration contract with as many Delegants as it wishes to do so. There shall be no restrictions or limitations to the number of TLDs that an accredited Registrar may offer, nor any waiver of the requirement for a Delegant to enter into a registration agreement with accredited Registrars.

Recognizing that some Delegants will wish to undertake specific channel development and marketing activities, Delegants, Registry Services Providers and Registrars must each be permitted to seek and obtain additional designations, subject to their willingness to commit to implementing controls to prevent internal conflicts of interest. With the presence of minimal constraints, there are no compelling reasons why a Delegant should not be permitted to become an accredited Registrar or Registry Services Provider or to prevent other similar combinations of accreditation.

Lastly, existing requirements to provide Registrars with equal access to registry resources should be refined to ensure that Delegants are providing registrars with access to registry resources on an equitable basis that takes into account net registration volume and other scale-related metrics. The restrictions on giving preference and special consideration to specific registrars would also therefore need to be removed.

How the contractual relationships are structured.

The term of relationships

The term of accreditation for Registry Service Providers and Registrars should be five years in length. The initial term of accreditation for each should be one year. These are arbitrary terms – not unnecessarily short, nor unnecessarily long.

The initial and renewal terms of contract for a gTLD delegation should be seven years. Again, this is an arbitrary term of sufficient length to provide a desirable level of certainty for the Internet and investment communities.

The term of contract between a Delegant and a Registrar should not be a matter of policy, but predicated on there being a current contract between ICANN and the Registrar.

Similarly, the term of the contract between the Registry Services Provider and the Delegant shall be of suitable length to fulfill the representations made in each of their Accreditation and Delegation applications.

Additional Contractual Terms

In addition to the technical requirements outlined previously, there are additional policy considerations that need to be enacted through the delegation contracts.

- Pricing controls within the delegation contracts should initially be relaxed and eventually eliminated. New delegations should not include pricing controls. Removal of price controls in existing contracts should happen in reverse chronological order of the date of their initial delegation (i.e. pricing controls should first be lifted in .cat, .jobs and .travel, and so on, until they have all been lifted). A recommended schedule is proposed in the endnotes[i].
- Renewal of the contract should be presumed except and unless the Delegant ceases to fulfill the terms of the contract. The contracts should continue to be cancellable by ICANN.
- ICANN need implement a sanctions program to deal with contract violations by Delegants, Accredited Registries and Registrars. A well thought out program should be sufficient to govern the activities of all three parties.

Other Considerations

Future policy development work must be undertaken to determine the forum, policies and processes used to grant geographic, regional and local top level domain names. This work would be explicitly out of scope for the GNSO, but the GNSO's unique experience with launching new gTLDs and the ccNSO in managing geo-political names is valuable. Careful consideration should be given to how the GNSO and the CCNSO can support the work of the GAC in addressing these critical questions.

Existing Sponsored TLDs will need to be transitioned to Chartered TLDs. This should happen as part of the current sTLD renewal process. Existing contracts should be extended for a period of one year while the details of the new arrangements are finalized. Existing Registry Operators will also need to become Accredited Registry Service Providers. It would be appropriate to grandfather existing operators into the accreditation program, unless there are specific, demonstrable performance concerns that require examination or explanation.

Award and Allocation of Top-level Domain Names

This proposal advocates that there be three phases to the gTLD allocation and operation process; development, implementation & operation and renewal. The elements of each phase are distinctly different. Broadly speaking, the proposed process looks like this;

1) Allocation Phase
   a. Application
   b. Notice/Counter-proposal
   c. Evaluation
   d. Auction/Award
2) Implementation Phase
   a. Implementation
   b. Operation
3) Renewal Phase
   a. Re-evaluation
   b. Renewal

Proposed Allocation Processes

gTLDs should continue to be allocated[11]. The gTLD allocation process should be simple, straightforward and self-funding. It should not, by itself, discourage potential applicants. Willing applicants who meet the basic criteria of accreditation and delegation should be put in a position where they can become operational as quickly as the process and new Delegant will allow.

The core of the award process is a "first-come, first-served" award process that uses a sealed bid auction to reconcile contention. This methodology has been selected for its overall fairness, cost-efficiency, inclusiveness, expediency and to minimize rent-seeking behavior by applicants (and ensure an appropriate allocation of rents).

The allocation process is an ongoing process. Applications may be submitted at any time. They will be processed on a first-come, first served basis. The allocation process is a self-funding process. As such, there should be no formal "gating" of applications. They should be processed as received and staff resources should be allocated to ensure a steady review of applications and assignment of delegations. The flow of applications can be regulated by adjusting one measure – the application and renewal fees. Future review of these processes should evaluate whether the flow of applications should increase or decrease. These fees can then be modified accordingly (i.e. lower fees should presumably increase the number of applications).

The award process facilitates the development of a segregated Community Interest gTLD Development Fund that will provide financial assistance to applicants who seek to develop chartered TLDs but may not have access to the funding necessary to pay the

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[11] Allocated through an assignment process as opposed to "slotting" or other similar proposals. It is important that the delegation of gTLDs be as similar as possible to the delegations methods used to allocate other domain names. All second and third level delegation consists of an applicant requesting a name and having that name allocated via specific processes. Top level delegations should be no different.

application fees. A portion of the application fees collected in excess of the budget requirements associated with administering the allocation process will be diverted to this fund.

Application Processes

Interested parties should submit a completed application to ICANN staff. This application should be accompanied by all supporting materials necessary to evaluate the application. There will be an application processing fee of $60,000. Applicants must include a certified cheque in this amount with their application.

There are several applications from prior allocation processes that have not been considered or otherwise dealt with. Each of these applications should be given preferential position at the top of the processing queue in the order in which they were received. These applicants must be given the opportunity to update their request for delegation and ensure its consistency with the requirements of the new process. All other conditions of this proposal should apply. Applicants will be required to pay a total application fee of $60,000 (their original application fee, plus the difference up to $60,000).

Once the application has reached the top of the processing queue, it will enter a public notice period. The term of this Public Notice period will be 90 days. The purpose of this period is to provide the community with notice of the applicants intentions. If there are other applicants who have applied for the same gTLD, their application will be removed from the processing queue and be included in the Public Notice. If there are additional third parties that wish to apply for the gTLD that has entered into the Public Notice period, they must file their application no later than the last day of the Public Notice period.

At the end of the Public Notice period, if there is only a single applicant for a particular gTLD, the application will be evaluated by an independent evaluator and, presuming the applicant meets all criteria, the request will be granted.

Multiple applicants for the same gTLD creates contention for the resource that will be resolved through a first-price, sealed bid auction[12]. Each bid will be accompanied by a certified cheque, payable to ICANN, in the amount of the bid. Low bids will be held confidentially and the associated bid cheque will be returned to the unsuccessful bidders.

Unsuccessful applicants (and bidders) will not be charged the application fee. Application fees from successful applicants who are the high-bidder in the auction process will be diverted to the Community Interest gTLD Development Fund. Application fees from successful applicants who were unopposed in their application will be used to underwrite the gTLD award process.

Application evaluation does not occur until after an auction has taken place, or in the case of an unopposed application, until after the public notice period has ended. In the event that a successful bidder does not qualify as an applicant, their high bid, minus the $60,000 processing fee, will be returned to them and the next highest bidder will be

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[12] In a first-price, sealed bid auction, bids are submitted in written form and bidders have no knowledge of the bids of others. The winning bid is the highest bid submitted, The winning bidder pays the exact amount of their bid.

evaluated. This process will repeat until a qualified high-bidder is determined. In the event that no bidder is qualified, there will be no award and the gTLD will remain undelegated.

Allocation Restrictions

Any restrictions on the specific strings that may be allocated must be limited, and publicly documented. These restrictions should deal with minimizing confusion with other TLDs, ensuring appropriate technical interoperability and provide appropriate protections for rights-holders. Restrictions should not attempt to manage semantics or structure taxonomy.

Proposed Restrictions:
1. gTLDs must consist of letters only. No requests seeking delegation of gTLDs containing numbers or special characters will be granted.
2. IDN gTLDs are permissible pending the development of formal IDN policy for gTLDs. Implementation of IDN policy is not a gating requirement for implementation of this proposal; however it is a gating requirement for the introduction of IDN-enabled gTLDs[13].
3. Delegations requests must not be confusingly similar to other delegations. This specific restriction should be interpreted as being very narrow and limited to the technical contents of the TLD string, and not any associated semantics. For example, ".airo", ".airoh" and ".erro" are confusingly similar to ".aero" — ".air" would not be. ".mail" would not be viewed as being confusingly similar to ".post" any more than ".biz" is confusingly similar to ".com".
4. Generic Top-level Domains consisting of a trademark are subject to a modified UDRP which requires a Delegant to state their intended use of the top-level domain prior to its delegation. Variation from this proposed use would constitute bad faith "registration" under this amended UDRP. These protections would only extend to famous or well-known brands and obvious trademarks (i.e. ".ibm", ".google" or ".tucows") but not generic words, letters or letter strings. The narrow focus of this modification should substantially minimize the risk for abuse that would otherwise be associated with delegating trademarked gTLDs.

Delegation Fees

Delegants will be required to pay annual delegation fees equivalent to the greater of $20,000 USD or 1/7 of the amount of their successful auction bid. (i.e. an opposed delegation that went to auction and was successfully awarded to a $500,000 bid would require the Delegant to pay an initial fee of $500,000 to cover their bid, and an annual fee of $71,428.57 per annum starting on the anniversary of the initial Delegant, through the seven year contract.

Implementation & Sunrise Considerations

Requirements to implement a sunrise period as part of the launch of a new gTLD should be dropped. The UDRP has proven to be a successful mechanism for providing broad protections to rights-holders. Sunrise periods have proven to be extremely difficult to successfully implement and manage. Effectiveness of sunrise periods associated with the launch of gTLDs over the past 6 years has been extremely limited. Further, the level of

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[13] This refers solely to IDN encoding at the top-level (i.e. "IDN.IDN" implementations). IDN encoding elsewhere in the namespace is not restricted by this proposal, but may be restricted by other policy.

complexity associated with administering a sunrise period to deter rampant rights abuse in a new gTLD also creates substantial confusion with Internet users and non-abusive registrants. Difficulties in effecting the sunrise periods have substantially damaged the success to date of large scale gTLDs. In sum, the social, economic and opportunity cost associated with mandatory sunrise periods far outweigh any benefits that would otherwise accrue to the various stakeholders, including rights-holders.

Re-evaluation and Renewal of Delegations

At the end of the sixth year of operation of the gTLD, ICANN will undertake a review of the Delegant's original application for the purpose of determining whether or not the delegation should continue for an additional seven years. In the event that circumstances have changed, or experience with the Delegant requires, ICANN will request an updated application from the Delegant. The actual evaluation should be undertaken by an independent third party who will provide recommendations to ICANN. The presumption in all cases will be that the agreement should be renewed, and the onus will be on ICANN to demonstrate why it should not be. Absent recommendation to deny renewal from the evaluator, or intervention by ICANN, the delegation will be renewed for an additional seven years. The re-evaluation and renewal process is also self-funding. Annual fees for renewed delegations will be 1/7 of the originally successful bid, or $20,000, whichever is greater.

Implementing a Community Interest gTLD Development Fund

The purpose of this fund is to make allowances for prospective Delegants who may not have the financial resources to pay the application fees due to ICANN via the delegation process, but have otherwise been judged to be submitting an application that substantially benefits the public interest in specific demonstrable ways.

This fund will be resourced by excess application fees from the gTLD allocation process to a maximum of $600,000 at any time. Fees collected in excess of $600,000 should be diverted to the general ICANN budget. The intent of this cap is to ensure that the fund can provide assistance to up to 10 applicants at any given time, while ensuring that it is not excessively funded.

Administration of this fund, and allocation of its resources, must take place outside of the gTLD application process. The fund should be administered via an evaluation committee consisting of a broad cross-section of stakeholders as determined by the ICANN Board of Directors. The purpose of this committee will be to develop an evaluation mechanism to assess the level of public interest served by applicants to the fund, and apply the mechanism to funding requests. Funding support should be reserved for those special cases in which the gTLD the applicant wishes to propose is substantially in the public interest, and that the applicant is able to demonstrate that they do not have the financial resources necessary to fund their own application. The development fund is not a vehicle for moderately funded interests looking to "defray" their application costs. The fund is a vehicle for ensuring that applications that demonstrably benefit the public interest, in its many forms, receive due consideration under ICANN's permanent gTLD allocation processes.

Final Thoughts

The purpose of this proposal is to provide ICANN's policy makers with a clear statement of processes and outcomes, taken from years of discussion on the issue of new gTLD introduction. ICANN and its supporting organizations have spent thousands (potentially hundreds of thousands) of hours exploring various options, deliberating possible programs and analyzing the issues related to the introduction of new gTLDs. Substantial time has also been devoted to one-off experiments. Neither the discussion, nor the experimentation, has lead to substantially concrete or repeatable results. A small number of new gTLDs are available, but the road forward is no clearer. In fact, the attendant policies, contractual conditions, standards and best practices have become less cohesive.

ICANN must take this opportunity to clean up the uncertainty it has created and implement a permanent, repeatable process that supports the ongoing introduction of new gTLDs.

ICANN should no longer seek to "optimize" the namespace as it has attempted to do under its "Sponsored TLD" programs. This program erroneously delegates policy making responsibility to the gTLD Delegant where this responsibility more properly belongs to ICANN's GNSO. Further, this experiment mandates specific business models and business practices that ICANN has no proper authority to make.

ICANN should not be endorsing specific business models or methods of operation nor trying to ensure specific outcomes. ICANN is in the business of coordinating the operation of the DNS. ICANN is not in the business of regulating Delegants and operators. ICANN cannot fulfill a regulatory mandate — it should seek to avoid assuming roles that it cannot fulfill. In this case, ICANN, per its own Mission Statement, must rely on market mechanisms to ensure a properly competitive domain name registration market across its entire breadth and depth.

ICANN must focus on implementing uniform minimum requirements that ensure that technical and operationally competent operators can request and receive generic top-level domain delegations via a permanent, predictable and repeatable process. The net result of this activity will contribute positively to a well-functioning, stable and secure domain name system. It will also help ICANN "get out of the way", reduce the overall cost and overhead associated with administering the top-level namespace and create an environment that is more conducive to increased investment, innovation, competition and user satisfaction.

[i] End Note 1: Proposed Schedule for Removal of Pricing Controls in gTLD Delegation Contracts

The following schedule proposes a timeline by which pricing controls should be removed from gTLD Delegation Agreements. Deference is given to the date of the original delegation for the purpose of ensuring that newer Delegants are not unduly impacted by the removal in older, more established TLDs. The timing of removal in each instance, is inversely proportional to the amount of time from current date to the original delegation (the following schedule assumes adoption and implementation of these policies in 2006):

gTLD	Original Delegation	Earliest Removal	Latest Removal
.aero	2001	2009	2014
.biz	2001	2009	2014
.cat	2005	2006	2010
.com	1995	2013	2018
.coop	2001	2009	2014
.info	2001	2009	2014
.jobs	2005	2006	2010
.museum	2001	2009	2014
.name	2001	2009	2014
.net	1995	2011	2016
.org	1995	2011	2015
.pro	2002	2008	2013
.travel	2005	2006	2010