
Comments on GNSO Initial Report & Questions

Part 1: General comments to the Initial Report

The Initial Report collects nearly all important topics for the next RFP. We agree with most of the points raised and summarized in the report. General comments we have are:

- a) The current new TLD PDP should leave the door open to incorporate the outcome of the IDN process. But the new TLD PDP should not be delayed by an IDN process which will for various, also technical, reasons, foreseeable not be finished before the new TLD PDP.
- b) Regarding Terms of Reference 2, paragraph 11, we'd like to remind that there are already name spaces which are either close to each other based on a string or on the TLD purpose:
 - .co (ccTLD Columbia), cm (ccTLD Cameroon) / .com
 - .ne (ccTLD Niger) / .net
 - .bi (ccTLD Belize) / .biz
 - .in (ccTLD India) / info
 - .com (commercial) / .biz (commercial)
- c) We agree with the proposal made in Terms of Reference 3, paragraph 2 and 3: A continual round of assessments and implementations of TLDs after an initial batch.
- d) We think that there should probably be no new categories of TLDs. However, it is probably necessary to differentiate the evaluation criteria with respect to specific properties a proposed TLD may have.
- e) We refer to the comments we made in our papers published on January 31th and April 30th, 2006.

Part 2: General comments to additional questions in connection with the Initial Report

1. After reading the Initial Report, are there any other selection criteria which may be helpful for a new top level domain application round?

Strings that are widely known to designate a sizeable community should not be assigned as TLDs to an unrelated party.

This is particularly important for geographically, ethnically and culturally significant names (they might be called "Geo names" for short).

These strings include abbreviations for cultural and linguistic communities mentioned in the available ISO lists, full names and common abbreviations of cities and regions, as well as designating strings for other communities. They may be full names, common abbreviations or other significations.

Geo names are bound to play an important role among future TLD applications. It is therefore reasonable to address their specificities in the Policy Development Process (PDP) for new TLDs. In particular, the PDP should establish guidelines for their allocation to the respective community.

2. Thinking about the issue of application fees for any new top level domain application, is there merit in graduated application fees to assist applicants?

ICANN rightly asks applicants to fulfil certain criteria, which are realistic business, financial, technical, and operational plans and a sound analysis of market needs. Therefore the all over expenses involved with a TLD application, from the founding of the applicant's organisation to final approval and launch of the TLD are more or less than \$2 million today. These costs include set-up of the organisation, staff salaries, back-end registry, lawyers and consultants, reserve assets, and also pre-marketing expenses to become visible in the market.

An application fee of \$50.000 certainly constitutes a hurdle, but if the applicant cannot raise funds for all other expenses which are necessary to fulfil the criteria to operate a TLD, the future of this TLD is very doubtful. Running a TLD is a serious business and is something that will not become commodity in the short- to mid-term.

ICANN should not lower the application fees but ICANN should try to reduce avoidable indirect costs incurred by the applicant. In particular, the whole approval process should be shorter and more predictable. These mechanisms could include:

- Fixed and reliable timelines
- Standardised contracts
- Public pre-evaluation hearings of applications

At the end of the day these things will allow also applicants with a smaller wallet to get a TLD approved.

3. Taking into account the experiences from the 2000 and 2004 round of new top level domains, do you have further comments to make about streamlining the application process?

Public Pre-Evaluation Hearings to make the application process more efficient.

As mentioned at the ICANN meeting in Marrakech a pre-evaluation of applications could be a measure to make the application process easier and more effective for all parties.

The pre-evaluation hearings can be conducted by a standing pre-evaluation committee, for instance by designated ICANN staff or/and a GNSO sub-group.

The pre-evaluation hearing takes place before the application is filed. The applicant is of course expected to have a complete, or almost complete, preliminary application ready. In the pre-evaluation hearing, the applicant presents the content of the preliminary application. Interested parties, ICANN staff, representatives of the GNSO constituencies and the GAC can provide feedback on the content.

The concept of pre-evaluation is used in many regulated industries. For instance, in the pharmaceutical industry, where pre-evaluation hearings take place before the filing of the application for a new pharmaceutical drug. In the case of pharmaceutical approvals, the hearings are often confidential because the approval does not confer any exclusivity. In the case of new TLDs, the hearings would have to be **public and compulsory** so as to ensure that all interested parties have the opportunity to voice their concerns, or give constructive feedback, before the application is filed.

Main purposes of the pre-evaluation are:

- to increase the quality of the final application
- to give TLD applicants consulting for the application
- to help avoid the filing of immature or faulty applications
- to prevent misuse and speculative TLD applications
- to bring applicants for the same TLD string or TLD purpose together
- to give ICANN more certainty in planning resources for the next TLD evaluation round

The pre-evaluation should be scheduled 90 days before the application deadline at each ICANN meeting ends.

The pre-evaluation is not a pre-approval. It is good to have a pre-evaluation report, authored by an appointed rapporteur of the pre-evaluation hearing. This report is valuable for the TLD applicant and other parties, including those who have not participated in the hearing.

The pre-evaluation hearing also has significant organizational advantages, especially if it is compulsory. It provides planning reliability: thanks to the hearings, ICANN can commit adequate staff and expert resources to evaluate applications once they are filed. For the TLD applicants, it helps optimize the timing of invested resources.

Modus and timeline for the pre-evaluation

Depending on the number of requests, ICANN can organise pre-evaluation hearings at the ICANN meetings or at special meetings in-between ICANN meetings (provided a several pre-evaluations are conducted at the such an event).

We think that the new TLD applications themselves should be accepted only at a set number of days before one of the three annual ICANN meetings. At this point, applicants should be able to make presentations.

4. Thinking about ICANN's responsibility to ensure competition in registry services operation, do you have any additional comments about how to encourage applications which would serve needs which are not met by the existing top level domains?

Especially establishing technical standards for back-end registry services would help the market by economy of scale in costs and thereby also applicants. However, these technical standards must be carefully designed to avoid stifling of innovation.

5. Looking closely at the technical selection criteria section of the Report, are there any further comments which would assist with identifying appropriate base line technical criteria for new applications?

These criteria are realistic business, financial, technical, and operational plans and a sound analysis of market needs.

6. Do you have any further comment to make on the use of the first come first served system for processing applications and then whether auctions or lotteries are appropriate ways of resolving competition between applications?

Some thoughts about a qualified “first come, first served” have been made in question 3.

If two or more applicants for the same string or purpose have completed a pre-evaluation hearing, all of them should be given the equal possibility to file their application. A comparative evaluation of the applications will then find out which application meets the criteria best.

If there is only one applicant for a certain TLD string the TLD string is blocked until ICANN has made a decision to approve or not to approve the application. If ICANN denies the application new applicants might try to apply for the same TLD string at the next following ICANN meeting or go through the next following pre-evaluation process.

Auctions may only make sense for strings devoid of meaning, such as 1-letter TLDs like .a.

Lotteries are probably the best way to proliferate questionable TLDs. They may give applicants with low financial resources a chance but also increase risk of TLD registry failure or questionable uses of TLDs. Only if the applicant has shown upfront to his application in the lottery that he meets the ICANN criteria to run a TLD he should be allowed to participate in the lottery. These criteria are realistic business, financial, technical, and operational plans and a sound analysis of market needs. We also refer to question 2.

7. Do you have any further views on the kinds of new TLDs that might be encouraged? Specifically, do members of the community expect the existing differentiation between sponsored, generic, chartered and open TLDs to remain?

The formation of TLDs for communities based on human similarities, whether the communities are ethnic, cultural, linguistic or of other heritage or communities based on geopolitical entities should be encouraged. These TLDs are a logical choice since they give communities a voice and virtual namespace.

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Berlin, August 10th, 2006