

Yahoo! Inc.'s Comments on Defensive Applications for New gTLDs

February 27, 2012

Yahoo! Inc. appreciates the opportunity to submit these comments in response to ICANN's February 6, 2012 request for comment on "Defensive Applications for New gTLDs," found at <http://www.icann.org/en/public-comment/newgtlds-defensive-applications-06feb12-en.htm>. We are among many brand owners who are concerned with the very real impact the new gTLD initiative will have on our brands, our reputation and our budgets, and the solutions touted by ICANN thus far have not brought us much hope that new gTLD abuse of brands can be avoided or even minimized.

Our concerns arise primarily from experience. Yahoo! owns tens of thousands of domains under the existing domain structure, the vast majority of which were acquired either proactively for defensive purposes, or reactively to stop infringement and cybersquatting. Our trademarks are among the company's most valuable assets and we are prepared to do whatever the law requires and allows us to do to protect them. As a result, an enormous amount of our trademark budget is devoted to enforcement matters, and the lion's share of that enforcement budget is devoted to dealing with cybersquatting/infringing domains. Based on this experience, and despite what may seem to be the high cost of entry (the \$185,000 application fee), it does not take a huge leap of logic or faith for us to expect there to be individuals and companies (sadly, including some companies within the registrar world), who have the cash reserves to jump into the .brand application fray, and the financial incentive, in the absence of better brand protection mechanisms, to try to hold legitimate brand holders hostage for sizable settlement fees in return for the relevant .brand. As distasteful as it may feel to file an application for defensive purposes, our experience leads us to believe that many brand owners feel that it is the better (more efficient, more immediate) business choice, if not the ONLY business choice, when so much uncertainty still remains around the new gTLD process, when the next round will begin, etc. The decision to file for defensive purposes seems all the more essential given ICANN's persistent watering down (if not outright rejection) of numerous brand protection mechanisms which might otherwise have minimized brand abuse in an expanded DNS.

We are aware of discussions about, and would like to express support for, two ideas which we believe could be helpful to brand owners navigating the new gTLD application and reduce their/our sensitivity about defensive filings. First, ICANN's Applicant Guidebook refers to batching applications in the first round in order to minimize disruption to the implementation process and root. We agree with others who are proposing that this should be done by category in the following order:

1. IDNs (to the extent any new gTLDs are needed, there seems to be consensus that these are needed most)
2. Geopolitical references, which involve governments at a variety of levels
3. .brand
4. True generics

This order would allow the most needed gTLDs entry first (IDNs), and also provide a testing ground which might inform later batches (such as brands). This additional test/observation time would give brand owners a better sense of how the process works, the relative risks and rewards, and thereby better inform their decision as to whether they want or need to remain in the process first round.

Related to this first proposal, a second recommendation which we support is the concept of providing a short window of time within which applicants can withdraw their application and receive a full (or at least partial but substantial) refund. Such a window, immediately after the list of applicants is published, can be as little as 10 days or 2 weeks, but would give applicants the opportunity to see whether a top level domain application is really immediately needed for top level defensive purposes, rather than applying blind, solely out of uncertainty and mistrust of the system. While ICANN is certainly not an institution driven by concerns about its image and reputation, allowing for such a window/refund might also go a long way towards building a little good will between ICANN and the brand community.

We urge ICANN to consider these suggestions, and again, we appreciate the opportunity to comment.

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