



Comments Posted Apr 13, 2009

Topic: New gTLD Draft Applicant Guidebook (v2)

Please accept the following comments in response to ICANN's announcement regarding Draft Applicant Guidebook, version 2 (DAGv2).¹ Go Daddy reserves the right to comment on future versions of the DAG, and our positions include, but are not necessarily limited to, the text herein.

Go Daddy supports the broad initiative to introduce new gTLDs into the Root, so long as such a program is launched according to a well-defined procedure and yields reasonably predictable outcomes. We recognize and applaud the significant efforts undertaken by ICANN staff and others within the community to address the spectrum of challenges and open issues associated with this program. This is particularly true when considering the thorough manner in which ICANN has collected, analyzed, and responded to public feedback to the first version of the DAG.

Nevertheless, there are still many elements of the DAGv2 that raise questions or present concerns. Among these are the four areas identified by ICANN staff as "New gTLD Overarching Issues:"²

- Trademark Protection
- TLD Demand and Economic Analysis
- Security and Stability: Root Zone Scaling
- Potential for Malicious Conduct

We are pleased to see ICANN is open to discussing these concepts in a consultative and collaborative manner. The establishment of a community feedback website and targeted working teams are already underway, and we look forward to participating in all aspects of this effort. As a result, these subjects will not be directly addressed herein.

Comments below are arranged according to the module to which they refer.

Module 2: Evaluation Procedures

On balance, the Evaluation Procedures described in this module are generally acceptable. We do note the challenge outlined in section 2.1.1.4.1 ("Categories of Strings Considered Geographical Names"), in which the fourth bullet describes the identification of city names. This presents numerous opportunities for collision, as many city names are repeated throughout US states, and in some cases at the

national level when two countries share a common language (e.g. the US and UK).

Because the burden of identification falls on the applicant, it is likely that many applications will unknowingly fail to identify (or misidentify) all instances of collision between their applied-for string and recognized geographical names. Later modules (particularly Module 6: Terms and Conditions) would imply that this would constitute a “material omission,” and may negatively affect the review of the application.

Module 3: Dispute Resolution Procedures

We support the development of a robust procedure for resolving disputes between gTLD applicants and non-applicants, as narrowly limited to the four areas outlined in this module:

- String Confusion with an existing TLD;
- Infringement of Legal Rights;
- Morality and Public Order; and
- Objection from an expressly targeted community.

We recognize that the precise implementation of these grounds for objection is still under development. For example, the recently-formed Implementation Recommendation Team (IRT)³ is convening to develop proposals for the protection of Rights Holders.

Nevertheless, this module raises several questions. As an initial example, consider section 3.1.4, which describes a settlement between the applicant and objector as one possible outcome of a dispute. Is this likely considering both application and objection fees are non-refundable? Or will a refund be considered in this scenario as no costs to ICANN were incurred?

Section 3.1.5 introduces the concept of an Independent Objector for Morality and Public Order, and Community objections. The qualification that the Independent Objector have “...considerable experience and respect in the Internet community” must be clearly established. Furthermore, some mechanism should exist for the responding applicant to challenge the standing of an Independent Objector, or indeed any objector, without necessarily addressing the merits of the objection.

The second point of section 3.2.3 states that applicants must respond to each objection separately, and pay the filing fee for each response. It is not difficult to envision scenarios involving popular or controversial applications that generate an unexpected number of objections.

Similarly, section 3.3.2 describes the process by which the Dispute Resolution Service Provider (DRSP) will consider consolidating multiple common objections. This raises the question of how Objection and Response filing fees will be re-allocated.

And finally, in section 3.3.7, ICANN estimates that the DRSP will charge different fee structures based upon the grounds of the objection(s), and may require advance payment of estimated fees prior to reviewing and processing a case or group of consolidated cases.

For applicants, the runaway fees associated with this scenario represent an un-quantified risk. ICANN should consider establishing a “cap” on the maximum Objection Response filing fees any given applicant will be expected to incur. This could be expressed as a fixed dollar value, or as a percentage of the initial application fee.

With regard to the various grounds for objections, further detail is required in the description of the procedure for determining the level of Community support for an objection. Does ICANN intend to survey a community to gauge its opposition to a Community application? Is it sufficient that the applicant or objector simply enlist the support of the leadership of the targeted community?

Module 4: String Contention Procedures

This module addresses situations in which multiple applications successfully complete the objection phase, but are applying for identical strings, or strings determined by ICANN to be likely to create confusion among Internet users.

Identification of Contention Sets

We agree that applications for identical strings should automatically be joined into a single contention set. But for those strings determined by ICANN to be “confusingly similar” (either directly or indirectly) the current DAG fails to address numerous issues.

For example, has this overall approach been thoroughly studied so as to eliminate the possibility of manipulation or collusion by one or more applicants? While this is admittedly unlikely given the high application fees, it could be viable for the most popular “premium” strings expecting numerous applications.

If an application is identified as belonging to a contention set, can the applicant challenge this inclusion? This is particularly concerning in cases involving “indirect” contention.

Contention Resolution

Once the contention sets have been identified, the next task is to resolve the contention in favor of a single applicant. First, the DAG fails to mention any expected timeframe for resolution. Time to market for new gTLDs will be essential, and contending applications should be “held” or “reserved” if they are unresolved at the end of the application round. Alternatively, ICANN can refrain from launching any subsequent rounds of New gTLD applications until all outstanding contention sets are resolved.

Next, while ICANN encourages contending applications to pursue self-resolution (combined or modified, section 4.1.3) there should be some incentive (financial or other consideration) offered to do so. For example, a portion of the application fee(s) collected could be refunded to the new Joint Application.

Section 4.2 describes the Comparative Evaluation process for community based applications. While this method may be effective for resolving contention issues between multiple Community applications, it is unclear if / how Comparative

Evaluation may address contention between one or more Community applications, and one or more Open applications.

The DAG has established several criteria and threshold scores for the Comparative Evaluation procedure. It is concerning that a Community application might expect a low rating in comparative evaluation, but still be granted a priority over Open applications. Other factors must be considered before granting a priority to Community applications over Open contenders including: 1) the Community based application must be for a not-for-profit endeavor; 2) the claimed Community cannot be globally distributed; and 3) the Community must be of a sufficiently limited size. We encourage Staff and Board not to repeat the mistakes of past so-called sponsored gTLD applications whose sponsored communities represented large global communities that encompassed the majority of people on the planet - .mobi, .tel, and .asia for examples. And giving contention deference only to not-for-profit Community based applicants will add another layer of protection from gaming for commercial gain.

The above requirements will further dispel concerns that claims of community endorsement will be inappropriately raised in order to gain an advantage when contending for popular, but otherwise generic, strings. ICANN staff should provide further detail on possible contention scenarios between Community and Open applications.

Module 5: Base Agreement

Section 2.8 of the Base Agreement discusses the requirement to use ICANN-accredited registrars, and that "affiliated" registrars can only sell registrations within the TLD for a combined 100,000 names. It is difficult to support or object to this provision without understanding what specifically constitutes an "affiliated" registrar. The details of this definition and its implementation require further consultation with the ICANN community as previously committed to by Staff. This is NOT something simply resolved through online public comment. Furthermore, it is unclear how the 100,000 name limit will be audited and enforced.

The Additional Requirements outlined in section 5.2.2 require the applicant to document its ability to fund basic registry operations for a period of three to five years in the event of a registry failure. It is not clear from this requirement whether this can include any portion of advanced (but unearned) revenue, or perhaps be addressed through contract arrangements with third parties. Also absent is a detailed description of "basic registry operations," which at a minimum could include the continued resolution of DNS queries for existing registrations, but blocking the creation of new registrations.

Module 6: Terms and Conditions

The following comments or questions relate to the Terms and Conditions enumerated in Module 6.⁴

Provision 1: "...are true and accurate and complete in all material aspects..."

Comment: Include a qualifying statement "to the best of applicant's knowledge."

Provision 1: "... (or omission of material information)"

Comment: Amend to read "... (or willful omission of material information)"

Provision 6: (Release of claims against ICANN)

Comment: This provision is overreaching and inappropriate unless it is amended to include some exceptions for acts of negligence and misconduct on the part of ICANN or its affiliated parties.

Provision 11b: "Applicant authorizes ICANN to consult with persons of ICANN's choosing regarding the information in the application or otherwise coming into [sic] ICANN's possession."

Comment: Provision should be amended to exclude any part of the application designated by the applicant as "confidential" without the express written permission of the applicant.

The launch of new gTLDs into the DNS root will fundamentally alter the organization of names on the Internet. For this reason, ICANN should pursue a cautious approach in its efforts to address all open issues. Go Daddy anticipates our continued participation in this process, and appreciates ICANN's responsiveness to concerns and questions from the community.

Sincerely,
GoDaddy.com, Inc.

A handwritten signature in black ink, appearing to read "Tim Ruiz", with a stylized flourish at the end.

Tim Ruiz
Vice President
Corporate Development and Policy
GoDaddy.com, Inc.

References

1. <http://icann.org/en/topics/new-gtlds/comments-2-en.htm>
2. <http://icann.org/en/announcements/announcement-02apr09-en.htm>
3. <http://icann.org/en/announcements/announcement-26mar09-en.htm>
4. <http://icann.org/en/topics/new-gtlds/draft-terms-clean-18feb09-en.pdf>