AT&T Comments on New gTLD Draft Applicant Guidebook Version 3

November 22, 2009

AT&T is a global IP network and Internet provider, and as such is both a major stakeholder in the global Internet and one of the key enablers of the movement and management of IP communications and IP enabled services. In this role, and in serving its globally distributed customers, AT&T has a direct interest and significant concerns about the resiliency, security and stability of the Domain Name System ("DNS") and the Internet, and thus, of ICANN itself.

AT&T has filed comments with regard to earlier draft versions of the New gTLD Applicant Guidebook (DAG) as well as with respect to the IRT and in connection with ICANN's ongoing institutional confidence proceeding. With respect to each version of the DAG, AT&T has consistently called on ICANN to address four overarching issues that were raised by many other commenters and acknowledged by ICANN itself in the first comment period: (1) trademark protection, (2) malicious conduct, (3) economic analysis, and (4) security and stability.

Recently, ICANN and the U.S. Department of Commerce entered into the Affirmation of Commitments Agreement (September 30, 2009) which states, in part, "ICANN will ensure that as it contemplates expanding the top-level domain space, the various issues that are involved (including competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection) will be adequately addressed prior to implementation." AT&T welcomes the Affirmation of Commitments, as well as its confirmation that ICANN must act in the public interest and holistically address the various impacts to end users and the security and stability of the DNS resulting from the introduction of large numbers of new gTLDs.

Today, AT&T is separately submitting comments on the ICANN staff's recommendations for rights protection mechanisms in new gTLDs. Accordingly, these comments focus on the DAG3 and the overarching issues that have yet to be addressed in the DAG processes, but which must be fully resolved before proceeding with the introduction of new gTLDs in a managed and cautious manner. These comments also reiterate the need for some unique provisions to address sponsored links which are operated as "non-public" registries, including the use of new gTLDs by a business for itself and its customers.

I.   Growth of Malicious Conduct

Along with others in the business community who are dealing with malicious

conduct and abusive registrations and use of the DNS, AT&T is concerned that malicious conduct will significantly increase with the introduction of large numbers of new gTLDs, putting both trademark holders and Internet users at risk. The impact is not limited to the burden and expense of trademark rights protection, but also includes serious end user issues such as identity theft and even health and safety risks when end users access deceptive sites that are providing goods that are fraudulent. The introduction of new gTLDs should therefore be pursued in a gradual and responsible manner.

ICANN and the community of stakeholders are only now beginning to identify the areas of greatest risk. This work needs to continue and must guide the development of policies and additional safeguards, such as ensuring accurate and mandated thick WHOIS. In addition, AT&T continues to maintain that proactive measures to keep deceptive gTLDs out of the system in the first place is an essential component of a comprehensive plan for avoiding end user confusion and the associated harms from malicious conduct such as malware and fraudulent products and services.

II.   Economic Analysis

AT&T has repeatedly called on ICANN to undertake an economic analysis of the full DNS ecosystem which is fact based and designed to understand how the DNS currently is being used and misused.[1] To date, ICANN has attempted to limit any examination of the economic impact of new gTLDs to a theoretical market analysis that is limited to justifying the benefits of new gTLDs. A thorough economic analysis of the DNS ecosystem will help to prioritize ICANN's policy and implementation activities, and will address the cost and risk factors associated with the introduction of new gTLDs. For example, such an analysis will inform ICANN's decision-making as it considers the policy and infrastructure implications of undertaking DNSSEC and IPv6 introduction at the same time as large numbers of new gTLDs are introduced.

To date, ICANN has not yet proposed or undertaken an economic analysis that addresses the implications of the simultaneous introduction new gTLDs. AT&T looks forward to ICANN taking the next steps to develop a broad-based economic analysis that considers the implications of new gTLDs for end users and Internet infrastructure providers. In order to fulfill its core mission, ICANN must undertake the examination of

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[1] We note that the Government Advisory Committee (GAC) also supports the need for an economic analysis. See Letter, Government Advisory Committee to Peter Dengate Thrush (August 18, 2009) ("The GAC notes that the economic reports commissioned by ICANN have failed to distinguish adequately between real demand and derived demand arising from widespread concern in the business community about the multiplication of the opportunity for cybersquatting, fraud and malicious conduct generally... However, the GAC believes that there is an urgent need for separate empirical research to be undertaken regarding the cost of defensive registrations and the impact on consumers of the availability of new gTLDs.")

the economic impact on end users, registrants and Internet infrastructure providers, as well as trademark holders who will be forced to defensively register in these new gTLDs.

III.   Security and Stability

AT&T has examined the Root Scaling Study, which clearly has implications, not only the root zone itself, but for the security and stability of the broader infrastructure and operation of the Internet. The Root Scaling Study identified the fact that more work is needed to fully understand the implications of the introduction of new gTLDs and develop effective responses to these concerns, such as a phased implementation. Consistent with its core mission of ensuring the security and stability of the Internet, ICANN must proceed with caution to ensure that the introduction of new gTLDs is undertaken in a responsible manner.

Further, AT&T notes that the preliminary report by the Root Scaling Team recommends a staged approach to the introduction of new gTLDs as a way to help manage the risks to the Root Zone Servers. Moreover, the report recommends that that DNSSEC should be introduced first, since adding IPv6 and DNSSEC will increase the size of the "priming' response".   The study indicates that the Root Zone operators are already engaging in the responsible actions needed. However, the implications for the rest of the Internet's infrastructure providers, such as network operators, are not incorporated in the analysis.

IV.   "Single-Registrant" Registries

AT&T notes that there is insufficient consideration of the consideration of single-registrant registries where the TLD holder is not going to operate as a traditional registry. Some examples of a single-registrant gTLD could include subscriber based services, such as an Internet service provider or a social network site, where the relationship of subscribers is to the service provider. Such single-registrant gTLDs would need different requirements in the utilization of ICANN authorized registrars. For example, a service provider would not be able to agree to the transfer of a TLD that is based on a company trademark in the event the provider ultimately decided to 'close' or cancel the registry operation. There also is no reason to compel a single-registrant TLD holder to utilize a structurally separate third party to operate the registry 'engine', even when the TLD holder is fully capable of providing the needed infrastructure to support the registry. Further, there has not been a thorough examination of the implications of this potential category of top level registry, including the potential for a large number of 'flat' registries, e.g. registries serving only the web visibility of the TLD holder and not offering open registrations of second level names. The introduction of vast numbers of such registries should be examined for its implications upon the functioning of the DNS and root zone.

V.   Conclusion

AT&T appreciates the opportunity to submit these comments and looks forward to continued focus on the four overarching issues raised by the introduction of new gTLDs. Until these issues are fully addressed, it is difficult to comment on the development of the Applicant Guidebook because these issues are so fundamental to the design and implementation of the new gTLD application process. Therefore, we urge ICANN to prioritize work on the four overarching issues so the community will have sufficient opportunity to comment on the application process once it fully reflects the modifications and safeguards that will be needed to address these important issues.