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Eurodns S.A.
2, rue Léon Laval
L-3372 Leudelange
LUXEMBOURG
www.eurodns.com

The Internet Corporation for Assigned Names and Numbers
Rod Beckstrom, CEO
Peter Dengate Trush, Chairman
4676 Admiralty Way, Suite 330.
Marina del Rey, CA 90292
USA

Dear Rod, dear Peter.

After careful consideration, EuroDNS SA (Registrar ID: 1050) is respectfully submitting the following comments on ICANN's Draft Applicant Guidebook v4. While we are impressed with the work done to date and generally supportive of the evolution between v3 and v4 (except for the points outlined below) most comments previously entered on DAGv3 remain accurate.

The biggest issue is the timeline: indications in the Brussels meeting that DAGv4 should be the last of drafts before the Final Application Guidebook were a step in the right direction but our clients, our resellers, many individuals and companies, the community as a whole, have been waiting for this (r)evolution to finally start.

While studies are useful, knowledge should not prevent innovation. When the DNS was invented three decades ago nobody knew that it would have to serve 1.8 billion users today. In 1994 McDonalds.com was still not registered by the McDonald's company, presumably because at the time the Internet was still relatively "new" even though the first commercial domain name had been registered almost ten years earlier. No-one can predict the full effect of innovation and waiting to have all the answers would kill any chance of a successful gTLD program.

Below are more specific comments based specifically on DAGv4 where we believe clarifications and improvements should be made.

I. Registrars Involvement – “registry services”

From the start ICANN has refrained from establishing a finite number of applications in the new gTLDs program and consistently refused to set-out specific categories of application ever since. As a result, many communities, companies and brand owners have expressed an interest in participating but are still looking for guidance in how to do so properly. For years these groups have been working closely with accredited Registrars which they trust to protect their intellectual assets on the Internet. Thus, coming back to their Registrars of choice with questions regarding to the new gTLDs program is a logical step, an obvious one.

However, current wording of the “Eligibility” requirement in DAGv4 (Module I, 1.2.1) make that impossible:

Applications where the applicant has engaged an ICANN-accredited registrar [...] to provide *any registry services* for the TLD will not be approved.

The wording “registry services” itself is extremely vague, especially since the words are not capitalized and therefore appear to be different than the “Registry Services” definition provided (Module II, 2.2.3.1). Several requests made to Staff during the Brussels meeting in June did not clarify whether “registry services” should be understood in its restrictive definition or in a much broader sense.

Because the Eligibility requirement is so loosely worded, an application could be rejected simply because the TLD applicant plans to use, say, a data center provider company whose sole fault is to be in the same group of companies as a Registrar. It means that any potential applicant would have to do a thorough background check to ensure no Registrar is involved at any level with their supplier of choice just to avoid risking being disqualified. As a result, we believe the sentence quoted above should be deleted, as well as the relevant articles in the proposed new gTLD Agreement.

As has been pointed out abundantly in other comments, the Registrars have long played an essential role in the way the Domain Names are used and handled by Internet users. It seems counterproductive and detrimental to Internet users to simply exclude this whole group from any involvement in what is the logical next chapter in the evolution of Domain Names.

II. Vertical Integration – No “Magic Number”

The issue has been the subject of lengthy discussions within the community. EuroDNS is proud to be one of the 68 members of this unique working group where 3706 e-mails have been exchanged as of this writing. Even though a consensus could not be reached, EuroDNS – along with many members of the WG – strongly believes DAGv4 “default position” should be amended and exceptions should be put in place, specifically to allow for specific categories. Namely, a TLD based on a brand or a specific language community may want to have stronger ties with a specific Registrar to ensure its acceptance and growth.

To that end and based on years of experience in the European region and with ccTLDs in general – where “vertical integration” has been pretty common for years since many Registries currently offer their own TLD to the public while accrediting Registrars who in turn make a difference by offering additional

services or better prices – EuroDNS has submitted a proposal along with other Registrars¹ of which key elements are quoted below:

While we are not proponents of pure laissez-faire the truth is that the Internet is constantly evolving; there is no foolproof way of determining what TLD will or will be a success and it would be quite presumptuous to judge a business model before it is even created. Twitter as become a key service in less than two years and without any “specific service” attached to the .com Top Level Domain. Similarly – and closer to home – the .Tel Top Level Domain is quite successful with only a handful of registrars promoting it effectively.

Ownership does not equal control

We therefore propose that full registry/registrar cross-ownership of 100% should be allowed and can be beneficial to the goal of stimulating innovation and growth for new gTLDs. We do not believe that an arbitrary/artificial limitation of ownership will prevent any harms as it provides no benefit in itself regarding the concerns raised regarding control. The same level of control is possible regardless if there is full ownership, 15% or just 2% ownership, depending on the setup of the owned entity. There is however a high risk that such limitations only serve incumbent registry operators by preventing new competitors from entering the market. Full Vertical Integration can also be quite useful for small or specialized TLDs. Fringe or specialized interest TLDs and TLDs in regions with no or few ICANN registrars will benefit greatly from the ability to act as both registry and registrar.

Whats works in ccTLDs can not be bad for the new gTLDs

Cross-ownership should also not prohibit a registrar to sell domains from a registry of which it holds shares, provided equal access to registrations is guaranteed and does not discriminate against other registrars. The fact that some ccTLDs Registries do act as Registrars for their own Internet Communities should be proof enough that VI is indeed a possibility. .SE, .UK, .DE have been acting as their own registrars for years and the German and British TLD markets are among the strongest in the world. ccTLDs have used VI/CO with great success while Registrars carrying those ccTLDs still continue growing their market share in these ccTLDs. It stands to reason then that a Registry offering Domain Name registrations directly is not enough to “capture” the customer who still knows and uses the choice of the market. It should also be remarked that none of the new gTLDs will likely reach a market penetration comparable with the big three gTLDs, com/net/org, and will more closely resemble smaller ccTLDs, especially in the case of new geoTLDs. It therefore makes sense to allow similar business models and models of integration in the sales channel.

Compliance enforcement is a better solution against risks and harms

Any innovation carries an inherent level of risk: domain names brought cybersquatting and tasting, to which the community found solutions – similarly the community will find solutions if and when issues arise. While we agree that there may be possibilities for abuse from a registrar affiliated with a registry selling domains of said affiliated registry, we believe such abuse is just as possible without cross-ownership of

¹ Drafted with Key-systems GmbH, Blacknight Internet Solutions Ltd and INDOM SA. While these companies supported the parts of the report quoted in *italic* above, it shall not mean any endorsement of the rest of this document on their part.

registrars and registry and without registrars providing RSP services. The strict language of DAG4 serves only as a band-aid - it may look safer, but it will not prevent any harms. Potential harms can be more effectively curtailed by implementing contractual barriers, checks and balances as well as penalties for offending entities. Some market players may try to violate their obligations with regard to limits of control and/or equal access, etc. For such violators, ICANN should put in place a firm and strict penalty system for the offending party, with penalties ranging from financial penalties, imposition of stronger restrictions up to the loss of the registry contract in case of severe and repeated offenses. Compliance should (and will be) monitored by competitors, registrars and registries alike on top of ICANNs own compliance enforcement teams, and complaints need to be investigated by ICANN and/or contractors of ICANN. As a result, we strongly believe the only suitable answer is to implement and enforce a strong yet flexible framework of rules. This system needs to be capable of effectively control CO and VI – and indeed avoid dangers that are clearly identified – yet provide flexibility for innovation while guaranteeing equal access to any TLD to all ICANN accredited Registrars. The team enforcing these rules needs to be adequately equipped to investigate and deal with suggestions of violating behaviour.

III. Trademark Protection Mechanisms – Call for an effective URS

As a proud member of the Czech Arbitration Court’s Advisory Board, EuroDNS believes in providing evolving solutions to Trademark issues in the Domain Name Space and was supportive of proposals such as the Uniform Rapid Suspension System (URS). Yet, we regret to observe that, as they currently stand in DAGv4 this idea is not as effective as it should be.

UDRP was developed at a time where cybersquatters were willing to acquire a domain name identical to a trademark and keep it for as long as they could. Therefore trademark holders needed an effective way to reacquire the domain name for their own use. Nowadays in contrast, we see more and more so-called “typosquatting” where the domain name is a typo variation of the trademark – which the trademark holder has usually no interest in getting back for its own use – and which the squatters does not mind losing providing they can keep it long enough to attract traffic. In principle therefore, URS seemed better equipped to deal with this more common issue. However, criteria outlined in DAGv4 would create a URS that would not be timely – sometimes even longer than a traditional UDRP given the delays that are included in the draft process – nor cost-effective since the 300 USD fee is only “recommended” and could go higher on a per TLD basis.



EuroDNS has been a public supporter of the new gTLD program and the whole ICANN Process for years. We appreciate, as usual the opportunity to comment on DAGv4 and hope these are helpful to the Community.

With warm regards,

A blue ink handwritten signature, appearing to read "JC Vignes".

Jean-Christophe Vignes

Executive Vice-President & General Counsel