

Annex 1

Red Flag Mechanism for the *Early Window* test

Rationale

As we have discussed in the main body of the *Step-by-Step* proposal, we are convinced that certain *categories* of TLD proposals bring clearly-defined *positive externalities* (increase diversity and competition; bring new users to DNS; promote cultural identities or language use, etc.) while not facing any of the *negative externalities* being currently discussed (adequate trademark protection; malicious conduct). This means that the discussions about the possible impact of *certain types of applications* are in fact blocking *all possible applications*, including those for which *nobody* finds any rational argument for their delay.

Both the GAC (as such and many of its individual members) and the IPC (as many among its most prominent members) indicated that they would support going forward with an *early window test* comprising those gTLD projects that raise no significant concerns. Linguistic and Cultural TLDs are often cited as such examples. City or Regional TLDs are another example.

But we understand that the difficulties in using those *examples* are twofold:

Many possible gTLD projects *not belonging to those categories* (or any other, in fact) could also offer the same mix of clear positive effects, absence of negative impact. Why exclude them?

How to define *acceptable categories*? A category does not mean everyone within its definitional boundaries will behave the same way. There are all sorts of ccTLDs, to give just one simple example. There are also many sorts of sTLDs (sponsored TLDs), and there are even very different kinds of generic, standard gTLDs. Fitting in a description does not guarantee anything as to the registration policies, enforcement practices and general behavior of both the registry and the gTLD.

We believe that categories should be used as *examples*, but not as part of the *selection criteria*. We offer a way to test the system with an *Early Window* based in both self-

selection of the applicants offering the highest level of commitments in the yet-unsolved areas and a blocking mechanism to check that self-selection.

Proposal

In this regard, we offer a mechanism that drawing upon the lessons we learned from certain types of TLDs (such as linguistic and cultural TLDs in the case of .cat) establishes a general mechanism with the following characteristics.

It is **not restricted to any pre-defined category** (or categories, types, classification). Applicants self-select themselves for the *Early Window Test* providing, individually, the guarantees and checks defined below.

Applicants must provide **detailed descriptions on how they specifically address the still-pending overarching issues**

Applicants are not just cleared by their declaration. Each organized interest group within ICANN structure will have the opportunity to review the application and, if needed, **raise a red flag** effectively blocking the application from moving forward in such *Early Window Test*. (This means that the underlying application is on hold until the Final Applicant Guidebook and related documents are effectively approved and implemented.)

With this system nobody would be worse off than it is under the current situation (no Final Applicant Guidebook; no timeline; no applications being accepted). Those applications that, for instance, raise trademark-related concerns (individually or by the aggregate effect) would be in the exact same situation as we are now: waiting for a final resolution of this concrete issue. Those groups claiming that a given issue is not yet solved can make sure that no application will slip through below the radar of their concerns. At the same time, some people would be better off (those applicants being able to convince everybody that they won't create any negative externality). Even in the case that a given application is stopped by the Red Flag Mechanism and sent back to the "general pool", its situation would be exactly the same it is today, but not worse.

Below we detail the elements of the proposal

Element 1: Application & Commitments

ICANN should open an application period not later than July 2011 based in all the current stipulation of the Draft Final Applicant Guidebook. In addition to all those requirements, Applicants should provide the following:

A) Specific commitment to the Early Window Test

Applicants should accept the implications of running a test, including the fact that their application can be changed at any time to the *normal track*, ie, would need to wait until all pending issues are solved in case any legitimate party raises a *Red Flag* or the Evaluation proves it can not be dealt in this *Early Window*.

B) Specific commitments Regarding Application Content

Applicants must commit to the highest standards regarding the yet-unresolved *Overarching Issues*. They need to detail their specific policies regarding such issues (trademark protection; prevention of malicious conducts). Applicants must furthermore detail how their application would bring a clear benefit to the Internet community in the following aspects:

Positive effect on the DNS (examples: serving now undeserved users; increasing diversity; bringing new users; increased competition; new uses, etc.)

* Positive effects outside the DNS (examples: promoting a lesser-used language; creating new content; increasing efficiency in a new area, etc. etc.)

C) Accountability Mechanism

Applicants should describe which accountability mechanism they have in order to increase the likelihood that they will stick to the high standards they have committed to. This refers to structures giving control, participation or oversight to entities not directly interested in the profit-maximization of the registry's revenue, but with clear links with the other stated benefits that the TLD would bring, as described in the preceding paragraphs (public administrations might come to mind, but it is certainly not the only available mechanism).

Element II: Red-flag mechanism

The different ICANN stakeholders shouldn't only rely in self-selection. Beyond the Evaluation process, individual stakeholder groups might find that any concrete application sent through the *Early Window Test* raises concerns regarding either trademark protection, or morality and public order, or prevention of malicious conduct, to name some issues not everybody agrees upon yet. The applicants would have agreed to principle of being able to move forward if, and only if, everybody deems the

concrete application absolutely *free of significant concerns*. We propose a system by which every ICANN internal organized group of interests could effectively take an application off the *Early Window* and send it to the general pool.

This would be defined in a way that the following groups, besides the Board itself, would have the right to raise a *red flag* in this process:

- i) All Supporting Organizations as such (ASO; CCNSO; GNSO)
- ii) All internal instances of stakeholder organization within the GNSO (each individual House, Stakeholder Group and Constituency) and
- iii) All Advisory Committees defined in Article XI of the Bylaws (GAC; SSAC; RSSAC; ALAC).

Each group would make such a decision according to their internal rules. As none of them have the power to formally evaluate an application, this would take the form of a recommendation to the Board, with the Board taking the commitment to vote in favor of taking any application being *red-flagged* out the *Early Window*. Indeed, the Board would do the same upon recommendation from the staff.

These groups should have 90 days to review the applications submitted and eventually red-flag some of them. The decision (formally: the recommendation to the Board) should not need to prove that any such applications *fails* in a concrete area, but should nevertheless express which concrete *concern* the group has regarding the application.

Indeed, some might argue that this system would be open to *gaming* and tactical red-flagging by some groups. But we believe in the sense of responsibility that each and every such group has, and we are sure this would not happen. Furthermore, even if *accidents* were to happen, the situation would be that nobody is worse off than today, while some applications would be allowed moving forward. Something like that would certainly be a *significant step forward*.