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March 7, 2013

Dr. Steve Crocker, Chairman of the Board
Mr. Fadi Chehadé, President & CEO
Mr. John Jeffrey, General Counsel
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Re: Public Comment on "Open" v. "Closed" Registry Models

Dear Dr. Crocker, Mr. Chehadé, and Mr. Jeffrey,

Thank you for the opportunity to participate in ICANN's request for public comments on the subject of whether or not ICANN should retroactively limit certain "closed" generic top level domain ("gTLD") strings. We would like to address three issues. First, applicants relied on the rules set by ICANN in the Applicant Guidebook. Second, ICANN should not disfavor specific business models over others. Finally, ICANN should allow applicants to innovate and develop new opportunities through expansion of gTLDs.

Amazon is committed to working with ICANN, national governments and others toward the development of the Domain Name System ("DNS"). We believe that the original intentions behind this expansion – to innovate and create choice and change in the DNS – will benefit not only those who take part directly in the process, but, more importantly, consumers and businesses globally.

Amazon

Amazon's vision is to be earth's most customer centric company; a place where people can come to find and discover anything they might want to buy online. We fully support ICANN's goal of promoting innovation and competition through the expansion of the gTLD space.

An important factor behind Amazon's applications for new gTLDs is to find new and innovative ways, mechanisms, and platforms to surprise and delight our customers.[1]

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[1] Amazon serves four primary customer sets: consumers, sellers, enterprises and content creators. We serve consumers through our retail websites and focus on selection, price and convenience. We offer programs that enable sellers to sell their products on our websites and their own branded websites and to fulfill orders through us. We serve developers and enterprises of all sizes through Amazon Web Services (AWS), which provides access to technology infrastructure that enables virtually any type of business. Amazon serves authors and independent publishers with Kindle Direct Publishing, an online platform that lets independent authors and publishers choose a 70% royalty option and make their books available in the Kindle Store. Amazon's own publishing arm, Amazon Publishing, offers authors another outlet to publish their books. Amazon also serves authors, musicians, film makers

Innovation is one of the core drivers behind ICANN's opening of the gTLDs. Amazon intends to bring this same philosophy and focus to its new gTLDs.

Applicants Relied on Rules Set by ICANN

The new gTLD Program has its origins in the "carefully deliberated policy development work of the ICANN community."[2] In 2005, ICANN's Generic Names Supporting Organization ("GNSO") began a policy development process to consider the introduction of new gTLDs. In 2008, the ICANN Board adopted 19 specific policy recommendations for implementing new gTLDs. After approving the policy, ICANN undertook an open, inclusive, and transparent implementation process to address stakeholder concerns, such as the protection of intellectual property and community interests, consumer protection, and DNS stability. This work included public consultations, review, and input on multiple draft versions of the Applicant Guidebook ("AGB").[3]

In June 2011, ICANN's Board of Directors approved the Applicant Guidebook and authorized the launch of the new gTLD Program. The Program's goals include enhancing competition and consumer choice, and enabling the benefits of innovation via the introduction of new gTLDs. [4]

During the development of the Applicant Guidebook, the question of what types of business models should be allowed, including "open", "sponsored", "closed", "brand", and "community" applications were discussed and debated in various fora. In the end, the only differentiation the ICANN community chose to recognize in the Applicant Guidebook is the need to recognize specific "community" applications. All other business models for operating a domain – "open", "sponsored", "closed", and "brand" – fall under the scope of a standard application which, according to the Applicant Guidebook can be used for "any purpose consistent with the requirements of the application and evaluation criteria," and "may or may not employ eligibility or use restrictions."[5] Ultimately, the choice of business model is left to the applicant.[6]

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and other content creators through CreateSpace, which provides on-demand publishing and manufacturing for independent content creators, publishers, film studios, and music labels.

[2] AGB, Preamble.

[3] http://newgtlds.icann.org/en/about/program The AGB was developed after five drafts, extensive input by the IRT, GNSO, ALAC and GAC, and nine separate public comment periods. http://newgtlds.icann.org/en/about/historical-documentation

[4] http://newgtlds.icann.org/en/about/program

[5] AGB, 1-27. During the summer of 2011, ICANN released an instructional video for organizations considering whether or not to apply for a new gTLD. The video states:
"If your organization runs its own TLD, your organization sets the rules. You can make your own TLD as inclusive or exclusive as you want. For example, you can sell second level domain registrations at a price you choose. Or you could decide not to sell them at all. Maybe you issue them only to your employees. You could offer specialized security services. Or perhaps you want all the web addresses in your TLD to work with your native alphabet. It is up to you."

Years of deliberations went into developing the rules guiding the new gTLD Program, and over 1900 applications were submitted based on the Applicant Guidebook, but some are now calling for significant and retroactive changes to the rules. These calls for change have only occurred, however, after it became clear who applied and for what strings. We do not think it is appropriate to retroactively change rules that have been debated and discussed for more than four years.[7]

Applicants relied in good faith on the rules and limitations set forth in the Applicant Guidebook. Applicants have expended significant time, money and resources on preparing and defending their Applications based on this reliance. Changing direction at this time will undoubtedly result in delays for all applicants, and a loss of confidence in the process itself.

ICANN Should Not Disfavor Specific Business Models Over Others

Under the current rules, ICANN evaluates an applicant's "proposed registry services for any possible adverse impact on security or stability."[8] A number of independent experts and groups assist in the evaluation of applications and registry services as they relate to security and stability, including String Similarity, DNS Stability, Geographic Names, Technical Evaluation, Financial Evaluation, and Registry Services Technical Evaluation Panels.[9] None of the panels is tasked with reviewing the purpose or business model of the registry.

Those that want to prohibit only certain "closed" gTLDs based on an assumed understanding of business models must recognize that such a policy would require ICANN to make judgments on difficult and unsettled issues. This raises a number of questions.

Who would make the determination that a term is "generic" and in what language? Who would determine what is "closed"; whether something is actually a trademark or used as a generic term; or whether using just a portion of a trademark in a string would be "generic" use or "brand" use?[10] Does use of a term in its generic sense override use of a term as a trademark if there are

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Overview: Get Ready for the Next Big Thing, ICANNnews Channel http://www.youtube.com/watch?v=AybZsS3NmFo (starting at 1:52). The video separately discusses community, IDN, government and brand gTLDs.

[6] From the New Generic Top Level Domains, Frequently Asked Questions. See Appendix.

[7] Should the ICANN Board want to seriously consider a prohibition on certain business models, any such change would be a material change of the Applicant Guidebook and must go through the appropriate policy development process. In any event, such changes if approved through appropriate channels should only apply to applicants in future rounds. The current AGB lists certain strings that are designated ineligible for delegation. "Future application rounds may differ according to consideration of policy advice." AGB, 2-10.

[8] AGB, 2-24.

[9] AGB, 2-29-30.

[10] Granting an applicant the right to run a registry with a string that reflects a generic term does not in and of itself grant trademark rights or something akin to trademark rights. Such rights arise from use of a mark in a certain way and are subject to national laws. Some critics have suggested that granting these rights will result in "additional IP rights." It is not for the ICANN community to determine whether a use of a term is use sufficient to evidence rights

competing interests? What happens to a trademark that becomes generic through use? What about generic terms that have several meanings? If ICANN starts acting as the gate keeper of business models for the top level, why would it not also be subject to proscribing similar rules in the second level?

ICANN should avoid making any changes based on assumptions about applicant business models and stay focused on its core mission – the security and stability of the Internet – and the timely launch of all new gTLD strings.

ICANN Should Allow Innovation to Develop

Recently, concerns have been raised about whether allowing gTLDs could potentially affect competition and consumer choice. ICANN has a long and successful history with "sponsored" domains such as ".mil", ".gov", ".museum", ".coop", and, more recently, ".cat" allowing users and providers to be confident that the websites and services operating in those gTLDs are in compliance with the rules established for that domain.

The use of generic terms in the second level have traditionally been allowed by ICANN without question over competition issues. Why should a company be able to own "widget.com" and not ".widget"? In the second level, third parties can still register alternative names in alternative spaces. Currently .com may be considered more "valuable" space, but that does not create a competition issue for the owner of the generic second level domain. Similarly, ownership of a "closed" or "sponsored" top level domain does not preclude an entity from registering a second level domain in an alternative space nor does it preclude an applicant from applying for alternative top level domain strings in future rounds.[11] Because the new gTLDs raise no more competition concerns than do registrations in .com or .us, ICANN should not allow belated claims of competitive impact to derail this years-long process.

Amazon does not understand how the allocation or use of a gTLD or an SLD could have an impact on competition in a relevant market segment. There is no evidence that past "closed" domains have led to any market power. Any impact would occur through the ultimate actual use, and not allocation and use of the name *per se* (or else all registry/registrar activities, including in "open" spaces, are anti-competitive by nature). ICANN must wait until each gTLD is in use, and then relevant competition authorities -- which have significant experience and robust procedures and tools addressing issues like market definition and the competitive impact of innovative technologies -- can measure actual behavior against relevant competition laws. Therefore, we urge ICANN to leave competition issues to the appropriate authorities enforcing the laws of their respective jurisdictions.
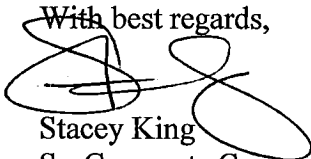
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as a trademark, just as it is not for the ICANN community to determine whether future use of a potential business model is anti-competitive. These are determinations that must be left to the appropriate national legal authorities.
[11] To take this to another level, certain companies offer paid registrations in a third-level subdomain, operating their second level as a "registry". The new gTLDs create no more competition issues than do these second-level registries.

Conclusion

Amazon supports ICANN's goal of opening the top-level to allow for competition and innovation that will benefit Internet users across the world, and controls will still apply for responsible companies.[12] We recognize that the relevant national laws apply to all participants in the DNS process throughout the lifecycle – ICANN, current and future registries, or registrars - and do not believe there is any justification for retroactively changing the rules based on conjecture. We look forward to developing the new gTLDs in innovative ways that will benefit users across the world as we continue to work with ICANN, governments, and the greater Internet community.

With best regards,

Stacey King
Sr. Corporate Counsel, Amazon

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[12] "One of the reasons ICANN is opening the top-level space is to allow for competition and innovation in the marketplace. ICANN recognizes that business models may evolve as the market matures." Excerpt from Questions and Answers, http://newgtlds.icann.org/en/applicants/customer-service/faqs/faqs-en.

Appendix

"**9.3 If I want to register a gTLD solely for my own use, for example, solely for use by my company, partners, consultants, shareholders, auditors, etc., can I limit the issuance of second level domains to those individuals? Can I refuse to accept applications for second level domains from members of the public in general?**"
Yes. The applicant is responsible for setting the business model and policy for how they will use their gTLD, so long as the registry is in compliance with the terms of the registry agreement.

9.4 If I want to register a gTLD solely to promote my own brand and undertake my own marketing plans, can I refuse applications for second level domains from my competitors? Can I also refuse applications for second level domains from individuals who appear to be cybersquatters or scammers?
Yes. The applicant is responsible for setting the business model and policy for how they will use their gTLD, so long as the registry is in compliance with the terms of the registry agreement.

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9.6 Will applications be categorized as "sponsored" or "unsponsored" in this New gTLD application round?
No, applications will not be categorized as "sponsored" or "unsponsored" in this new gTLD application round. ICANN carried out 2 previous new gTLD application rounds. Sponsored and unsponsored TLDs were part of these 2 previous programs. These distinctions are not relevant to the New gTLD program. Under the New gTLD program, a community-based designation can be made on any application. Please refer to section 1.2.3 of the Applicant Guidebook for more information on community-based designation. "

Http://newgtlds.icann.org/en/applicants/customer-service/faqs/faqs-en (visited February 27, 2013).