



## Donuts Inc. Comments on gTLD Marketplace Health Index (Beta)

Donuts Inc. appreciates the opportunity to comment further on the beta version of ICANN's gTLD Marketplace Health Index.

### ICANN's Definitions

ICANN has set forth a number of definitions of metrics intended to periodically assess whether the domain name marketplace is "robust, stable and trusted."

These include:

#### Robust Competition

- Diversity exists in the choice of a service provider, including:
  - Geography
  - Scripts offered
  - Service model
  - Languages offered
- The commercial marketplace is thriving—demonstrated by growth in new gTLDs and across all gTLDs.
- The marketplace is open to new players.
- Marketplace competition is perceived to be fair.\*
- The marketplace is not dependent on one or a small number of players.\*

With regard to the starred items above, ICANN notes that "The gTLD Marketplace Health Index (Beta) does not include metrics for these goals. It is expected that through community input, these goals and metrics will be refined and that subsequent versions of the index will contain the metrics for these goals."

Donuts has reservations about attempting to assign metrics to such subjective matters, particularly those that involve perceptions instead of quantifiable data or demonstrable fact. Upon what criteria, for example, can a *perception* of fairness be established? To be sure, ICANN participants, depending on their individual points of view or those of whom they represent, can find nearly any reason to perceive unfair treatment. This is a very slippery path for ICANN to attempt to traverse. Quantifiable measurements—and a rewording of this definition (e.g., "Marketplace competition is independently measured as fair")—are much more preferable.

#### Marketplace Stability

- More gTLD registrars and gTLD registry operators are entering the gTLD marketplace than are leaving.
- Service providers are reliable, setting consistent expectations and meeting levels of service for: gTLD registrants, Internet users and the global community (including gTLD registry operators, gTLD registrars, law enforcement and intellectual property holders).\*

The same caveat regarding lack of metrics applies to the starred item in the second bullet here. Donuts again is concerned about the vague nature of this definition; while service providers generally do consistently set and meet expectations for service levels, beyond tools such as service level agreements (which are very specific and technical in nature), it's unclear how (if at all) ICANN could either point to or develop measurements that would be a reliable representation of "stability" in this context.

As to the first bullet, Donuts does not believe this is necessarily an indicative metric. For example, within a six-month period (the frequency proposed for marketplace health updates), it's conceivable that NO provider enters or exits the market, but that gTLD usage still grows steadily. Or that another helpful metric—perhaps penetration in traditionally underserved regions—shows growth. An increase in market participation by providers is a laudable goal, but in isolation, such a metric has the potential to be misleading.

#### Trust

- Service providers, gTLD registry operators, gTLD registrars and gTLD registrants are:
  - Compliant with their contractual obligations.
  - Perceived to be trustworthy.\*

Donuts repeats its reservation about perceptions. Donuts agrees that compliance with contractual obligations is a useful and necessary metric (though it's doubtful that this is a metric indicative of trust outside the industry—consumers and end-users generally are not literate with ICANN contractual compliance matters).

## **Reported Metrics**

### **Robust Competition**

#### Geographic Diversity

According to ICANN:

The metrics in this section track the geographic diversity of gTLD registry operators and registrars by examining their physical presence in each ICANN region and by legal jurisdiction (as defined by the ISO 3166 standard).

Donuts echoes it's May 2016 input: It's a worthy goal to have a geographically meaningful distribution of registry operators, but the absence of operators from a particular region does not necessarily indicate the overall health of the marketplace or of penetration of users in a particular geography. The mailing address of operators in various jurisdictions clearly is not an indicator of usage of those providers' products and services in other jurisdictions.

A more meaningful approach would be to measure domain registration volumes across different countries and then to cross-segment this data by registrar and by registry and study the distribution. This would better capture overall global market penetration, whether providers were competing effectively in these marketplaces, and whether registrants were offered widespread choice in service provider, regardless of where they reside.

#### Competition

ICANN reports:

Some ICANN-accredited gTLD registrars and gTLD registry operators operate independently, while others are part of larger families that share the same corporate parent. These metrics track the percentage of distinct entities in the gTLD marketplace. In

calculating the metrics, each gTLD registrar or gTLD registry operator family is counted once, then added to the number of independent gTLD registrars or gTLD registry operators.

Donuts appreciates ICANN considering its and others' input and consolidating registry and registrar families.

We do have a concern here, however: Will ICANN presume that only *growth* in these numbers will indicate marketplace health? It may be, for example, that the industry enters a period of consolidation, where the absolute number of providers decreases, but products, services and marketplace penetration expand. Alternative points of reference in such instances could be useful, and we encourage the advisory panel to consider their development.

Also, we reiterate our input from May, when we stated that “family,” in the context of a registry, is not defined—that is, does it include provider-client relationships (whereby a provider manages key registry functions for, say, a variety of single TLD providers)?

#### gTLDs – Total

This is a helpful metric.

#### gTLDs – Additions and Deletions

This too is a useful set of metrics.

However, Donuts again repeats its comment from May 2016: It would be a more meaningful and detailed metric if, along with this data, re-registrations of deleted names also were calculated, as sometimes this is a significant number.

ICANN can refine its demonstration of year-over-year growth rates with the addition of the number of new TLDs released in each time period. This would more precisely demonstrate the consistent pattern of strong initial registration growth (due to pent-up demand), followed by a leveling off in rates of growth in subsequent years.

Similarly, on page 7 of the presentation, we suggest the addition of text to the “Second-Level Domain Name Additions: IDNs, .brands, Geographic” graphs that would explain these TLDs were launched in late 2014 and early 2015 and thus would have experienced the same phenomenon. These representations otherwise mistakenly project these TLDs as otherwise unhealthy.

### **Marketplace Security**

#### gTLD Registrars – Newly Accredited

This is an interesting statistic, but is not an indicator of “marketplace security.”

#### gTLD Registrars – Involuntary Terminations\*

Donuts is pleased to see ICANN staff give credence to input that requested de-accreditations be broken out and documented as due to non-compliance. However, it also would be helpful, and more informative, to denote other reasons for de-accreditation that are not due to inappropriate reasons (for example: acquisition and consolidation).

\* Documented here under Trust: <https://www.icann.org/en/system/files/files/gtld-marketplace-health-index-beta-19jul16-en.pdf>

### Accuracy of Whois Records

ICANN indicates that:

This metric tracks the accuracy of WHOIS records, as detected by the WHOIS Accuracy Reporting System.\*\*\*\*

*\*\*\*\*These data are presented at a 95 percent confidence interval with an estimated percentage plus or minus approximately two standard errors.*

Donuts remains concerned that this statistic is not reliable. The Whois ARS is a new technology still being developed and refined—just recently, an error with the ZIP code accuracy process was discovered. The resulting changes yielded significantly different numbers.

While we appreciate taking our previous comment into account (that if the Whois ARS data is to be used, the +/- standard deviation and error rate of measurements reported must also be published), we continue to believe the accuracy of the reporting system is insufficient for use in the index at present.

### Number of UDRP and URS Decisions Against gTLD Registrants

ICANN indicates that:

These metrics track the total number of Uniform Domain Name Dispute Resolution Policy (UDRP) and Uniform Rapid Suspension (URS) decisions issued against gTLD registrants due to trademark infringement, and that total as a percentage of the total number of UDRP and URS complaints filed.

It is important to understand and document the fact that URS does not (yet) apply to disputes in the .COM and .NET gTLDs, where the majority of infringement occurs. Accordingly, stakeholders could improperly perceive that disputes are disproportionately occurring in new gTLDs, an unfair perception and contrary to ICANN's ongoing duty to maintain a level playing field. Accordingly, it would be useful if ICANN were to account for this discrepancy without conflating the two and reporting UDRP and URS statistics in absolute numbers for each.

## **Additional Topics for Community Discussion**

This list is very thorough and will offer the community much to consider. However, as we did in our previous comment, Donuts urges against use of pricing as a metric in any scenario. ICANN is not a pricing authority and should not report on pricing in any format.

## **Conclusion**

Thank you for the opportunity to comment on this important matter.