

## Comments on Amazon RSEP Request

To ICANN Staff and the ICANN Community,  
Please forgive our delay in responding to this comment period, but we are surprised to find substantive changes to a gTLD Registry Agreement buried in an RSEP proposal. We understood RSEP proposals to be for changes technical in nature, but this request is much more. Amazon is proposing a fundamental change in its .MOI Registry Agreement – one it only recently agreed to! In signing the Base Registry Agreement, set out in the New gTLD Applicant Guidebook for all New gTLDs, Amazon expressly consented to Specification 9, the Registry Code of Conduct. In doing so, Amazon agreed to operate .MOI without “directly or indirectly show[ing] any preference to provide any special consideration to any registrar with respect to operational access to registry systems.” (.MOI Registry Agreement, 12/18/2014).

Amazon’s proposal seeks a major change to the competitive aspects of its application, and thus a change to Specification 9 of its .MOI Registry Agreement. It wants to adopt a pre-registration gTLD Platform that will provide preferential access to certain registrars, but not to others. That is not appropriate conduct and this certainly is not the appropriate forum to do so. As ICANN is aware, the Base Registry Agreement is a key part of the Applicant Guidebook; it was adopted by both the GNSO and the ICANN Board. New gTLD Registries were told that any changes to the Base Registry Agreement would be met with long delays and close analysis by ICANN Counsel. Amendments to New gTLD Applications prior to signature of New gTLD Registry Agreements were, in fact, closely reviewed by the ICANN Community.

Very few monitor this process. Attempting to bury a major change to key clauses of the Registry Agreement in an RSEP – a technical proceeding! – prior to the launch of the gTLD is simply an attempt to bypass the mandated public review. Amazon is hoping the public will not notice the filing. Fortunately numerous Registrars did, and noted important problems. We do as well and as leaders in the noncommercial community we concur that the RSEP is not the place to change or revise consensus agreements, to change Applicant Guidebook Base Registry Agreement, or to alter key competition agreements and requirements in the Registry Code of Conduct.

Amazon’s proposal is also likely a violation of its commitment under Specification 11, its Public Interest Commitments, to “operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies.” Amazon’s proposals hint at its new “registration eligibility requirements,” but provide no details. As others have commented, this proposal is not clear, open or non-discriminatory.

We note that this is not the first time Amazon has sought in New gTLD proceedings to violate the clear language of the Applicant Guidebook. They did so in applying for .MOBILE as a closed generic, and were forced to withdraw their application when the International Chamber of Commerce found that their application violated the rules set out by the Applicant Guidebook. (International Centre for Expertise of the International Chamber of Commerce, Case No. EXP/499/ICANN/116)

Overall, this RSEP must be rejected. If Amazon wants to change the rules for Round 2 of the New gTLD process, let them join the New gTLD Subsequent Procedures Working Group or other proper community based policy development processes and work with us on new consensus policies to allow the limited-access systems and platforms they posit here in this request. Until then, Amazon is bound by the application for .MOI that it submitted in Round 1 of the New gTLD process, the public review that took place, the base registry agreement they signed and the rules they agreed to live by. Burying a major change to systems, competition and especially Specifications 9 and 11, Registry Code of Conduct and Public Interest Commitments, in an RSEP is hardly proper notice to the public and the registrant communities, an unfair “second bite at the apple,” and completely inappropriate.

The answer to this RSEP should be no.

Sincerely,

Kathryn A. Kleiman, Esq.  
Edward Morris, Esq.  
Members of ICANN’s Noncommercial Stakeholder Group