.fr AFNIC

Saint Quentin en Yvelines, January 27, 2010

Comments on the EOI Model proposed by the ICANN Staff

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1. Statement of Interest

AFNIC is a not-for-profit, multistakeholder organization founded in 1997, managing the French country-code top level domains *.fr, .re, .tf, .wf, .pm* and *.yt*. AFNIC is a member of ccNSO and a founding member of CENTR, the European regional organization of ccTLDs gathering 57 ccTLD managers.

Recently AFNIC, in cooperation with CORE, was selected by the City of Paris to provide back-end registry services for the *.paris* TLD project. In the context of future new gTLD applications, AFNIC may also be involved with providing services and support to other applicants.

2. Summary of propositions

EOI development process

ICANN must allow more participation in the EOI design process. If ICANN should prefer public comments procedure over public discussion for the sake of expediting the process, public comments from all stakeholders should be more adequately analyzed and reported.

Goal of an EOI round

We note that ICANN has yet to officially endorse the goal(s) it is pursuing through the EOI round.

In our opinion these goals should be : first, solving the overarching issues through public discussion ; then, validating ICANN plans and operational readiness. It is not expected from ICANN to conduct evaluation at this stage. Information provided beyond the TLD string and the applicant's identity will serve the community debate.

EOI timeframe commitment

18 months seem a disproportionate amount of time if the goal of the EOI is for ICANN to ready a plan which have been under development for several years.
We propose a 3-month timeframe if the EOI is used by ICANN to validate its plans. A 9-month timeframe could be acceptable if the EOI is aimed at addressing the remaining overarching issues through disclosure of more information to the community.

Managing DAG changes through yellowing

Parts of the DAG on which there is consensus should be identified and frozen. New emerging issues from EOI applications should be constrained to those applications that cause them.

Mitigating transfer risk and lowering barriers to entry through categorization of EOI regimes

There should be several EOI regimes depending on the nature of the TLD project applied for, as is visible through currently emerging categories (generic names, geographical names, language and cultural communities, brands). This would allow ICANN to differentiate policy design and fee schedules. For instance, for highly the commercial space of highly speculative generic names, propositions such as that of an EOI focused on strings could apply, while for other categories of projects fees could be reduced as to allow wider participation and consideration of non commercial business model.

EOI Fees

EOI applications should not be designed to support financially ICANN's operational readying. Interests earned on EOI fees should be returned to applicants. Applicants allowed to withdraw should also recover their deposit in full.

3. Critical analysis of the current proposal

EOI policy process

AFNIC welcomes ICANN's recognition of a "universal agreement" that "more public comment and discussion" is needed on the EOI round. It is time ICANN launches its global communication campaign on new gTLDs while giving the community more time to debate on the EOI modalities. So far, the only forum in which the EOI model has been discussed was an event not organized by ICANN : the ICANN Studienkries recently held in Barcelona on January 21-22, 2010.

Public participation must be facilitated by ICANN on this critical policy for the new gTLD process. If the only procedure allowed by ICANN for its stakeholder to participate in the process is the submission of public comments, these should be given appropriate timeframes (see our previous EOI contribution) and submission ought be reviewed much more profoundly with a view to reflect the wide range of views expressed and not reduce them to misrepresented binary majorities and minorities. For instance, AFNIC's view that much more information than strings and the applicant identity should be collected in an EOI has not been reflected in the ICANN analysis of comments included in the plan.

The proposed model does not properly address the speculative risk it nonetheless identifies

AFNIC thanks ICANN for taking into account the "possibility of transfers" in its EOI risk assessment. However, we believe that the plan fails to address properly this acute risk.

First of all, transfers at this stage of the process cannot be deemed identical to post-delegation transfers. There are two main differences between the two :

> 1) what is at stake in a mandatory EOI is the securing of an entitlement to eventually operate a TLD, it is not the commitment to operate that TLD in compliance with the binding policies authorized by ICANN through the thorough evaluation of a comprehensive TLD application;

> 2) the financial barrier against speculation is negligible at the EOI stage (a mere $55,000 as currently envisioned) compared to what would be the cost of a post-delegation transfer once the TLD operator's assets are taken into account.

Secondly, given this difference, it is hard to see how allowing well funded speculators to secure and then trade rights to operate multiple new TLDs would be "in the public interest". ICANN does not provide any evidence to support this assertion. Instead, it simply refers to an illustration of the Coase theorem and the statement of ICANN's responsibility toward the security and stability of the DNS. Invoking renowned academic work does not constitute a valid argument and ICANN ought to provide a

detailed justification of its position to the community. As for the security and stability argument, we fail to understand why it would be relevant at the EOI stage.

Finally, for the above reasons, the evaluation of the "possibility of transfer" risk must be elaborated by ICANN in order for it to determine whether they are to be "mitigated" or whether they "may be beneficial". In any event, these two statements are contradictory and cannot stand side-by-side in the same risk appraisal. In any case, it might occur that the "design and drafting terms and conditions" may not be an adequate mean to adress this risk in the public interest.

The proposed commitment to open the application window within 18 months of the EOI is an unjustified delay imposed on the process

The timing risk which many feared would be downfall of an EOI, including AFNIC, seems to have materialized already in the plan. Although ICANN rightly sees that lengthening of the EOI-to-application period as a potential for unacceptable delay, it does set its commitment to refund EOI participants should it not open the application windows within another 18 months.

No reasonable justification is proposed to justify this critical parameter of an EOI model. On the contrary, the overall model that is described hardly supports the need for such a extensive period. For instance, in the current proposal it is emphasized that the EOI would require only limited information on the part of applicant and that processing of that data would mostly serve to validate operational plans, as evaluation capacity to go beyond would not be available yet.

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