

Mr. Paul Twomey
President and CEO
Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601
USA

Re: Demand Media's Comment on Module 1

Dear Mr. Twomey:

This RFP will initiate the first truly open round of TLDs since ICANN was established ten years ago. We believe these TLDs will inject innovation, investment, and new competition to the DNS to the strong benefit of consumers, businesses, Governments and the DNS itself.

Some have asked why we need new TLDs at all, suggesting that consumers are not clamoring for them. We think such arguments display a misunderstanding of the nature of innovation. The most productive and beneficial developments in science and business have rarely been the result of broad public demand for a specific development. Rather, the very concept of innovation means that most people did not think of the idea until after its introduction.

We are reminded of the introduction of FM radio when some questioned the need for change on the grounds '*we already have radio*', since AM already existed. We believe just as FM and its following technologies resulted in higher quality service and choice for consumers, new TLDs will also begin a second phase of innovation and service improvement for DNS users.

We also think it is illogical to argue against TLDs because they might result in consumer confusion. Using this approach we would stop all new services and brands in other industries. No one can predict what improvements will come as a result of new TLDs and the products bundled with them, but history indicates there will be improvements. The process of achieving this innovation will not be a free-for-all. ICANN has balanced innovation with strong contractual and technical safeguards to protect registrants and trademark holders, and to ensure DNS security and stability.

This RFP has been in development a long time. Over the past months and years there has been a huge amount of input, discussion and study resulting in the document we now all see. We believe the document is a very well crafted synthesis of the inputs received. It proposes strong and practical solutions to the many issues raised during the process.

We think the RFP is solid in almost all respects and we encourage ICANN to not let perfection become the enemy of good. We encourage the timely review of comments on this current draft, prompt issue of the final version and swift progress to the bid submission phase. In particular, we recommend the four month 'global communications campaign' start concurrent with issue of the next RFP draft (planned for February 2009). Some argue that this communications campaign should not start until after the RFP is finalized in May 2009. We believe this would unnecessarily delay the process by four months, as well as denying the audience for the campaign an opportunity to meaningfully comment on the RFP.

Failure to stick with a Q2 2009 commencement for application submission will put some of the anticipated competition and innovation benefits to consumers at-risk. Like many others we have investors and business plans that rely on timely implementation of this process.

Comments on Module 1

1.1.2.7 String Contention

“String contention refers to the scenario in which there is more than one qualified applicant for the same gTLD or for gTLDs that are so similar that they create a probability of detrimental user confusion if more than one is delegated. ICANN will resolve cases of string contention either through comparative evaluation or through an alternative mechanism for efficient resolution of string contention.”

The Explanatory Memorandum on “Resolving String Contention” looks at four possible methods for resolving string contention: chance, comparative evaluation, selection by best terms and auction. It reaches the conclusion that auction is the preferred method for contention between Open Bids (note: this does not refer to Community Bids). We strongly agree with this conclusion. We see enormous subjectivity, gaming potential and enforcement issues if methods other than auction are used. If chance (lottery) is used some applicants will submit multiple bids for the same string in order to increase their likelihood of selection. This will result in windfall Evaluation Fees to ICANN. Many lottery winners will then sell their TLD to the highest bidder -- resulting in an outcome similar to auction.

1.1.3 Accounting for Public Comment in the Evaluation of Applications once the New gTLD Process is Launched

“Public comments received will be provided to the evaluators during the Initial and Extended Evaluation periods. Evaluators will have discretion to take the information provided in these comments into consideration as deemed necessary. Consideration of the applicability of the information submitted through public comments will be included in the evaluators’ reports.”

If an evaluator uses public comment as part of their evaluation there should be an obligation on that evaluator to validate the accuracy of the submitted comment.

1.2.2 Two Application Types: Open or Community-Based

*“All applicants are required to designate each application for a new gTLD as **open** or **community-based**.....For purposes of this RFP, a **community-based gTLD** is a gTLD that is operated for the benefit of a defined community consisting of a restricted population.....An applicant for a community-based gTLD is expected to:*

- 1. Demonstrate an ongoing relationship with a defined community that consists of a restricted population.*
- 2. Have applied for a gTLD string strongly and specifically related to the community named in the application.*
- 3. Have proposed dedicated registration and use policies for registrants in its proposed gTLD.*
- 4. Have its application endorsed in writing by an established institution representing the community it has named.”*

We think ICANN has done a superb job defining a workable process for this complex issue of 'Community'. We will provide more detail in our comments on Module 4, but we would like to commend ICANN for the thought and creativity applied to this problem. The RFP creates a high bar to achieve Community which we think is entirely consistent with: (i) the concept of Community as created by the GNSO; (ii) the interests of legitimate communities; and (iii) the creation of competition under the new TLD process.

We think the most important characteristic of a true community bid is nexus between the chosen string and the community in question. We think string nexus should be very tight (i.e. the string chosen should be extremely close and ideally identical to the actual name of the community). For example if the community is 'Southern Baptists' we think the string should be .SOUTHERNBAPTISTS. If nexus is not tight communities will be used to grab generic terms (thereby harming competition), and multiple communities will collide over the same string.

1.2.2.2 Implications of Application Designation

"Contract Execution and Post-Delegation – A community based gTLD applicant will be subject to certain post delegation contractual obligations to operate the gTLD in a manner consistent with the restrictions associated with its community-based designation, once it begins operating the gTLD. ICANN must approve material changes to the community-based nature of the gTLD and any associated contract changes."

Given that Community bids passing Comparative Evaluation will beat Open Bids for the same string, we think it is critical that Community registries cannot subsequently loosen the policies and restrictions promised in their bids. We would like to see ICANN include in community contracts a requirement that changes can only be considered due to compelling and unforeseen changes in the community itself rather than any unforeseen changes in the registry's business model.

1.2.3 Required Documents

"5. Before delegation: documentary evidence of ability to fund ongoing basic registry operations for then-existing registrants for a period of three to five years in the event of registry failure, default or until a successor operator can be designated."

As there will be no registrants before delegation, the RFP should specify a point in the applicant's volume projection when this provision should apply. To ensure maximum protection of registrants a logical point would be the time of highest registrations.

1.5.1 Breakdown of Fees and Amounts

"gTLD Evaluation Fee – USD 185,000.....In certain cases, refunds of a portion of this fee may be available for applications that are withdrawn before the evaluation process is complete. The amount of refund will depend on the point in the process at which the withdrawal is made (Refer to subsection 1.5.5.). Details will be made available when the application process is launched."

The RFP presents a reasonably well-detailed case justifying the \$185K Evaluation Fee. We agree that the process is unique and unprecedented, with considerable scope for unexpected costs. In our experience there will almost certainly be unanticipated complexities, therefore, we think it is prudent to have a fee that is high enough to cover these costs. On the balance we think \$185K is an acceptable, one-time fee for serious applicants.

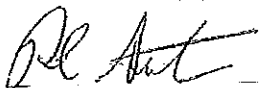
In the event cumulative Evaluation Fees do represent a surplus of funds, ICANN should spend this surplus in a way that promotes and assists the new TLDs placed in the root (i.e. the source of the surplus should be the beneficiary of the surplus). Possible uses for such surplus are campaigns to increase public awareness of new TLDs and a reduction in fees for new registries.

1.5.5 Withdrawals and Refunds

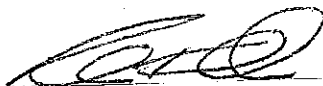
"Refunds may be available to applicants who choose to withdraw at certain stages of the process."

We understand the motivation for those who want the RFP to provide an explicit promise of partial refund, or some form of graceful withdrawal period. In practice, however, any commitment by ICANN of this nature will cause ICANN to be inundated with a very large number of speculative proposals. We recommend that refunds only be provided in rare cases and that the amount of refund be determined on a case by case basis.

Regards,



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