



Comment on Preliminary Issue Report on New gTLD Subsequent Procedures

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Business Constituency Submission

GNSO//CSG//BC

Background

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants, as defined in our Charter:

The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. promotes end-user confidence because it is a safe place to conduct business
2. is competitive in the supply of registry and registrar and related services
3. is technically stable, secure and reliable.

BC Comment

The BC gratefully acknowledges the significant efforts of the Discussion Group to identify issues for consideration for New gTLD Subsequent Procedures. We welcome the opportunity to comment and add on the comprehensive list.

Specific BC responses are in **bold text** below.

4.2.3 Competition, Consumer Trust and Consumer Choice

There are many other statistics that could be measured, such as geographic spread of back-end providers, diversity of business plans, types of organizations applying, etc. What may be useful is establishing metrics for success, although it must be noted that the Implementation Advisory Group for Competition, Consumer Trust Consumer Choice (IAG-CCT) has already identified 66 metrics.

The Business Constituency recommends a review of use cases of operational new gTLD registries, including type of registrants, quantity of new registrants, and use of registered domain names.

The BC supports the continued collection and dissemination of data from which to draw conclusions about the new gTLD program. In addition to the referenced sources, ICANN should also incorporate into its review a broader range of community input based on staff observations, qualitative reports of abuse or gaming, public comments submitted to ICANN, contractual compliance complaints, and transcripts from public ICANN meetings.

4.2.8 Accreditation Programs

As there appears to be a limited set of technical service and Escrow providers, would the program benefit from an accreditation programs for third party service providers? If so, would this simplify the application process with a set of pre-qualified providers to choose from? Are there other impacts that an accreditation program have on the application process?

The BC asks whether creating an accreditation program would add significant delay for the next application period. Delay might give current vendors an unfair advantage and decrease the entry of new vendors into the marketplace.

4.2.10 Application Fees

ICANN has committed to evaluate the accuracy of its costing model for any subsequent procedures, it may also need to account for any significant changes to the program stemming from policy development, operational changes, or other channels.

Transparency and an audit of ICANN's costing model should be completed to ensure that gTLD expansion has not, and will not, become a profit center for ICANN.

4.2.13 Application Submission Period

Is four months the proper amount of time? Is the concept of a fixed period of time for accepting applications the right approach?

The BC recommends moving away from the concept of fixed application rounds, and toward a continuous process for the introduction of new gTLDs. For business users, a continuous process would provide predictability and reduce the need to rush to submit applications for fear of being locked-out. Businesses can also develop more robust applications once use cases and initial plans had been fully developed, rather than being rushed to submit applications within a set timeframe. Delays associated with execution of the ICANN Registry Agreement, delegation, and commercial rollout would also be mitigated as applicants could wait to submit their applications until they had full confidence in their own timelines for launching a TLD.

This would potentially lessen the number of applicants and spread out the rollout of new registry sunrise periods. The last round was an avalanche and created a demand where it may not have existed.

4.2.15 Different TLD Types

Does the one-size-fits-all application and review process hamper innovation? Should things such as the application process, requirements, annual fees, contractual requirements, etc. be variable based on the TLD type? Should an existing Registry Operator, that is fulfilling the requirements of its Registry Agreement, be subject to a different, more streamlined, application process?

The BC believes that streamlining the application process may give existing registries an unfair advantage. There have been many issues with this round and the BC does not support lessening the requirements for registries simply because they were applicants in the previous round. We may be supportive if the parameters of compliance – including with RAA requirements -- ensure that there is no inadvertent advantage in the process.

Prioritizing or fast-tracking branded gTLDs would promote innovation as these are the entities that are likely to create interesting and innovative uses for their TLDs.

4.2.16 Application Submission Limits

With the current implementation of the New gTLD Program, the DG noted that allowing unlimited applications from any applicant can make it more difficult for applicants with limited funding to adequately compete. Allowing unlimited applications creates more competition for the most valuable strings, making it especially difficult for applicants from underserved regions to realistically secure certain strings. With auctions identified

as the method of last resort to resolve string contention, likely benefitting applicants with the deepest pockets, it makes it challenging for ICANN to achieve Article 1, Section 2,6 of its Bylaws:

Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.

As noted in our above reply to 4.2.13 Application Submission Period, the BC recommends moving away from the concept of fixed application rounds, and toward a continuous process for the introduction of new gTLDs.

If ICANN were to continue using batched rounds, the BC does not support a numerical cap on the number of new gTLD applications that could be submitted.

Furthermore, in order to ensure fairness between rounds, ICANN should also avoid placing explicit restrictions on applicant types or on strings themselves, beyond those restrictions previously identified for the 2012 round.

We encourage ICANN to focus policy development on implementations for the 2012 round that were not reflected in the recommendations in the 2007 Final Report or the Applicant Guidebook:

- **added requirement to implement the Name Collision Occurrence Mitigation Framework**
- **the introduction of Specification 13 for .brand applicants**
- **the restrictions placed on “closed-generic” applications.**

To the extent that features of the 2012 New gTLD Program become principles for the introduction of future gTLDs, it should result from community-developed recommendations and policies.

4.3.1 Reserved Names

The Reserved Names list and string requirements were intended to provide a measure of certainty to applicants in selecting their strings, which given the inability to change their string after application submission, was of utmost importance.

DG members noted that the string requirements should be re-examined, to determine if the policy could be changed in regards to things like special characters, 2 letter strings, single letter strings, etc. The DG also noted that the requirements around geographic names may require debate as well, as issues were encountered around certain strings, especially those that related to geographic regions or regional indicators as identified in the GAC’s Beijing Communiqué from, country or territory names were unavailable in the 2012 New gTLD Program round per the guidance in section 2.2 of the GAC Principles Regarding New gTLDs:

ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities.

The BC believes that the Applicant Guide Book provides sufficient procedures for addressing the use of geographic names. Any PDP examination of this section should focus on strengthening the existing procedures rather than attempting to review the entire framework, which was the result of four years of development and public comment, and several consultations between the Board and GAC. In reviewing the existing procedures, the PDP should make clear that while GAC advice on geographic names is welcome, that advice must be consistent with national and international law.

4.3.2 Base Registry Contract

The BC believes that the base agreement should be available in multiple languages.

Rules should be established concerning designating brand names as premium names. Brands should not be penalized based on how well known they are.

Pricing of reserved/premium names is a critical issue. Designating brands as premium names should not be designed to create commercial opportunity for registry operators. Applicants should be required to describe their premium name program and include pricing evaluations in their application and then be held to what was proposed by ICANN compliance.

4.3.4 Compliance

The BC understands that prescribing or limiting the price of registry services is considered outside of the scope of ICANN consensus policies.

That said, we note the troubling practice by some new gTLD registries to engage in predatory domain pricing that targets well-known trademarked terms. In particular, certain registries have exploited the Sunrise Period by charging exorbitant registration fees 10 to 50 times standard domain pricing. While it is important for users to be able to exercise their free speech rights, including through gTLDs, charging brandowners excessive fees for largely defensive registrations does little to protect businesses and consumers. We encourage further review of these practices, including consideration of voluntary best pricing practices for new gTLD registries.

Concerns about premium pricing and predatory pricing were identified by the BC, but ICANN did not consider this a compliance issue. We recommend requiring registry operators to include a detailed description of their proposed Sunrise and premium pricing programs in their applications. ICANN should publish guidance against predatory pricing schemes specifically targeting trademarked terms, as grounds for losing points on the application. Any failure to follow the proposal in the application without a formal change-request would then be an RA compliance issue once the application is incorporated into the signed RA.

4.3.7 Second-level Rights Protection Mechanisms (effectiveness and implementation of RPMs such as TMCH, URS)

The BC believes that new gTLD RPMs, including the TMCH, URS, and the Trademark Claims Service have generally worked well to protect participating intellectual property owners from

trademark infringement and similar abuses in new gTLDs. However, the RPMs would be more effective if they were more widely used on a global scale. We encourage further outreach on the part of ICANN to increase awareness of the TMCH and other RPMs, particularly in underserved areas or areas underutilizing the RPMs.

The BC has many concerns with all of the issues described in this section, including reservation of premium generic domains, TMCH notices, Name Collisions and the URS. We look forward to participating in the PDP and the in-depth discussion.

4.4.1 New gTLD Applicant Freedom of Expression

The report recommends that when assessing the possible restriction of offensive expression ICANN should “consider legal models outside of trademark law to better address the balance of speech rights.”

The Business Constituency respects human rights and understands the need to ensure that both registrants and consumers are adequately protected.

4.6.3 Name Collisions

The BC supports a robust discussion and thorough analysis with input from SSAC and RSSAC, on name collisions, the deficiencies of the DITL collection, and the practical ramifications of name collision policies in the 2012 round.

We recommend that exact procedures for allocating/registering domain names placed on hold due to Name Collision are specified in the future, provide sunrise protection, and mitigate exorbitant pricing.

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This comment was drafted by Susan Kawaguchi, Andy Abrams, Andrew Harris, Tim Chen, Steve Coates, Ellen Blackler, and Steve DelBianco.

It was approved in accordance with the BC charter.