



New gTLD Program Explanatory Memorandum

Discussion Draft: Market & Economic Impacts

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Background – New gTLD Program

This is one of a series of new Explanatory Memos related to recent consultations between ICANN's Board and Governmental Advisory Committee concerning ICANN's New gTLD Program.

These memos were developed to document the latest position on these topics by taking into account the current thinking, discussions and public comments received. Each memo not only reflects GAC advice but also contains the reasoning and rationale on each of the relevant issues regarding the Applicant Guidebook and the launch of the New gTLD Program.

For current information, timelines and activities related to the New gTLD Program, please go to <<http://www.icann.org/en/topics/new-gtld-program.htm>>.

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

Introduction

Current Environment

Through a formal development process, the ICANN Board approved a GNSO Policy recommendation that additional new gTLDs should be delegated based upon the conclusion, among others, that new gTLDs would bring net benefit to the Internet community. Following that approval, several economic studies were conducted to study: whether new gTLDs would bring net benefit and potential market restrictions (i.e., domain name pricing policy; and vertical separation rules).

None of the studies were able to specifically quantify projected net benefits, stating, among other things, that innovation was difficult or possible to predict, as were the effectiveness of the many cost mitigation tools being implemented along with the program. All studies described benefits; some were more bullish on their likelihood and effect than others. All studies recommended that cost mitigations be put in place such as property rights protections and malicious conduct mitigation measures.

In their Indicative Scorecard, the GAC recommended the following action:

Amend the final Draft Applicant Guidebook to incorporate the following:

- Criteria to facilitate the weighing of the potential costs and benefits to the public in the evaluation and award of new gTLDs.
- A requirement that new gTLD applicants provide information on the expected benefits of the proposed gTLD, as well as information and proposed operating terms to eliminate or minimize costs to registrants and consumers.
- Due diligence or other operating restrictions to ensure that Community-based gTLDs will in fact serve their targeted communities and will not broaden their operations in a manner that makes it more likely for the registries to impose costs on existing domain owners in other TLDs.

During the consultations in Brussels and San Francisco, the GAC indicated that the next weighing of costs and benefits should take place as part of the new gTLD program review as specified in section 9.3 of the Affirmation of Commitments (rather than as a prerequisite to evaluating and delegating gTLD applications).

Recommendation

- I. The Guidebook will be amended, i.e., the applicant questions will be augmented, to include questions requiring new gTLD applicants to provide information on the expected benefits of the proposed gTLD, as well as information and proposed operating terms to eliminate or minimize costs to registrants and consumers.

ICANN retained economists familiar with these issues to suggest which questions should be asked. Anticipating that a portion of the program review undertaken after the first round will be performed by economists, it was thought that the review would be more effective if the question design was also performed by professionals in the same field.

After some discussion and iteration, questions have been developed and are provided in the annex to this paper. The questions will be public facing, i.e., the answers will be published. The answers will *not* be used to score or otherwise evaluate the applications. (Answers to other questions already in the application will be scored according to the current scheme and also will be used in the study.)

- II. It is agreed that operating restrictions be put into place to ensure that Community-based gTLDs will in fact serve their targeted communities and will not broaden their operations in a manner that makes it more likely for the registries to impose costs on existing domain owners in other TLDs.

ICANN Board resolved that the GNSO should be provided a briefing paper and should examine this question (see, <http://icann.org/en/minutes/resolutions-10dec10-en.htm> - 8). The GNSO was provided that paper, including a proposed model for determining under which circumstances a community TLD registry operator may amend the registration restriction in the registry agreement. The procedure is intended to allow changes to Community TLD restrictions, recognizing that changes will be necessary to best meet community needs. Conditions change and anticipated ways to meet community needs are not always correct. The test within that procedure is intended to ensure that the TLD still meets the needs of the targeted community after the changes are made – or to disallow the change.

Rationale for recommendation

Post-launch economic study

Because it is mostly that economists will conduct the post-launch study, it was decided that economists should also write the questions. The questions will not be scored because openness is encouraged and because the existing scored questions were formed to match the GNSO gTLD allocation policy.

The economists suggested some questions already in the application. They were not repeated in the new section. Questions concerning confidential business plans were avoided.

While it is understood the applicants will not be held to their answers and therefore may exaggerate claims, the questions and answers will be published so that the public will be able to test the applicants' accuracy and thoughtfulness afterward.

Ensuring Community-based gTLDs will serve their targeted communities

When considering changes to Community TLDs, the Board Reconsideration Committee stated, "because such a process may impact gTLDs greatly and is a policy issue, the GNSO is the natural starting point for evaluating such a process." (See, <http://www.icann.org/en/committees/reconsideration/bgc-recommendation-09dec10-en.pdf>.) Therefore, the Board resolved that the issue be referred to the GNSO.

Prior to that resolution, considerable work had been done creating a model for achieving that same end. When the Board requested briefing paper was sent to the GNSO, a proposed model for evaluating change was included. It can, if the GNSO so chooses, to serve as a starting point for that discussion.

The published model can also serve as a notice to potential Community TLD applicants of the future pre-requisites for changes. The Board might decide to include the proposed model in the Guidebook, pending GNSO deliberation and decision.

ANNEX – ICANN APPLICATION QUESTIONS

Note: The information gathered in response to these questions is intended to inform the review of the New gTLD Program, from the perspective of assessing the relative costs and benefits achieved in the expanded gTLD space.

The New gTLD Program will be reviewed, as specified in section 9.3 of the Affirmation of Commitments, after new gTLDs have been in operation for one year. This will include consideration of the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion.

The information gathered in this section will be one source of input to help inform this review. This information is not used as part of the evaluation or scoring, except to the extent that the information may overlap with questions or evaluation areas that are scored.

Expected Benefits of the Proposed gTLD

1. How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?
 - a. What is the goal of your proposed gTLD in terms of areas of specialty, service levels, or reputation?
 - b. What do you anticipate your proposed gTLD will add to the current space, in terms of competition, differentiation, or innovation?
 - c. Provide a complete description of the applicant's intended registration policies in support of these goals.
 - d. What goals does your proposed gTLD have in terms of user experience?
 - e. Will your proposed gTLD impose any measures for protecting the privacy or confidential information of registrants or users? If so, please describe any such measures.
 - f. Please describe if outreach and communications will help to achieve your projected benefits? If so, please describe how.

Eliminating or Minimizing Costs to Registrants and Consumers

2. What operating rules will you adopt to eliminate or minimize social costs (e.g., time or financial resource costs, as well as various types of consumer vulnerabilities)? What other steps will you take to minimize negative consequences/costs imposed upon consumers?
 - a. How will multiple applications for a particular domain name be resolved, for example, by auction or on a first-come/first-serve basis?
 - b. Explain any cost benefits for registrants you intend to implement, such as advantageous pricing, introductory discounts, bulk registration discounts, etc.
 - c. Do you intend to offer registrants the ability to obtain long term (or permanent) contracts for domain names? Do you intend to make contractual commitments to registrants regarding the magnitude of price escalation? If so, please describe your plans.
 - d. Will you impose any constraints on parked sites, or sites that offer only advertising?

Existing application questions that are directly relevant to the review. (All questions, to some extent, go to mitigating cost and providing benefit.)

18. Mission/purpose
20. Community-based designation
23. Registry services
28. Abuse prevention and mitigation
29. Rights protection mechanisms