

New gTLD Workshop



29 October 2007

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ICANNMEETING
Los Angeles 2007 29 Oct - 2 Nov

Introduction

- Moderator
 - Chris Disspain, ccNSO Chair

- Workshop structure
 - Total time: 6 hours
 - Three sessions
 - Two breaks

Workshop Goals

1. Complete but brief overview of the GNSO recommendations for the introduction of new gTLDs including
 - Major issues considered
 - Rationale for final decisions
 - Implementation planning progress to date
2. Interaction with the community to
 - Ensure understanding of the GNSO recommendations
 - Obtain input from the community

As a side effect, community input may be useful to the Board.

Organization of Sessions

1. Panel presentation re. recommendations
2. Staff presentation re. implementation plans & progress
3. Open Discussion
 - Panel comments
 - Audience questions & comments
 - Online questions & comments
 - Panel responses
 - GNSO Councilor comments

Participation Procedures

- General microphone for audience
- Special microphone for GNSO Councilors & ICANN Staff (not on panel)
- Remember to give your name and organization when speaking at the microphone
- Please speak into the microphone
- Please talk slowly so that everyone can understand



Q&A Guidelines

- Time management will be essential.
 - All participants need to be brief.
 - It may be necessary to enforce time limits.
- Staying on topic is important.
 - All participants are asked to focus only on topics related to the current session.
 - Please identify what topic(s) you are addressing.
 - Time permitting, an open microphone will be allowed at the end of Session 3.

Note: Comments to the Board may also be made during the open microphone session in the Public Forum on Thursday.



Important Points to Note

- The GNSO Council already approved the recommendations by a 'supermajority vote'.
 - 19 out of 23 in favor.
- The next step in the policy development process is for the ICANN Board to act on the recommendations.
 - Only the Board can approve policy.
- After Board approval, implementation issues could lead to the need to consider changes.
 - Any changes would be sent back to the Community and Council for comment.



Overview of Sessions

The principles, recommendations and implementation guidelines were divided into thematic groups for this workshop:

1. Introductory Material and Selection Criteria for New gTLDs
2. Contractual Conditions for New gTLDs
3. Allocation Methods for New gTLDs



Important References

The following are available as handouts:

1. A one-page quick reference guide
 - Workshop agenda
 - List of principles, recommendations and implementation guidelines
 - URLs for relevant documents such as
 - New gTLDs GNSO Report Summary
 - Final Report on the Introduction of New Top-Level Domains (Parts A & B)

2. New gTLDs GNSO Report Summary
 - Note: for the most part, this tracks to the workshop sessions.

Workshop Agenda

1. Introduction

2. Session 1

- Principles A - F
- Recommendations 1, 2, 4, 7, 8, 9 & 13
- Overview of Draft RFP
- Projected Timeline & Estimated Costs
- Implementation Details
- Open discussion

Workshop Agenda (Cont'd)

3. Session 2

- Recommendations 5, 10, 14, 15, 16, 17, 18 & 19
- Implementation Guidelines I - O
- Overview of Draft Base Contract
- Implementation Details
- Open discussion

4. Session 3

- Principle G
- Recommendations 3, 6, 12, 20
- Implementation Details
- Open discussion



Workshop Suggestion

- Refer to the Quick Reference Guide, the Report Summary or the full report for details
 - In responding to questions and comments, panel members will generally point to sections of these documents or the full report rather than reading them verbatim.
 - Participants are encouraged to read the details on their own.

Session 1



Introductory Material & Selection Process for New gTLDs

1. Principles A - F
2. Recommendations 1, 2, 4, 7, 8, 9 & 13
3. Implementation Guidelines A – E, M - O
4. Overview of Draft RFP
5. Projected Timeline
6. Estimated Costs
7. Other Implementation Details

Session 1 Panel

- Tony Harris (ISCPC)
- Ute Decker (IPC)
- Mike Rodenbaugh (CBUC)
- Avri Doria (Council Chair)
- Chuck Gomes (Council Vice Chair)
- Kurt Pritz (ICANN Staff)

Principles A - D

- A. New gTLDs must be introduced in an orderly, timely and predictable way.
- B. Some new generic top-level domains should be internationalized.
- C. New gTLDs will fill demand and provide more competition.
- D. Technical criteria must ensure stability, security and global interoperability.

Principles E & F

- E. Capability criteria must assure that an applicant can meet its agreement obligations.
- F. Contractual operational criteria must ensure compliance with ICANN policies.

Recommendations 1 & 9



Implement a new gTLD process that is fair, transparent, nondiscriminatory and predictable with objective and measurable criteria, fully available before initiation of the process.

- There was strong support for objective criteria.
- Some criteria are easier to measure than others.
- Should more subjective criteria be excluded?
- Should some stakeholder interests be ignored to ensure objective measurability?

Decision: Try to address all stakeholder interests while making criteria as objective as possible

IG-A: Provide a 'pre-defined roadmap'



Recommendation 2



Strings must not be confusingly similar to an existing top-level domain or a Reserved Name.

- **Rationale:** A confusingly similar string could cause technical or consumer confusion.
- **Implementation Considerations:**
 - A string that resembles another string is not necessarily confusingly similar.
 - Staff is exploring various options for implementation of this recommendation, including:
 - The application of an algorithm that provides guidance on which TLD strings are considered to be confusingly similar
 - Providing a capability for formal objection to be filed to an application by a third party on the grounds that the proposed gTLD is confusingly similar to an existing TLD.

Recommendation 4

Strings must not cause any technical instability.

- Criteria will be stated in the RFP.
- The review is expected to be done by ICANN, drawing on technical expertise as needed.

Recommendation 7



Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.

- There will be minimal technical criteria for ALL applicants to ensure security, stability and interoperability of the Internet.
- Other technical requirements may vary depending on the purpose and use of the gTLD.
- Applicants will have to demonstrate that their operation of a new gTLD will not adversely affect the stability or security of the DNS.



Recommendation 8



Applicants must be able to demonstrate their financial and operational capability.

- Financial and operational obligations may vary depending on what is proposed by an applicant.
- Principle E states, “A set of capability criteria for a new gTLD registry applicant must be used to provide an assurance that an applicant has the capability to meet its obligations under the terms of ICANN's registry agreement.”
- Applicants will be assessed to help ensure that their operation of a new gTLD will not adversely affect the stability or security of the DNS and that they are capable of implementing the gTLD as proposed.



Recommendation 13

Applications must initially be assessed in rounds until the scale of demand is clear.



- It is suggested that ICANN should try to staff itself to accommodate whatever demand occurs while recognizing that it is not possible to accurately predict demand.
- The intent of this recommendation is that applications would be processed in rounds until such time as an ongoing application process could be put into place.
- It is expected that the date for a second round will be communicated in the RFP for the first round.
- Within a round, all applicants will be evaluated on the same grounds (i.e., order of receipt within a round will not be an evaluation criterion nor will it be used to resolve string contention but will only be considered with regard to processing order).



Implementation Guidelines C & D

- C. ICANN will provide frequent communications with applicants and the public including comment forums.
- D. A first-come, first-served processing schedule within the application round will be implemented and will continue for an ongoing process, if necessary. Applications will be time and date stamped on receipt.
 - Order of receipt within a round will only be used for processing order, not as an evaluation criterion or to resolve string contention.

Implementation Guideline E

The application submission date will be at least four months after the issue of the Request for Proposal and ICANN will promote the opening of the application round.

- The rationale for this is 1) to allow time for adequate and broad communication of the round within and external to ICANN circles, and 2) to allow entities to adequately prepare their response to the RFP.

Implementation Guidelines B & N

- B. Application fees must cover costs; fees may vary.
- N. ICANN may develop a 'fee reduction model' for applicants from economies classified by the UN as least developed.

Issues:

- Could an applicant that cannot raise the fees raise the capital to meet security and stability specifications?
- How would applicants from a least developed economy that can afford the fees be distinguished from those who cannot?
- How would situations be avoided where potential applicants try to take advantage of any exceptions?

Implementation Guidelines B & N (Cont'd)

Implementation plans:

- Costs associated with the initial evaluation will be covered by the application fee.
- Costs associated with any objections or contention resolution (or other review beyond basic evaluation) will be borne by the parties utilizing those processes.
 - There is a concern that financial disparity between the applicant and the objecting party may result in undesired outcomes.



Implementation Guidelines M & O

- M. Consider establishing a support mechanism to facilitate effective communication that no longer requires all participants to know English.
- O. Provide information about the new gTLD process in major languages other than English.
 - ICANN plans to publicize the new gTLD process in different languages, but it remains to be seen if applications could be accepted in languages other than English.
 - Staff should select the limited set of languages that would most effectively communicate the implementation to a wide



Draft RFP Overview



- Pre-defined (i.e., published) roadmap for all applicants
 - Defined timeframe for consideration
 - Clear, objective criteria for all evaluation steps
- Applications will be considered in one round with an indication that there will be other rounds in the near term
 - Order of receipt within a round will only be used for processing order, not as an evaluation criterion or to resolve string contention
- Base contract will be included



Communications

- A comprehensive communications effort will be launched four months prior to the official request for TLD applications
- Details of the new gTLD Policy implementation will be communicated globally, including the Policy reasons for:
 - the introduction of new gTLDs,
 - allocation procedures, and
 - TLD string criteria in the RFP
- Significant aspects of the plan include:
 - Multi-lingual features

Reaching every country / territory defined by ISO 3166 list



RFP Elements

The RFP will define requirements regarding the following:


- Technical capability
- Financial/operational capability
- Technical stability of the DNS
- Reserved Names
- Strings that are confusingly similar to an existing TLD, proposed string or a Reserved Name
- Limited grounds and standing for objecting to a proposed string

Note: An initial evaluation will be made for each gTLD application with separate evaluations for each of the elements.



Implementation Issues



- Communications:
 - Informing people and governments outside of ICANN
 - Securing multi-lingual talent to effectively communicate aspects of the program and understand applicants
- Examining Business & Technical Competency:
 - Using the evaluation process to predict success and ensure long-term commitment
 - Balancing stringent criteria vs. encouraging innovation
- Confusingly similar strings:
 - Using an algorithm best determine if strings are confusingly similar
 - Applying an algorithm to IDNs
-  Staffing in the face of unknown demand

Projected Implementation Timeline

- gTLD Consensus Policy Approved – est. Q4 2007
- Draft RFP Posted – est. Q2 2008
- Final RFP Approved – est. early Q3 2008
- First Round Implementation - Communications/RFP - est. Q3 2008
- Applications Accepted – est. early Q4 2008
- Successful TLD Applications Approved – est. Q1 2009

Implementation Costs & Application Fees



- Start-up costs
 - Request for Proposal
 - Dispute Resolution Process
 - Communications/Outreach
 - Information Technology/Web-based Application System
- Operational costs
 - Dispute Resolution Services
 - Evaluation Services
 - Contention Resolution Services
 - Program Support Services
- Depending on costs and application volume, full cost recovery might be a barrier to entry to some applicants



Open Discussion

- Comments by panelists
- Audience questions & comments
- Online questions & comments
- Panel responses
- GNSO Councilor comments



Break 😊

- Feel free to talk to panel members and GNSO Council members during the break.
- Note that panelists and Council members are all wearing a string of red beads.

Session 2

Contractual Conditions for New gTLDs

1. Recommendations 5, 10, 14, 15, 16, 17, 18 & 19
2. Implementation Guidelines IG I – IG L
3. Overview of Draft Base Contract
4. Implementation Details

Session 2 Panel

- Jon Nevett (RC)
- Ray Fassett (RyC)
- Mawaki Chango (NCUC)
- Tony Harris (ISCPC)
- Avri Doria (Council Chair)
- Chuck Gomes (Council Vice Chair)
- Kurt Pritz (ICANN Staff)

Recommendation 10

A base contract must be provided to applicants at the beginning of the application process.

- Use of the base contract without material deviations will shorten the process.
- Contracts with individual registry operators might vary depending on the particulars of the new gTLD.

Recommendation 5

Strings must not be a Reserved Name.

- The RN-WG's full set of recommendations may be found in Part B of the final report.
- A summary of the reserved names is provided in the Annex to the New gTLDs GNSO Report Summary.
- Note it is recommended that the following NOT be reserved: controversial names; geographic and geopolitical indicators; single and two character U-labels; and single-letter/single-digit combinations.
- Issues related to controversial and geographic names can be addressed by the new gTLD dispute resolution and challenge processes. (Workshop Session 3)

Recommendations 14 & 15



The initial registry agreement term must be of a commercially reasonable length & there must be renewal expectancy.

- This creates a level playing field for new and existing gTLD operators.
- The draft base contract contains a term of [ten] years.
- A contract of a commercially reasonable duration & renewal expectancy provides incentives for a registry operator to make the investment necessary to operate a new gTLD in a stable and secure manner.



Recommendation 16

Registries must apply existing & new Consensus Policies.



Issues:

- Concern was discussed re. special situations where a gTLD serves a specific and well-defined community for which they believe a specific consensus policy may not readily apply.
- ICANN will maintain and enforce the requirements to adhere to Consensus Policies.



Recommendation 17

A clear compliance and sanctions process, which could lead to contract termination, must be set out in the base contract.

- Staff is working on this issue.

Recommendation 18

If an applicant offers an IDN service, then ICANN's IDN guidelines must be followed.

- Following the IDN Guidelines will support the diversity, security and stability of the domain name system (DNS).
- Existing gTLD operators have this requirement.
- ICANN Staff and others are working to ensure that IDN gTLDs are introduced in a timely manner, and that the activities of the ccNSO related to the introduction of IDN ccTLDs, and activities in organizations such as the IETF with regard to the IDNA standards are coordinated, as needed.

Recommendation 19

Registries must use only ICANN accredited registrars.

Issues:

- Should smaller registries be able to start a registrar if existing registrars are uninterested in servicing their gTLD?
- ICANN's current registry agreements require the use of ICANN-accredited registrars and registries are prohibited from being ICANN-accredited registrars even for their own gTLDs.
- Regions where there are no, or few, ICANN-accredited registrars may be at a disadvantage.

Discussions are continuing on this topic.

Implementation Guidelines I, J, K & L

- I. An applicant granted a TLD string must use it within a fixed timeframe which will be specified in the application process.
- J. The base contract should “balance market certainty and flexibility to accommodate a rapidly changing market place”.
- K. ICANN “should take a consistent approach to the establishment of registry fees”.
- L. The use of personal data must be limited to the purpose for which it is collected.



RFP & Draft base contract will consider:

- Current registry/sponsor agreement
- Policy recommendations:
 - New gTLD and
 - Registry Contract Terms
- Registry Failover Plan/Best Practices Document
- RFP/technical requirements



The RFP and draft base contract will include:

- Commercially reasonable term and a renewal presumption
- Requirement to comply with Consensus Policies
- DNS Stability: Requirement to follow applicable RFCs and Best Practices
- Audit and compliance clause and defined escalation and sanctions procedure
- Requirement to follow IDN guidelines and IDN technical requirements (RFCs)
- Requirement to use Accredited Registrars



Base Contract Details / Issues

- To what extent should the base contract be “modifiable”:
 - may accommodate innovation
 - a fixed agreement will facilitate processing
- The base contract will balance market certainty and flexibility to accommodate innovative ideas.
- Specification of fees should also take a consistent approach and allow some flexibility.



Open Discussion

- Comments by panelists
- Audience questions & comments
- Online questions & comments
- Panel responses
- GNSO Councilor comments

Break 😊

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Session 3

Allocation Methods for New gTLDs

1. Principle G
2. Recommendations 3, 6, 12, 20
3. Implementation Guidelines F, G, H, P, Q, & R
4. Implementation Details

Session 3 Panel

- Robin Gross (NCUC)
- Kristina Rosette (IPC)
- Jon Bing (NomCom)
- Marilyn Cade (BC)
- Avri Doria (Council Chair)
- Chuck Gomes (Council Vice Chair)
- Kurt Pritz (ICANN Staff)

Principle G



The string evaluation process must not infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law.

- This principle was added after long discussions about Recommendations 3 and 6 with the purpose of balancing the goal to protect rights with the goal to promote freedom of expression.

Recommendation 12



Dispute resolution and challenge processes must be established prior to the start of the process.

- It is important that all aspects of the application process be known before applications for new gTLDs are prepared and submitted.
- Dispute resolution and challenge are intended to address two types of situations:
 1. The filing of an objection against an application on certain specific grounds developed from the GNSO's recommendations
 2. When two or more applicants are vying for the same or confusingly similar new gTLD ("contention resolution").



Recommendation 12 (Cont'd)

Specific grounds from the GNSO recommendations:

- Confusingly similar strings (Recommendation 2)
- Legal rights of others (Recommendation 3)
- Morality & public order (Recommendation 6)
- Community opposition (Recommendation 20)

The procedures, standing and criteria for assessment need to be developed, and ICANN Staff has begun this process in consultation with outside counsel and other experts.

Recommendation 12 (Cont'd)

- To resolve string contention, the New gTLD Committee discussed methods such as 'comparative evaluation', 'lotteries' or 'auctions' but was unable to reach agreement.
- ICANN Staff is exploring processes that may enable contention to be resolved informally by the parties, or through comparative evaluation, auction, mediation, lottery, arbitration or some other method.
- The role of the Board in the process remains to be defined.

Implementation Guideline F

If there is contention for strings, applicants may:

- i. Resolve contention between them within a pre-established timeframe;
- ii. If there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention;
- iii. The ICANN Board may be used to make a final decision, using advice from staff and expert panels.

Implementation Guidelines H, Q & R



- H. External dispute providers will give decisions on objections.
- Q. ICANN staff will provide an automatic reply to all those who submit public comments that will explain the objection procedure.
- R. Once formal objections or disputes are accepted for review there will be a cooling off period to allow parties to resolve the dispute or objection before review by the panel is initiated.



Implementation Guideline G



- Where an applicant lays any claim that the TLD is intended to support a particular community such as a sponsored TLD, or any other TLD intended for a specified community, that claim will be taken on trust with the following exceptions:
 - i. The claim relates to a string that is also subject to another application and the claim to support a community is being used to gain priority for the application; and
 - ii. A formal objection process is initiated. Under these exceptions, Staff Evaluators will devise criteria and procedures to investigate the claim.
- Under exception (ii), an expert panel will apply the process, guidelines, and definitions set forth in IG P.



Recommendation 3

Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.

- **Examples of sources of legal rights include:**
 - The Paris Convention for the Protection of Industrial Property (in particular trademark rights)
 - The Universal Declaration of Human Rights (UDHR)
 - The International Covenant on Civil and Political Rights (ICCPR) (in particular freedom of expression rights)



Recommendation 3 (Cont'd)

- Procedure: A party holding rights that it believes would be harmed may file an objection to a proposed gTLD.
- Key criterion: Legal rights must be recognized or enforceable under generally accepted and internationally recognized principles of law.

Recommendation 3 (Cont'd)

- Efforts need to be made to clarify the kinds of legal rights that are derived from internationally recognized principles of law and applicable to the context of new gTLDs.
- Legal research is being done on the potential applicability of the Paris Convention, ICCPR, the UDHR and other possible sources.

Recommendation 3 (Cont'd)

Examples:

- Rights defined in the Paris Convention for the Protection of Industrial Property (in particular trade mark rights)
- Universal Declaration of Human Rights (UDHR).
- International Covenant on Civil and Political Rights (ICCPR), in particular freedom of expression rights.

Recommendation 3 (Cont'd)

- It is important that the new gTLD process respect the concerns that have been expressed by groups representing both trademark and freedom of expression interests.
- The GNSO recommendations are intended to create a process that addresses the concerns of all key stakeholders while still being as objective and measurable as possible.

Recommendation 6

Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.



Examples of such principles of law include:

- The Universal Declaration of Human Rights (UDHR)
- The International Covenant on Civil and Political Rights (ICCPR)
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- The International Convention on the Elimination of All Forms of Racial Discrimination
- Intellectual property treaties administered by the World Intellectual Property Organisation (WIPO)
- The WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS)



Recommendation 6 (Cont'd)

- Procedure: Anyone may file an objection to a proposed gTLD on the grounds that it is contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.
- Key criterion: Legal rights must be recognized under international principles of law.

Recommendation 6 (Cont'd)

- Efforts need to be made to clarify the meaning of “generally accepted legal norms relating to morality and public order that are recognized under international principles of law” and would be applicable to decisions regarding new gTLDs.
- Further legal research is being done in this regard.

Recommendation 6 (Cont'd)

Examples:

- Under Article 29(2) of the UDHR limitations on an individual's rights and freedoms may be permitted "as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."
- Article 6quinquies of the Paris Convention contains language relating to the denial of trademark registration in cases "when they are contrary to morality or public order and, in particular, of such a nature as to deceive the public."



Recommendation 6 (Cont'd)

- Legal research thus far suggests that international law has not addressed concepts of “morality” in connection with gTLDs, the DNS, or the Internet more generally.
- There may be subjectivity involved in an expert panel making determinations on objections brought on these grounds.
- Concern has been expressed that the notion of public morality varies by region, by country, and by individual.
- Staff is tasked with developing a set of standards and a procedure for implementing this recommendation in an objective manner.

Recommendation 20



An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted.

- Procedure: An established institution representing a specified community may file an objection on the grounds that there is substantial opposition to the application by a significant portion of the community to which the string may be explicitly or implicitly targeted.
- The definitions of the terms involved in this recommendation are critical in terms of trying to limit subjectivity.



Recommendation 20 (Cont'd)

Two key definitions from IG-P:

- **Explicitly targeting** – explicitly targeting means there is a description of the intended use of the TLD in the application.
- **Implicitly targeting** – implicitly targeting means that the objector makes an assumption of targeting or that the objector believes there may be confusion by users over its intended use.

Refer to the Quick Reference Guide for other definitions in IG-P.



Implementation Guideline P

- Provides definitions for key terms.
- Suggests that the “objector must provide sufficient evidence to allow the panel to determine that there would be a likelihood of detriment to the rights or legitimate interests of the community or to users more widely”.

Recommendation 20 (Cont'd)

- Challenges remain in implementing this recommendation.
- Questions have arisen about the impact on a community if the purpose or business model of the new gTLD changes after approval.

The Policy Recommendations states that:

- There are some strings that should be rejected because they are:
 - Clearly hate language
 - Clearly a violation of property or other rights
 - Clearly a misappropriation and misrepresentation of a community label
- In these cases, the objection to the string should come from the party claiming harm, and
- The dispute between the applicant and the objector should be resolved in a timely, predictable process using objective standards employed in a repeatable manner.



Objection and Dispute Resolution Processes

ICANN tasks:

- Objection process
 - Describe criteria to determine whether objector has standing
- Dispute resolution process
 - Standards development
 - Procedure development
 - Appeal mechanism / standard of review
- String contention resolution process
 - Objective comparative evaluation
 - Develop other objective criteria



Open Discussion

- Comments by panelists
- Audience questions & comments
- Online questions & comments
- Panel responses
- GNSO Councilor comments

Open Microphone (Time Permitting)



Thank You