

At-Large's feedback on Neustar's comment to the overarching topic 2.2.3 of Applications Assessed in Rounds

Date: 6 February 2019

The At-Large Community (represented by members of the At-Large Consolidated Policy Working Group) thanks the Subsequent Procedures PDP Working Group Sub-Team A for their request of 3 January 2019 for our feedback on Neustar's comment to the overarching topic 2.2.3 of Applications Assessed in Rounds, in particular, to Question 2.2.3.e.4, as submitted through the public comment process for the Subsequent Procedures Initial Report.

We are pleased to provide feedback on the same, as obtained through our Consolidated Policy Working Group consultation.

First and foremost, we believe the request for feedback to the said Neustar comment to be premature. We wish to point out that at this juncture, no decision has been made as to whether another application round / window or expansion of the gTLDs is desirable.

No substantive cross-community discussion has taken place to address this question. Neither is there definitive data nor has a sufficiently comprehensive study been undertaken to establish whether the overall impact of the New gTLD Program as it stands has truly been beneficial in terms of improving consumer choice, competition and trust as well as industry innovation and outweighing costs such as domain name confusion, DNS abuse etc from the perspective of Internet end-users.

Further, the At-Large Community strongly believes that the Program still bears many issues which need to be effectively resolved before any serious contemplation can be made to expanding the gTLDs. An example of such an issue is the adoption of priority for community-based applications in the 2012 round through the CPE process yet is one which did not provide for either a clear understanding of the term "community" or for community expertise in evaluating such applications.

Notwithstanding, and in the event the next application round were contemplated (assuming there is community consensus for the same), we think that the idea of a phased approach is not a new one. Further, we think Neustar's proposal is problematic in several fundamental aspects.

We also believe and trust that this Neustar comment should be rightfully and effectively discussed at the plenary level of the Subsequent Procedures PDP WG.

Specific Response to Neustar's Proposition

We understand that Neustar's comment was made in context of the WG's Preliminary Recommendation 2.2.4.c.1 which essentially proposes that ICANN continue to recognise the 5 established TLD categories of:

1. standard TLDs,
2. community-based TLDs,

3. TLDs for which government entities serves as Registry Operators,
4. geographic TLDs, and
5. Specification 13 .Brand TLDs.

While we support in principle the retention of these 5 categories, we think that Neustar's proposition of a 3-phased application window followed by an open round and thereafter a FCFS process is problematic.

Our concerns, some inter-connected, are:-

1. Apart from what is provided for in the 2012 ABG, there remains no definitive guide for determining what constitutes a generic string and not geographic name. Further, WT5 is still deliberating on the treatment of potential geographic names and geographic indications which may (or may not) be reserved or at least subject to preventative protection measures. Jointly and separately, these render the demarcation between .Brands, geographic and generic TLDs illusory.

2. Should a phased approach be contemplated and subject to an effective demarcation guide being agreed to:-

- There is consensus within At-Large that community TLD applications should not be lumped together with generic TLDs applications.
- There is some support for .Brand TLDs to be prioritised in Phase 1 as suggested, because .Brand strings are typically used as closed TLDs and thus bears little to no risk for SL domain abuse,
- However, there is also an alternative view that .Brand applications should be de-prioritised, with either community TLD applications or underserved categories from the 2012 round to be prioritised ahead of geographic TLDs, generic TLDs and .Brand TLDs – it can be said that since brand owners or trademark holders already enjoy the presumption of a 'strong' claim to a string matching their brand name under trademark laws, the need to prioritize .Brand TLD applications should be less than for other categories of applications.
- There is some support that applications could be called for and to undergo initial evaluation but not approved (or contracted for) until all the applications for all categories have been evaluated initially, undergone comments/objections, and for which contentions have been identified and resolved
- There is no support for the FCFS open application process to commence right after the phases and open round suggested by Neustar – the making of such a decision should be undertaken with due consideration as to the desirability of expanding the gTLDs as well as demands for new gTLDs in due course.

3. It must be emphasized that, even though clarification was provided by Donna Austin in relation to the dates of each phase being illustrative only, no decision has been made as to whether another application round / window or if expansion of the gTLDs should proceed. In this respect the At-Large Community stands strongly against any attempts to override the mandated PDP process or time frame or exceed the charter of the WG or to engage in any activity which interferes with or handicaps the ICANN Board's due consideration of the WG's final report and recommendations.