Submission on the new gTLD process to the At-Large new gTLD Review Group

By IT for Change, India
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It is our submission that

1. There is really no need to give out gtlds with full words, which have semantic and thus significant cultural values. The earlier practice of three alphabet gtlds limited such a problem of monopolization of generic words. Enough combinations of three letters are available, along with two alphabet cctlds, to keep the domain name market competitive, ensuring that many sets of same second level domain names are available that prevents monopolization. Continuing such a practice best serves the public interest.

2. In any case, it is absolutely wrong to allow generic words as private tlds, with single registrant, with no requirement to make second level domain names available n the open market to all, on a non-discriminatory basis. The logic of private gltds itself is quite questionable, and we are unable to understand what public interest is served by them. (What is it that a private gltd owner will be able to do which he cant do under the current DNS, to require allowing such monopoly use of tld handles?) On the other hand, ***allowing any and all kinds of generic names like .book, .music, .cloud and .beauty to be monopolized as private gltds in entirely un-understandable, and goes completely against the public interest.***

Words and names are parts of language, our common heritage. It is obvious that language, and its specific uses, have to zealously protected, as public domain, equally available to all. Names used in some forms however are *unique identifiers*, and thus cannot be shared. Trademarks and domain names are two examples of such unique identifiers. There is clear and obvious logic in both these cases as to why specific exceptions to the general and fundamentally important rule of common ownership of language and words is made. Expectedly, there are governance systems around such unique identifiers so that exceptions are made only when absolutely necessary, and only when they clearly serve the public interest. The burden of evidence required to claim exceptions to the common ownership and use of language is always very heavy. This is a principle of natural justice.

Trademark authorities are very strict in not allowing generic names as trademarks. Authorities registering names of companies, organizations etc are similarly very careful and demanding, in terms of very good reasons for claiming anything which may appear to interfere with common ownership of names, words, phrases and language.

Trademark and name registering authorities allow limited monopoly to some parties over specific forms of uses of some words. This monopoly is provided through the instrument of law, which is backed by coercive force. It is done only after thoroughly ascertaining that it is really necessary to do so for the sake of larger public interest, and the general principle of common ownership of language is not compromised in any significant way. The reasons for making specific exceptions have to be very clear and compelling, and the exceptions have to be suitable limited.

Similarly, the DNS system provides monopoly over specific forms of uses of words (as DNS address) not through the instrument of law but because of the fact of a singular unified architecture of the global domain name system (DNS) which is managed/ controlled by ICANN. If we can

understand the full implications of Lessig's very insightful observation that in the digital world 'code is law, and architecture is policy', it should be evident that the difference between granting monopoly through the coercive force of law or the coercive force of control over a monopoly technical architecture is not that great. This is the basic point to understand; that DNS allows limited monopoly use of certain words to certain parties in a way similar to the manner that trademark authorities do. Therefore the spirit of law and natural justice as applied in trademark regimes should also equally apply in allocating domain names or gltds. Importantly, the principles of natural justice used in trademark regimes should apply not only to parties competing for monopoly use of the same name(s) – a logic which the commercially- minded ICANN seems to understand and have sympathy for. It should apply even more so towards preserving the general public interest, which is in not alienating generic words to private monopoly use by private parties, unless a very clear and strong case is made out which makes such limited alienation really necessary – a kind of public interest logic that seems not to be one of ICANN's strengths.

After looking at the similarities between the trademark regime and the DNS vis a vis the need to defend the principle of common ownership of language, we must also examine the differences between the specific provinces in which the two regimes operate. Unlike trademarks, which are a singular entity, DNS system consists of two levels of domain names, a system that seems to be developed with the aim to limit the problem of conflicts of claims over specific words and names as domain names. Otherwise, we could as well have had a simple system whereby just words like JohnPostel were needed to be typed in the address space to connect through the relevant numeric address. But the DNS system was deliberately made at two levels – consisting of tlds, each of which could take all the possible unique words and phrases as domain names, which system greatly expands the DNS space and reduces possibilities of conflicts over specific words and phrases. Limiting tlds names to three alphabets also greatly reduces their semantic value, which again reduces chances of unfair monopoly over generic words.

Since, availability of many tlds in any case provide multiple choices for the same words and phrases to be taken as second level domain names, it was possible to allow second level domain names simply on first come first served basis. Unlike trademarks, domain names are taken in millions, by common entities and people, whereby any system of prior vetting by a regulatory authority as in the case of trademarks would simply have been impractical.

However, the same logic does not apply to gltds. There is no competitive alternative space. If .book is taken, it is taken. There is no alternative space or form in which someone else can also take .book. This makes it *necessary* to do prior vetting of the need and suitability for giving out any tlds, unlike in the case of second level domain names. Secondly, unlike second level domain names, tlds are applied for by entities which are by far less numerous than those applying even for trademarks, what to speak of second level domain names. This makes it *possible* and practical do prior vetting on principles of meeting the requirements of public interest. Two key public interest issues involved here are (1) the problem with giving monopoly rights to use of generic words and (2) reducing the public availability of domain name space by allowing single registrant model for tlds, with no obligation to open second level domain names to public in an open market.

ICANN must understand that it is a governance system with the responsibility of protecting and promoting public interest. It is not a private company offering products and services with an aim to maximize profit. For this reason, it has to conservative more than being innovative. It is taking important decisions on the behalf of the people of the whole world. It must realizes that giving off gltd names is a zero sum game. What it gives to a private party for keeps is denied to everyone else to that extent. It is allowing highly privileged if not exclusive association with some very important elements of our common heritage to a few private companies who are ready to shell out the money. To that extent the 'common-ness' of these important symbolic elements of our common heritage is

permanently compromised. Not only that, as explained later in this note, their form may even get contorted through manipulative use in private hands. Does ICANN realize the erosion of public 'value' that this entails?

It is an unfortunate fact of the emerging digital ecology that monopoly companies have begun to dominate complete sectors of our civilizational system - one company claims to be organizing the world's knowledge for all of us, another positions itself as 'the' world virtual meeting place, a third one is 'the' global distributed instant media, one company has always sought to be 'the' on-line office suite, another emerging as 'the' music store.... and so on. The trend is only intensifying, and anyone concerned with public interest can only be very alarmed with it. Our governance systems are meant to be on the side of the public, and they need to pro-actively anticipate issues implicating public interest, and deal with them appropriately. This is 'the' task of governance systems; not to play in the hands of whoever can pay most and provide revenues for sustenance and growth of the 'governance' system. People acting independently would either not make the necessary anticipation or be unable to act by themselves against such threats to public interest that are 'public bads' (like public goods), and require collective action to be taken by the relevant governance systems.

ICANN needs to see its due role and responsibilities vis a vis the public interest issues in the digital realm and act accordingly. As mentioned, monopolization of whole sectors of our civilisational systems by a few companies is an emergent threat to public interest. Instead, of taking counter-measures to this very big problem, ICANN is contributing to it in a significant manner through the new gtld program. It is allowing these mega Internet companies, interested to monopolise and 'represent' whole sectors of our civilizational system, exclusive use of generic words that they would love to 'own' like .book, .cloud, .music, .media, .school, .beauty etc. Such 'ownership' greatly helps cement their plans to monopolize these cultural aspects of the world, re-design and shape them in the image of their own narrow interests, and then extract perpetual rents. They would manipulate both, people's imagery and the concerned generic words, so that increasingly it is the respective offerings of these companies that get associated with the generic cultural elements represented by these words. No business model could be more remunerative.

While those who gain so much from such business models are very active at not only making, what is for them, the very 'small' payments for getting these exclusive rights to generic words, but also rigging the discourse as one of 'increasing innovation in the domain name space' and also the very governance system that needs to protect the public interest. Those who lose out – the public – have no means to resist, since the fence is eating the grass. It escapes credulity how such a hugely problematic plan of allowing private gltds employing generic names has managed to get through the numerous committees etc around and in the ICANN system. There seems to be a serious crisis of world view here vis a vis what gets called as the ICANN system, or, as the insiders like to call it indulgently (and perhaps, cleverly, to make it a self legitimizing system), the ICANN community.