June 9, 2016

Dear Thomas

We write to you as the Co-Chairs of the GNSO's New gTLD Subsequent Procedures Working Group (WG), which was chartered by the GNSO Council to conduct a Policy Development Process (PDP) to determine what, if any changes may need to be made to the existing *Introduction of New Generic Top-Level Domains* policy recommendations from 8 August 2007[1]. As the original policy recommendations as adopted by the GNSO Council and ICANN Board have "been designed to produce systemized and ongoing mechanisms for applicants to propose new top-level domains", those policy recommendations remain in place for subsequent rounds of the New gTLD Program unless the GNSO Council would decide to modify those policy recommendations via a policy development process. We are now writing to seek your input on several overarching questions as part of the Group's first Community Comment process.

1. Background on the New gTLD Subsequent Procedures PDP WG

In June of 2014, the GNSO Council created the New gTLD Subsequent Procedures Discussion Group, which was focused on reflecting upon the experiences gained from the 2012 New gTLD round and identifying a recommended set of subjects that should be further analyzed in an Issue Report. At the ICANN53 meeting, The GNSO Council approved a motion to request that a Preliminary Issue Report be drafted by ICANN staff, basing the report on the set of deliverables developed by the Discussion Group, to further analyze issues identified and help determine if changes or adjustments are needed for subsequent new gTLD procedures. ICANN staff completed the Preliminary Issue Report on New gTLD Subsequent Procedures, which was published for public comment on 31 August 2015, with the comment period closing on 30 October 2015. ICANN staff reviewed public comments received and adjusted the Issue Report accordingly. The Final Issue Report, along with the summary and analysis of public comment received, were submitted to the GNSO Council for its consideration on 4 December 2015 and a PDP on New gTLD Subsequent Procedures was initiated on 17 December 2015. The GNSO Council adopted the PDP WG charter during its 21 January 2016 meeting, with a call for volunteers issued on 27 January 2016.

The PDP WG held its first meeting on 22 February 2016 and is currently meeting on a weekly basis. While the PDP WG has only begun its deliberations relatively recently, it has preliminarily considered a set of 6 subjects that it considers high level and foundational in nature. The review of these subjects are expected to serve as a dependency in considering the remaining 32 subjects, as well as perhaps other areas of focus that are identified during the life of the PDP WG. The GNSO's PDP Manual mandates that each PDP WG reach out at an early stage to all GNSO Stakeholder Groups and Constituencies to seek their input, and encourages WGs to seek input from ICANN's Supporting Organizations and Advisory Committees as well. We are now writing to update you on our activities to date, and to provide your group with an opportunity to assist the PDP WG with its assigned task, in respect of the following

[1] http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm

questions and issues that stem from our Charter and the initial deliberations of the WG. The PDP WG anticipates that it will provide additional updates and solicit input from the community again in the future, as the work progresses, and to address the other subjects identified in the WG charter.

2. Community Comment Request: Survey on 6 relevant subjects

The six subjects that the PDP WG is considering at this stage are listed below. A brief description of each subject and specific questions on which the PDP WG seeks your input are included as Annex A. Your input is critical in allowing these subjects to be considered fully and to achieve a thoughtful outcome, which could be new policy recommendations, amendment of existing policy recommendations, or more simply, implementation guidance to be considered in the future. We would like your group's responses to the specific questions in Annex A as well as any other information that your group thinks is relevant to these subjects. The six subjects are:

1. Additional new gTLDs in the future.
2. Categorization or differentiation of gTLDs (for example brand, geographical, or supported/community) in ongoing new gTLD mechanisms.
3. Future new gTLDs assessed in "rounds."
4. Predictability should be maintained or enhanced without sacrificing flexibility. In the event changes must be introduced into the new gTLD Application process, the disruptive effect to all parties should be minimized.
5. Community engagement in new gTLD application processes.
6. Limiting applications in total and/or per entity during an application window.

3. Coordination with other efforts

Finally, the PDP WG is aware of other efforts related to New gTLDs that are underway within the community, particularly the Competition, Consumer Trust & Consumer Choice Review Team (CCT-RT); the PDP WG understands that coordination with other community efforts is needed to promote comprehensive solutions and outcomes. In addition to the CCT-RT, the PDP WG has identified the following initiatives that may have an influence on the outcomes of this WG.

- PDP on gTLD Registration Data Services
- PDP IGO-INGO Access to Curative Rights Protection Mechanisms
- Non-PDP CWG on the Use of Country and Territory Names as TLDs
- PDP Review of All Rights Protection Mechanisms in All gTLDs
- CCT-RT and the associated New gTLD Program Reviews
- The Governmental Advisory Committee (GAC) working groups on the topics of: a) public safety, b) underserved regions, and c) geographic names.
- Security and Stability Advisory Committee (SSAC) reviews of guidance provided regarding the New gTLD Program and determining if new recommendations are needed.
- Other efforts in other Supporting Organizations, Advisory Committees, Stakeholder Groups, or Constituencies?

We ask that you consider and clarify the extent to which the above-identified efforts, or any additional efforts within the community, should be considered by this PDP WG during its deliberations.

This is the first of at least two Community Comment Requests requests we will be submitting. Once the input from this Community Comment is processed and work begins on the remaining 32 subjects, additional Community Request(s) will be made.

Thank you for the GAC's consideration of this request. We look forward to any comments and any input that you and the organization you Chair are able to provide to our WG. If possible, please forward your comments and input to us by Monday, 25 July 2016 so that we may fully consider it in our further deliberations.

Best regards,

Avri Doria, Jeff Neuman, and Stephen Coates, (WG Co-Chairs)

Annex A: The 6 Specific Subjects

Subject 1. Additional new gTLDs in the future.

The 2007 GNSO Final Report and the Applicant Guidebook (AGB) are consistent in the position that the previous policy development process was intended to establish an ongoing mechanism for potential applicants to apply for gTLDs. As such, a deviation from this position, such as cancelling the program, would warrant policy work. If the decision is made to deviate from existing policy, it should be based on fact-based decision-making.

Questions:

1.a: The 2007 consensus policy above expressed the commitment to an ongoing mechanism[2] for the introduction of new gTLDs. Are there any facts and/or circumstances that have changed such that you believe this should no longer be the policy? Please explain.

1.b: Would the absence of an ongoing mechanism have an anti-competitive effect for potential applicants?

1.c: Are ongoing mechanisms for the introduction of additional new gTLDs necessary to achieving sufficient diversity (e.g., choice and trust) in terms of domain extensions? Please explain.

1.d: Is it too early in the review cycle of the previous round to determine the full range of benefits of the 2012 round of new gTLDs? Should that impact the decision to introduce additional new gTLDs and/or the timing of ongoing mechanisms for new gTLDs?

1.e: What additional considerations should be taken into account before deciding on ongoing mechanisms for new gTLDs (e.g., to cancel ongoing mechanisms for new gTLDs via policy changes)?

[2] "*Ongoing mechanism*" will be a phrase that will be used throughout this document and should be considered to mean the subsequent procedures by which new gTLD applications will be received by ICANN in the future, without making any predetermination to the precise nature of those procedures. The use of the term "*ongoing mechanism*" stems from the following text in the GNSO's 2007 Final Report on the Introduction of New gTLDs: "This policy development process has been designed to produce a systemised and ongoing mechanism for applicants to propose new top-level domains."

1.f: Any other Issues related to this overarching subject:

Subject 2. Categorization or differentiation of gTLDs (for example brand, geographical, or supported/community) in ongoing new gTLD mechanisms.

Defining application categories was seen as too "challenging" during the development of the 2007 Final Report and the subsequent development of the Applicant Guidebook. However, the Applicant Guidebook did recognize that certain categories of TLDs deserved differential treatment in the application process, evaluation process, the string contention resolution process and in the ultimate Registry Agreement. The categories included geographic, community, and brand TLDs and those associated with governments or governmental organizations.

The Working Group intends to formally address this issue depending on the feedback provided by the community beyond simply identifying categories, the PDP-WG would need to consider the development of distinct and enforceable definitions, development of separate requirements and processes, validation and enforcement measures, and a process to switch categories post-delegation, among many other areas of work.

Questions:

2.a: Should subsequent procedures be structured to account for different categories of gTLDs?

Note, several possible categories have been suggested by PDP WG members, including:

- Open Registries
- Geographic
- Brand (Specification 13[3])
- Intergovernmental Organization
- Community
- Validated - Restricted Registries with qualification criteria that must be verified
- Not-for-profit or non-profit gTLDs, NGOs
- Highly Regulated or 'Sensitive' TLDs
- Exclusive Use Registries (Keyword Registry limited to one registrant & affiliates) or

[3] Specification 13 to the Registry Agreement (RA) provides certain modifications to to the RA for applicants that qualify as a .Brand TLD. For additional information, please see the Specification 13 section here: https://newgtlds.icann.org/en/applicants/agb/base-agreement-contracting

Closed Generics

- TLD with applicant self-validated restrictions and and enforcement via Charter Eligibility Dispute Resolution Policy, e.g. .name and .biz

The following questions refer to this list of possible categories:

2.b: Are additional categories missing from the list? If so, what categories should be added?

2.c: Do all categories identified by the PDP WG members belong in the list?

2.d: If categories are recognized, in what areas of the application, evaluation, contention resolution and/or contracting processes would the introduction of categories have a likely impact?

2.e: If different categories of gTLD are defined, should all types be offered in each application window? Is it acceptable for an application window to open for only one or a limited subset of categories of gTLDs (e.g. a .Brands only application window)

2.f: Any other issues related to this overarching subject:

Subject 3. Future new gTLDs assessed in "rounds."

Recommendation 13 of the 2007 Final Report stated that "Applications must initially be assessed in rounds until the scale of demand is clear." However, it was acknowledged that Recommendation 13 could be modified, provided there is data and evidence that supports an alternative mechanism. This PDP WG may want to consider these suggested actions/questions to help determine if a change to the policy is warranted:

- Define, capture data, and analyze metrics to understand "scale of demand"
- Define, capture data, and analyze metrics other than "scale of demand" that may help in determining if an alternative application acceptance mechanism should be considered
- Determine if any other New gTLD Program reviews may benefit deliberations on this subject.

Questions:

3.a: Should we continue to assess applications for new gTLDs in "rounds." If not, how could you structure an alternative application window for accepting and assessing applications while at the same time taking into consideration public comments, objections, evaluation, contention resolution, etc.?

3.b: How would the assessment of applications in a method other than in "rounds" impact rights holders, if at all?

3.c: Does restricting applications to "rounds" or other cyclical application models lead to more consistent treatment of applicants?

3.d: Should "rounds" or other cyclical application models be used to facilitate reviews and process improvement?

3.e Do "rounds" lead to greater predictability for applicants and other interested parties?

3.f: Do "rounds" add latency to the evaluation and approval of an application, leading to longer times to market?

3.g: Do “rounds” create artificial demand and/or artificial scarcity?

3.h: Does time between “rounds” lead to pent up demand?

3.i: What is an ideal interval between “rounds?” Please explain.

3.j: Any other issues related to this overarching subject:

Subject 4. Predictability should be maintained or enhanced without sacrificing flexibility. In the event changes must be introduced into the new gTLD Application process, the disruptive effect to all parties should be minimized.

The PDP Working Group has discussed this issue and does not believe that there will need to be policy development with respect to this issue. It should be noted and taken into account that there have been measures taken in the wider ICANN community that may help address some of the issues related to the subject of predictability, including the advent of new liaisons between Supporting Organizations (SOs) and Advisory Committees (ACs) and the GNSO actively seeking early engagement with other SOs and ACs, particularly with the GAC. In addition, the new GNSO processes developed by the Non-PDP Policy and Implementation Working Group should help to resolve problems that are only identified at a later stage, in a more consistent, predictable, and transparent manner, for not only this PDP-WG, but future GNSO efforts.

Questions:

4.a: Was the round of 2012 sufficiently predictable given external factors, while balancing the need to be flexible? Please explain.

4.b: Do the changes implemented as a result of the establishment of Cross Community Working Groups and the adoption of the principles and processes from the Policy and Implementation Working Group suffice to maintain predictability of the application process while at the same time provide for the needed flexibility to address changes of circumstances?

4.c: What are the impacts on applicants, users and related parties from a process that lacks predictability?

4.d: Any other issues related to this overarching subject:

Subject 5. Community engagement in new gTLD application processes.

The subject of community engagement was not anticipated by the New gTLD Subsequent Procedures Discussion Group to require any type of policy development specific to New gTLDs. This issue is not isolated to New gTLDs, and as such, steps to increase opportunities for community engagement or outreach have already been implemented. For instance, the GNSO PDP Manual requires that outreach to Supporting Organizations (SOs), Advisory Committees (ACs), Stakeholder Groups, and Constituencies be conducted at certain intervals to ensure they are aware of the issue being discussed. In addition, many of the SOs and ACs maintain liaisons between their groups to ensure they remain informed and are able to communicate concerns back and forth. Beyond these proactive engagement measures, the PDP process is open and transparent, so any member of the community is welcome to participate. As well, the implementation of New gTLD policy via the AGB, allowed for participation from any aspect of the community, and this is expected to be the case for any subsequent implementation activities. Recognizing that no matter how much planning and coordination is done at the policy development and policy implementation stages, there will always be unforeseen issues, and these issues should be dealt with in a predictable fashion.

Questions

5.a: Are there circumstances in which the application window should be frozen while unforeseen policy issues are considered and resolved? If so, should there be a threshold or standard that must be reached before considering freezing an application window?

5.b: If the Board is faced with questions that cannot be addressed by the policy recommendations they were sent, must the Board bring the issue back to the GNSO and PDP process (e.g., the GNSO Expedited PDP or GNSO Guidance Process)?

5.c: Should a standard be established to discriminate between issues that must be solved during an open application window and those that can be postponed until a subsequent application window? Please give an example.

5.d: Any other issues related to this overarching subject.

Subject 6. Limiting applications in total and/or per entity during an application window.

Application limits were not discussed in the 2007 Final Report. In the event that the PDP-WG undertakes policy development with respect to application limits, it will need to define the application limitation mechanism, assess and resolve any questions related to the legality of the mechanism, establishing requirements, establishing validation and enforcement measures, among other elements. Limits to the total number of applications in an application window and/or total number of applications from a single entity, at a minimum, should be considered. For the total number of application in an application window, this could refer to the absolute number of applications accepted, the number of unique strings accepted (or delegated), or other limiting factor.

Questions

6.a: Should a limit for the total number of applications for an application window and/or from a single entity be established? If so, what should be the limiting factor (e.g., total application, total number of strings, etc.) and why?

6.b: If a limit for the total number of applications for an application window and/or from a single entity is established, how would the appropriate amount of applications be set to establish this limit?

6.c: If a limit for the total number of applications for an application window and/or from a single entity is established, what mechanism(s) could be used to enforce limit(s)?

6.d: How would a limit on the total number of applications for an application window and/or from a single entity impact fees?

6.e: Would limits to the total number of applications for an application window and/or from a single entity be considered anti-competitive? Please explain.

6.f: Do limits to the total number of applications for an application window and/or from a single entity favor "insiders?

6.g: Any other issues related to this overarching subject:

Open Questions

1. Are there further overarching issues or considerations that should be discussed in the New gTLDs Subsequent Procedures PDP WG ?

2. Are there additional steps the PDP WG should take during the PDP process to better enable community engagement?