At-Large gTLD working group statement on Applicant Guidebook V2

At-Large Statement on New gTLD Applicant Guidebook V2

General Issues

We agree with and support the expedient introduction of new gTLDs, especially those offering support for IDNs. In fact, we believe that a number of components of the proposed policy present unnecessary barriers to entry for the broadest possible variety of gTLD applicants.

Categorization

We believe that the process of categorizing new gTLD applications into "open" and "community-based" is incomplete. It does not take into account all of the issues that differentiate the categories; indeed, it is likely that more than two categories may be necessary to adequately address the diversity of stakeholders and potential applicants.

Further study is required immediately to further develop the exact categorization, but we agree that it should not be so complex as to cause confusion or significant logistical problems.

The categories should not determine merely the dispute resolution procedure; they should also encompass other distinctions such as pricing, recognizing (for instance) the ability to pay – by organizations of all kinds – in developing and least developed countries. ICANN may allow applicants to assert in advance that their proposed gTLD string is based on an existing intellectual property.

We recognize the potential for "gaming" the process if differential pricing is enabled. However, we believe that proper wording and appropriate guidelines will minimize abuse. In any case, we believe that a small number of new gTLDs inappropriately given lower fees is preferable to the 2nd draft's current barriers to entry for would-be applicants in developing and least developed countries.

Fees

The current fee schedule is a clear barrier to entry of potential applicants, especially those who have no interest in monetizing their TLD. The current structure is also a substantial obstacle to potential applications originating in developing and least developed countries.

We urge a fee structure based on actual cost-recovery related to current application evaluation procedures. Fees must not include amortizations of ICANN's fixed costs or previous gTLD policy work, nor should they include speculative "risk" charges. If a lowering of gTLD application fees follows from such a re-calculation, we welcome the higher numbers of applications which will occur as a result.

In the place of the proposed system of refunds, we recommend a phased fee system under which an applicant would pay a portion initially and additional fees as each milestone is achieved. While ICANN will still be paid up-front for its evaluations, applicants only need pay for the stages which they are eligible to pursue.

String Contention

It may be possible to alleviate many problems and barriers related to string contention through a hybrid process. Because of the substantial pent-up demand for new gTLDs, it is not reasonable (and too easily gamed) to initially allow string allocation to be based on "first come, first served" – the technique usually used for second-level domains.

ICANN should hold one new round of accepting gTLD applications – the round being currently developed. It should have a fixed deadline and be subject to the string contention dispute mechanisms described in the Applicant Guidebook. After all applications submitted in this round have either been accepted or rejected, ICANN should then eliminate the concept of "rounds" and accept subsequent gTLD applications on a rolling "first come, first served" process of string allocation, of course subject to the objection mechanisms.

We do NOT believe in a preliminary interim round with an arbitrarily limited number of applications as a "trial run". Such an interim round can be gamed no matter what selection process is used, and therefore any interim round is unlikely to serve its intended goals.

We are concerned about substantial potential harm that could be caused through the inappropriate rejection of applicant strings based on perceived contextual similarities. String similarity should be explicitly restricted to visual or typographical similarity. The current existence of ".biz" has not caused confusion with ".com", and we reject any contention rules that might disallow subsequent similar terms.

Legal Rights

The protection of trademark rights is legitimate and necessary. However, we are concerned that the proposed "Legal Rights" objection protocol exceeds existing territorial and class-of-goods limitations contained in current international trademark treaties.

We specifically note language in section 3.4.2 of the current guidebook draft, which allows unrestricted Legal Rights objections based on similarity of "meaning" to trademarks. This would enable trademark protection well beyond that of TRIPS or the Paris Convention, which only extend protection of "meaning", in exceptional circumstances, to a very limited subset of "well-known marks". ICANN should not engage in any trademark protection regime which extends beyond existing international treaties; to do so in effect turns ICANN into an unauthorized treaty organization.

It is also the obligation of ICANN to recognize the non-trademark "traditional knowledge" rights of Indigenous Peoples, in a manner consistent with international treaties.

Objection on Morality and Public Order

We emphatically call for the complete abolition of the class of objections based on morality and public order. We assert that ICANN has no business being in (or delegating) the role of comparing relative morality and conflicting human rights.

Abolishing the morality and public order class of objection will eliminate the risk to ICANN of bearing responsibility for delegating morality judgement to an inadequate DSRP.

Certain extreme forms of objectionable strings may be addressed through minor modifications to the "Community" class of objection. While we fully appreciate the motivation behind this class of objection, we cannot envision any application of it that will result in fewer problems than its abolition.

The Independent Objector

The description of this role is that of an independent body, provided resources by ICANN, to represent the public interest in ICANN processes.

This is a perfectly accurate description of At-Large.

We understand ALAC is a formal ICANN body and may be considered non-independent. However, the regional at-large organizations, at-large structures and (in some regions) individual participants have nothing more than a memorandum of understanding – and often less than that.

At-Large is ICANN's logical and natural source for public interest advocacy; it would be counter-productive and inefficient to create a parallel public interest advocate separate from At-Large.

In addition, At-Large has the existing grass-roots connections to ensure that communities are made aware of gTLD attempts being made in their name. It is pointless for ICANN to recreate such an infrastructure outside of At-Large.

In addition to the listed functions ascribed to the Independent Objector, this role should also be able to offer an independent appeal mechanism in case gTLD applicants believe that they were unfairly or improperly rejected. The parameters of this role could be sufficiently constrained to prevent frivolous appeals; however, the availability of an independent third-party capable of reviewing decisions – possibly requiring unfair rejections to be re-evaluated – would be an extra and beneficial addition to the transparency of the evaluation process.

Legal Status of Applicants

It is our position that being convicted of a crime, on its own, should not disqualify someone from being part of a gTLD application. It is not ICANN's role to further punish people who have been convicted and served their sentence; the only exceptions are people convicted of fraud and officers of any ICANN-contracted party that has been de-accredited.

Required Technical Facilities

Applicants must have an understanding of IDNs; however, applicants for non-IDN TLDs should not be required to implement IDN technology. On the other hand, applicants must demonstrate familiarity with DNSSEC technology and provide an implementation plan to enable DNSSEC when it becomes widespread in line with ICANN policy.

Dispute Resolution Service Providers

We have severe concerns about the lack of transparency in the initial selection of Dispute Resolution Service Providers before the selection criteria has been fully published. Parties requiring the use of DSRPs must have the right to select the appropriate provider.

Participants

March 6, 2009

The original document is the result of work done by Working Group 3 of the At-Large Summit, which took place during the Mexico City ICANN meeting. It was part of the Summit Declaration that was delivered to Paul Twomey on the final day of the Summit.

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April 13, 2009

In response to a deadline set for comments on V2 of the guidebook, the Summit WG3 was merged into the existing ALAC gTLD working group. Subsequent discussions led to the proposal of a number of modifications to the original Summit statement. In addition to email discussions a conference call was held April 10 2009. The changes resulting from these discussions are to be submitted to ALAC for endorsement and submission to the gTLD guidebook comment process. Some of the changes were made to be consistent with previous ALAC statements on string contention

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