



New gTLD Program:

Aspects of an Expressions of Interest and Pre-Registration Model

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Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the New gTLD Program as the program remains subject to further consultation and revision.

New gTLD Program: Aspects of an Expressions of Interest and Pre-Registration Model

Executive Summary

ICANN is in the process of completing implementation work leading to establishment of the New gTLD Program. As part of this, consideration is being given to establishing a period for interested parties to formally declare their interest in applying for a new gTLD.

ICANN is publishing for comment aspects of a draft model for Expressions of Interest and Pre-Registration for new gTLDs (hereinafter, "EOI"). This model requires those parties interested in submitting an application for a new gTLD to submit certain basic information as an Expression of Interest. Submission of the data will also serve as a pre-registration for those intending to submit gTLD applications. Such data will be used in consideration of certain remaining issues prior to the opening of the application process. An outline of the model for proceeding with an EOI process is included in this paper, with a discussion of each element in detail.

This is a model EOI/Pre-registration process for public comment, and is subject to change based on feedback received.

In summary, the model for discussion entails the following:

- Responses to the request for EOI are mandatory for eligibility to submit a gTLD application in the first round. Subsequent application rounds are open to any eligible applicant.
- A deposit of US\$55,000 is required for the EOI, as a credit against the evaluation fee.
- The deposit is refundable if the New gTLD Program does not launch within a specific time period.
- Participants are notified that there will be subsequent changes to the Applicant Guidebook, and that there are limited terms for refund based on such changes. It is the intention to conclude many outstanding issues (for example, discussions of issues concerning vertical integration and the IDN-3 character issues) prior to initiation of the EOI process, through the publication of draft version 4 of the guidebook.
- A fully executed communications campaign, intended to ensure global awareness of the program, will precede the opening of the EOI process.
- A specific set of information concerning the participating entity and the intended string is collected from EOI participants.
- The participant and string information will be made public.

The model, along with public comments received, will be submitted to the Board at its next meeting. If approved, staff would work to implement the model as an operational process. However, the EOI process would not begin (i.e., participants would not begin submitting information) until after publication of draft version 4 of the Applicant Guidebook in 2010.

Background

The ICANN Board passed a resolution in October directing staff to study the possibility of an EOI process, and present to the Board an analysis of the risks and benefits at the December 2009 meeting.¹

To facilitate consideration of these issues, ICANN posted a set of conceptual questions² relating to the EOI topic as items on which community feedback was specifically requested.

ICANN presented a report to the Board at its 9 December 2009 meeting, including the public comment received by the time of the meeting. The Board subsequently directed staff to post a draft EOI model for public comment, and return to the Board with the results of comment and the recommended model, for consideration by the Board at its February 2010 meeting.³

¹ Whereas, work continues on the remaining issues that need to be resolved by the community prior to the launch of ICANN's next round of New gTLDs;

Whereas, ICANN encourages comment on Version 3 of the Draft Applicant Guidebook for New gTLDs (on which the comment period remains open until 22 November 2009);

Whereas, the ICANN community has expressed interest in evaluating a process for calling for "expressions of interest" from organizations with serious interest in applying for a new gTLD;

Whereas, such a call for "expressions of interest" could give ICANN and potential applicants important information about the level of interest in the program and likely strings to be applied for, which could assist the resolution of the remaining issues and assist ICANN in planning for the coming new gTLD round;

Whereas, as a part of the IDN ccTLD Fast Track process, ICANN issued a call for expressions of interest, which assisted ICANN and the community in planning the launch of IDN ccTLDs;

Whereas, the community has requested that ICANN conduct further economic studies related to new gTLDs; it is noted that receiving "expressions of interest" (possibly with some financial deposit) will likely contribute to a better understanding of: 1) the economic demand for new gTLDs; 2) the number of gTLDs that are likely to be applied for; and, 3) relevant industry data;

Resolved (2009.10.30__), the ICANN Board directs staff to study the potential impact of a call for formal "expressions of interest," and provide a plan for Board consideration at ICANN's next Board meeting, in December 2009. The plan should include possible options and a risk analysis relating to the proposed action.

² <http://icann.org/en/announcements/announcement-11nov09-en.htm>

³ Whereas the ICANN Board has passed a resolution in Seoul directing ICANN staff to study the potential impact of a call for formal "expressions of interest", and provide a plan for Board consideration in December 2009, including possible options and a risk analysis relating to a proposed action;

Whereas ICANN staff has presented an analysis of the potential benefits of an Expressions of Interest (EOI) process, and has developed a preliminary EOI process model for ICANN Board discussion;

Accordingly, staff is publishing the enclosed draft model for comment. It is not an operationally complete plan, i.e., it is not intended to include all details that would be needed for implementation of a functioning process. Rather, it contains the basic parameters recommended for moving forward with an EOI process, with an opportunity for public comment. If implemented, a full detailed process for the model would be published.

Public Comment

In all, there were 92 comments / responses to the questions posted regarding the establishment of an EOI round. They were all thoughtful, clear and, when taken in summary, provided fairly clear direction for the contents of this proposed EOI / pre-registration model. A summary of the body of public comment has been posted separately. The comments addressed the themes outlined below and led to the conclusions discussed in this paper.

Process Concerns

Most of the comments regarding process have to do with the amount of time allotted for public comment. As pointed out, this is because there were fewer than 45 days between the launch of this first public comment period on the EOI and first Board discussion of it. This created a bifurcated comment period where the Board could not take all the comment into account before discussion.

The comment states that more public comment and discussion is required. There is universal agreement on that.

In its direction prior to the writing and posting of this model, the Board instructed that all comment through the end of the comment period be taken into account, including that received after the Board discussion. This model is based on consideration of the comment received to date, but the model is for additional comment and amendment. Public discussion will continue following the publication of this draft model in accordance with the comment received.

Opposition to EOI

Whereas the board discussion has resulted in some preliminary determinations pending formalizing the EOI process model and obtaining public comment on those determinations;

Resolved, (2009.12.09.05), ICANN staff is hereby directed to record and publish for public comment the risks and considerations considered by the board and the ICANN Board's determinations on the EOI process model. Staff is also directed to continue undertaking additional analysis on those determinations.

Resolved, (2009.12.09.06), ICANN staff shall summarize: a) the public comments resulting from the publication of the risks and considerations considered by the board, b) ICANN Board's determinations on the EOI process model, and c) the additional staff analysis undertaken; and present that summary to the ICANN Board. Further, along with that summary ICANN staff shall present a proposed EOI process model for approval at the ICANN Board's February 2010 meeting.

There were several comments (the minority view) stating that an EOI round should not be launched, indicating that the EOI will not address the overarching issues. In addition, some comments indicate that an analysis of available market capital indicates that demand will not exceed 500 applications. Therefore, according to the comment, the EOI process will not provide data to resolve demand and root scaling issues beyond that which is already known. Therefore the EOI cannot serve any useful quantitative purpose, i.e., the EOI is not necessary for ICANN to address root-scaling concerns. While the EOI results would not on their own resolve any of the issues, they could provide a reasonable context for considering these issues and bringing them to a close.

The comment indicates that the EOI may benefit a group of participants that engage in ICANN's processes to a greater extent than Internet users generally. This set of comments indicates that a comprehensive communications campaign must be executed prior to the launch of an EOI process. This is especially true if the EOI is mandatory, i.e., a pre-requisite for participating in the first application round of the new gTLD process. Accordingly, the proposed model includes a four-month EOI communications campaign.

There are real concerns that publication of the strings will trigger discussion about contention sets, issues regarding "standard" or "community-based" applications, or lead to stability concerns. In the event there is an EOI exercise, there will not be the capability in place at the time to resolve objections or contention. There may be extensive public discussion regarding aspects of the strings, and an avenue to collect comment will be provided. However, it must be made clear that evaluation and objection processes will not occur until the new gTLD application process is formally launched.

There is also concern that the EOI will delay the ultimate goal, that proceeding with an EOI phase will only distract from and be a roadblock to the real task at hand – completion of the Guidebook and launch of new gTLDs. Fortunately, a number of processes under development for launching the new gTLDs can be leveraged to manage the EOI process.

Comments suggested that an EOI process will increase uncertainty for businesses, communities and investors, who will be asked to commit before knowing the final guidebook rules. These comments indicate that as many of the Guidebook issues as possible should be settled before the EOI is conducted, particularly those regarding who may participate and which strings are eligible. The resolution of a number of issues (e.g., vertical integration, 3-character IDN requirements, etc) is a pre-requisite to launching the EOI process.

A comment indicated the EOI could subject ICANN to litigation from parties who missed the opportunity to participate in the EOI, from participants who want a refund, and from parties pursuing legal action because the final rules changed the game and are adverse to their interests. Expected mitigation of litigation risks, in relation to these concerns, will occur through a combination of a robust communications campaign, clear EOI model guidelines, and a clear refund policy.

Support for EOI

There were many comments (the majority view) supporting the EOI in concept. The central theme was that an EOI process would expedite opening of the new gTLD application round. Importantly, these comments were accompanied by specific recommendations for conducting the EOI process as described below.

EOI Requirements

Many comments focus on the purpose of the EOI process and ensuring acquisition of useful data. In response to the question “How do we ensure that participation in the EOI indicates to the desired level of confidence that the number of applicants is less than, or more than, [the] limit on the resource to be allocated?”, comments indicate that participation in the EOI process should be a mandatory prerequisite to applying for a gTLD in the first round. Otherwise, the data gathered would not be accurate or useful and would not reasonably inform operational readiness. Comment indicates that the exercise should inform operational readiness. This also seems to indicate that participation in the EOI should be a prerequisite for first round inclusion.

This led to the conclusion that this effort should be called an EOI / Pre-registration process.

The clear majority view is that the EOI should be mandatory. (The minority view is that making it mandatory is unfair because entities wanting to participate in the new gTLD application round when it is launched will be excluded.) These comments clearly indicate that if the EOI is mandatory, a comprehensive communications campaign must be fully executed prior to its launch so that parties are not excluded.

Comments indicated that other useful data that could be gathered in an EOI exercise: string contention sets, “standard” or “community-based” applications, or applications triggering a registry services stability investigation would be data useful to ICANN. There is a balancing, however, that must occur. Since no formal evaluation can take place before the new gTLD application process itself is launched, conclusions cannot be drawn from the mere publication of expressions of interest. In the draft model published below, only the strings themselves are requested from participants. Analysis of whether the application is community-based, or if registry services require review, is left for the actual application at a later time.

The clear majority view is that a substantial fee should be required for participation in the EOI process. If the fee is low or zero, demand will be inflated by speculators seeking to reserve “slots” at little cost. The minority view is that participation should be voluntary and no fee be required so that there is no barrier to entry. (Alternatively, one comment suggests no fee for geographic or community-based applications). The conclusion for developing the model is that the deposit amount should be set at a level to prevent mere speculation, but limited below the point where the cost creates a barrier to entry.

Comment also indicated that, to limit speculation, the deposit should be refunded only in very limited circumstances: i.e., if the new gTLD application round is not launched. There is less support for refunds in cases of changes to Guidebook, string contention, or withdrawal.

Information to be collected and published

The information to be requested varied from comment to comment but nearly all suggested the preliminary set of questions asked of applicants in the Guidebook, i.e., the applicant name, contact information, and some subset of Guidebook questions 1-16, 18, 20, 21. Most comments stated that all information should be published.

Most comments suggested that the requested strings should be collected and published. Other comments suggested that strings should not be published, but that ICANN should release statistics that would inform the primary question of the number of strings that will be requested, demand, delegation rate and operational readiness issues.

Should participants commit to a go-live date? There was a split of opinion on this issue and the question did not seem to raise much interest. Therefore, at this time, this question is not included in the EOI model.

Changes to the Guidebook

Comments suggested that changes should be anticipated and the risk should be borne by participants, but all possible sections of the Guidebook should be settled prior to the EOI / pre-delegation start and changes should be minimized. At a minimum, issues regarding who can apply (e.g., vertical integration) and what strings are available for delegation (e.g., relaxing the 3-character requirement) should be resolved. One way to do this would be to publish version 4 of the Guidebook prior to the EOI round. This would work to ensure continued work on resolving issues required for closure and minimize the potential for change after the EOI / pre-registration is conducted.

Developing the Model: Objectives and Approach

Staff has used a particular set of objectives, derived from the original Board resolution, as a basis in developing this draft model. Namely, a successful model would:

- Gauge the level of interest in the program;
- Determine the likely strings to be requested;
- Assist with the resolution of open issues; and
- Assist in operational readiness planning.

It is expected that the EOI/Pre-registration process will assess demand to contribute to economic analysis, and inform operational readiness plans. In addition, the level of demand as determined by the EOI round may add the final bit of certainty to resolution of the root zone scaling issues, where the work will essentially have been completed. Therefore the EOI/Pre-registration exercise should be an accurate indicator of application volumes.

Many of the public comments received on the preliminary set of questions expressed support for the EOI in concept, and included recommendations on the specifics of the model. Other comments indicated lack of support for executing an EOI process at all, doubting its efficacy in providing valid data or helping to resolve issues and move the process forward. Thus, the possible broad approaches considered by staff were:

- Execution of a “firm” EOI round (i.e., requiring accurate participant data and a deposit, as a prerequisite to submission of an actual gTLD application): this type of EOI will provide data to resolve, with certainty, demand, operational, and possibly other issues. It is believed that this option will be the most time-efficient and allow the most flexibility for ICANN to work with the results of the EOI process.
- Execution of a “soft” EOI (i.e., voluntary or containing minimal data): while providing the perception of movement, this approach will provide no certain data and will consume additional resources (time and money) on the part of both ICANN and potential participants, with no real value added. It could also result in a perceived bias toward EOI participants in the eventual application process.
- Proceeding without an EOI. Under this approach, no information will be required from applicants until the actual submission of new gTLD applications. If this option is pursued, the remaining program implementation work will continue at the current pace, in accordance with the existing project plans.

It is recommended that the first model be pursued, to best fit the objectives of the EOI and the needs of the program at this stage. It is believed that the “firm EOI” option will yield valuable data that would not be obtained with the other options. If information collected is to be used as a basis for decisions affecting many community interests, the soundness of the data is critical. While there are risks inherent in carrying out this step, these can be mitigated in preparatory work, and the value is believed to outweigh the potential problems in the long term. Public comments have raised several concerns with this approach, including institutional confidence issues, timing concerns, and the difficulties of participation in an uncertain process. These are real risks to be considered: the model has been constructed with an idea to mitigate the most serious risks to the greatest extent possible. A discussion of the risks identified and considered is included in a subsequent section of this paper. Community comment is encouraged in this area.

It is important to note that staff has not paused or slowed ongoing work on the new gTLD program due to consideration of the EOI/Pre-registration process. Work continues to move forward on outstanding issues such as trademark protection, IDN string requirements, vertical integration, and other areas, as well as operational readiness work including panel procurement and system development.

Risks considered

The most significant risks relate to perception and the implementation process, particularly as the policy recommendations are still in the process of being implemented, and there is still uncertainty about how some of the issues will be resolved. The EOI/Pre-registration process should anticipate and mitigate these risks, e.g., by reaching resolution on the highest-impact issues, defining clear terms for participation, and engaging in strategic messaging on community expectations.

1. Possibility of transfers. There is a risk that entities will buy and transfer application “slots” prior to the opening of the application process, although this can be partially mitigated via the design and drafting of the terms and conditions. The fact that gTLDs can be “transferred” after delegation

generates much the same result -- the EOI process could shift these scenarios to an earlier stage. It is possible that such transfers may be beneficial and in the public interest. See for example discussion of the Coase theorem at <http://demonstrations.wolfram.com/TheCoaseTheorem/>. The key task for ICANN is to ensure that transfers are carried out in a way that does not harm the security or stability of the DNS.

2. Perception risk: moving too quickly. There is a concern that moving forward with an EOI process will be perceived as moving forward without having resolved the overarching issues. This risk can be addressed generally with messaging to convey the need to get it right before launching. There is precedent for an EOI process with the launch of the IDN ccTLD Fast Track.
3. Perception risk: moving too slowly. Complaints about program delay will certainly come from some parties, although several of the comments from declared participants indicate they are willing to tolerate some limited delay if the EOI process helps to resolve some of the outstanding issues.
4. Distraction risk. It is possible that the EOI process would bring additional real or perceived complexities to the surface, especially if the process includes publication of the intended strings. Parties may seek to change the rules to block particular strings, or promote them. An outcome might be to exacerbate the existing disagreements among stakeholder groups, create the argument for more delay, and raise concerns about the effectiveness of the process to address perceived issues. There is a risk of the entire program getting fully bogged down in the EOI process while resources are diverted from resolution of other issues. Mitigation includes managing the process to a time certain conclusion or keeping some aspects confidential. (An alternate perspective is that it would be better to surface any such underlying issues at this stage rather than after the application process has been launched.)
5. Deposit concerns. If a deposit is required for participation in the EOI, there is possible criticism that ICANN is taking funds in return for nothing, although this can be partially addressed by holding the funds in escrow and considering the deposit as a credit toward the eventual evaluation fee, and by creating clear and fair refund procedures. There will also be comments that the fee amount is difficult for smaller (e.g., community-based) investors.
6. Additional costs. Duplication of tasks (and creation of new ones) can be mitigated by treating the EOI round as a pre-registration for the new gTLD round. Incremental costs may be incurred by the lag between the EOI and new gTLD rounds requiring some task repetition. Interest income from deposits could help to offset additional costs. Additional cost analysis may indicate the requirement for additional fees.
7. Creation of conflicts for ICANN staff and Board members. The existence of a pool of interested parties may create awkward appearances with declared participants who work with ICANN staff and Board members in other contexts, for instance, creating the perception of having greater access. This is particularly a risk if string information is part of the EOI materials. This risk factor is

somewhat dependent on how the program is structured.

8. Timing risk. Timing risk is an inevitable result of a community/stakeholder decision-making process and the complexity of the issues. If ICANN makes a commitment to refunds after the end of a time certain, it can be construed that ICANN will rush the remaining implementation steps in order to keep revenue. Lengthening the period (say from one to two years) will relieve this pressure but result in the negative outcome of delaying the opening of the application period for an unacceptable (to many) period of time.
9. Subsequent amendment of Applicant Guidebook. Amending the Guidebook subsequent to the EOI may materially alter circumstances for potential participants. The policy recommendations state: "All applicants for a new gTLD registry should ... be evaluated against ... criteria, fully available to the applicants prior to the initiation of the process." Mitigation for this risk includes resolution of certain open issues prior to the EOI round (e.g., vertical integration and IDN 3-character rules) and full notice to participants that there will be subsequent amendment to the Guidebook in other areas. This risk is also partially mitigated since the plans for resolving the remaining open issues will occur in an open and public process.
10. Litigation risk. An EOI/Pre-registration process includes the risk of possible legal action against ICANN for outcomes resulting from the process. As discussed above, the potential for litigation arising from the EOI process is mitigated by clear notice of potential change, terms and conditions for participation. This is a critical area of risk; however, the various factors of the model construction affect this risk significantly.

The above is a concise summary of the risks identified through public comment and staff analysis. The risks discussed here are addressed in multiple aspects of the model, as noted below.

Aspects of the Model

The draft model includes the following provisions:

1. Responses to the request for EOI are mandatory for eligibility to submit a gTLD application in the first round. Subsequent application rounds are open to any eligible applicant.

Participation in the EOI process is necessary to participate in the first new gTLD application round. This approach tracks with the objective of the EOI process to obtain reliable data for use in connection with issues such as root scaling or operational readiness. With this goal, it makes most sense to structure the EOI as a condition for submission of a new gTLD application.

Making the EOI mandatory creates a requirement to conduct the same type of formal communications contemplated for the opening of the application submission period, so that there is global awareness of the opportunity to participate. The communications campaign is discussed separately below.

Voluntary participation might eliminate some of the risks entailed by a mandatory round, such as liability due to subsequent changes to the implementation plan (this is the reason the proposed approach calls for settling most sections of the Applicant Guidebook before the EOI process begins). It was noted in the comments that the EOIs used for the 2000 proof-of-concept process and for the IDN ccTLD Fast Track worked well without being mandatory; however, these exercises took place in different circumstances as the 2000 process was prior to the community experience gained in the last nine years, and the IDN ccTLD Fast Track process was limited to countries and territories, a smaller group of participants with a less commercially-focused space.

It would be expected, in a voluntary process, that many first-round participants would choose to keep their plans confidential for business reasons and not participate. Those who participated in a voluntary EOI would be at a potential disadvantage if additional players could enter later. A voluntary approach would mean significant work for participants and ICANN without the benefit of usable data to inform operational readiness or other discussions. A mandatory EOI will lend greater certainty to the process and reliability to the information received.

2. A deposit of US\$55,000 is required for the EOI, as a credit against the evaluation fee.

If, as described above, the EOI process is to generate data that will drive validation of implementation work and operational readiness, it is expected that participants must show an appropriate level of commitment. Absent a deposit of a sufficient amount, participants could provide false or misleading submissions regarding their intentions for a new gTLD, opening the process to frivolous submissions and gaming scenarios designed to gain various competitive advantages. This would undermine the reliability of the data to be used for the purposes intended. While it is understood that it may be difficult for prospective participants to collect funds for a process that is uncertain, a deposit at this stage (to be credited toward the eventual evaluation fee that accompanies submission of the application) will give weight to the process and the submissions.

The starting point for this recommendation is the non-refundable portion (US\$55,000) of the evaluation fee (currently US\$185,000). The deposit would be considered as a credit against the eventual fee that accompanies submission of an application (making the EOI fee essentially a pre-registration fee). The EOI deposit will also be non-refundable, except in circumstances explicitly defined and agreed to by participants.

The fee should not be so high as to be a barrier that would discourage investors with shorter payback periods – i.e., smaller players. The fee should not encourage gaming: not so low as to encourage speculation or a secondary market. US\$55,000 is reasonable as it is based on existing Applicant Guidebook terms and seems to strike a balance between two negative outcomes, that a low fee might result in gaming and a high fee might be a barrier to entry.

Unless financial analysis demonstrates that changes should be made, the deposit does not result in any additional funds to ICANN. The deposit is partial payment of an amount that would be collected from all applicants at the time of application submission.

It is recognized that a deposit of this amount may not be tenable for some prospective participants, given that the timing is not certain and there will be a few remaining issues to be settled. However, it is critical that ICANN move forward toward resolving uncertainties according to an appropriate timeline. Those that do not participate in the EOI and first round are in no way precluded from applying for a new gTLD in a future application round, which will occur shortly after the first.

3. The deposit is refundable if the New gTLD Program does not launch within a specific time period.

Under this draft model, the fee is non-refundable except in explicitly specified circumstances. One such circumstance is that the new gTLD program does not launch within a defined time period (e.g., 18 months from the closing date of the EOI submission period).

Refunds based on changes to the Applicant Guidebook subsequent to the EOI are not recommended. Such an allowance would lead to costly, time-consuming debate and disagreement over the materiality of changes and areas impacted. However, certain key provisions that significantly affect an entity's decision to participate would have to be settled prior to EOI launch. These include, for example, vertical integration and a rule relaxing the 3-character requirement for IDN strings.

The EOI request documentation will contain caveats, terms and conditions indicating that the program is in development and that refund requests based on the changes are generally not accommodated. A refund based on changes would be appropriate only in very limited circumstances, for example, if a change invalidates a string that would have been valid according to the Applicant Guidebook at the time the participant submitted its EOI response.

In the event of a refund, some portion of the deposit will be retained to cover administrative costs resulting from the EOI process. It is expected that the administrative costs would amount to no more than 5-10% of the currently recommended deposit amount.

4. Participants are notified that there will be subsequent changes to the Applicant Guidebook, and that there are limited terms for refund based on such changes. It is the intention to conclude many outstanding issues (for example, discussions of issues concerning vertical integration and the IDN-3 character issues) prior to initiation of the EOI process, through the publication of draft version 4 of the guidebook.

Solutions to certain key open issues are a prerequisite to initiation of an EOI process. In particular, vertical integration and IDN three-character issues are dependencies that must be resolved prior to accepting expressions of interest because of their effect on potential

applications. It is likely that community discussion and other developments will continue to drive other modifications to the Applicant Guidebook, so that additional areas will be substantively complete prior to the initiation of the EOI process. It is expected that draft version 4 of the Applicant Guidebook will be released before any EOI responses are accepted, so that participants will have the most complete and reliable information available.

In a public, multi-stakeholder comment process, some iterative changes on specific areas should be expected between draft version 4 and the final version of the guidebook. However, the intent is to close on as many open issues as possible prior to the EOI process, to offer greater certainty to participants.

Some of the issues are unknown and will impact the willingness to participate. This is to be mitigated to the extent possible by closing issues and minimizing the areas that need to be subject to change. The EOI must be clear: that there will be subsequent changes to the Guidebook, which portions of the Guidebook are subject to change, and that there are limited terms for refund (i.e., refunds are not available based solely on changes to the guidebook).

5. A fully executed communications campaign, intended to intensify global awareness of the program, will precede the opening of the EOI process.

Given that participation is mandatory for submission of a new gTLD application in the first round, it is critical that ICANN intensify the global awareness of this window of opportunity. A situation where those that are already well-informed on the process will have an advantage and those less informed are excluded from participation is unacceptable. Accordingly, implementation of this model would require re-allocation of communications budget to an earlier stage. A draft of the New gTLD Communications Plan is available at <http://icann.org/en/topics/new-gtlds/draft-communications-plan-oct09-en.pdf>. A revised version of the Draft Communications Plan will be available soon.

As required by the GNSO recommendations, the communications campaign would take place for a minimum of 4 months. The campaign would include a variety of activities, to be published if the Board approves this model.

6. A specific set of information concerning the participating entity and the intended string is collected from EOI participants.

It is recommended that participants be asked to answer questions 1-14 in Applicant Guidebook: Evaluation Questions and Criteria (<http://www.icann.org/en/topics/new-gtlds/draft-evaluation-criteria-clean-04oct09-en.pdf>). This includes:

- Contact information for the participating entity,
- Proof of legal establishment and good standing for the participating entity,

- Disclosures concerning the participant’s background, and
- The requested string and associated IDN information.

An EOI would therefore be useful as a pre-registration process, enabling an early start on the due diligence portion of the evaluation and the capacity needed for this.

Participants will provide strings, as this will accurately assess the number of unique strings requested, and may demonstrate that most strings are non-controversial. Knowledge of the strings could further inform operational readiness work: for example, strings could indicate qualifications needed for evaluators, or indicate likelihood of use of dispute resolution processes and types of disputes most likely to occur.

Inclusion of the strings creates a requirement for additional system security for ICANN due to risks resulting from possible leaks of information. This is addressed by leveraging the existing security requirements under development for the TLD Application System.

A number of comments suggested that ICANN should collect additional information as part of the Expressions of Interest and Pre-Registration, for example, a declaration of whether the requested string is a geographical name (question 21), and a response to the community-based questions (18-19). While this information could be of interest in some respects, it is not definitive information since ICANN will not be performing evaluation tasks based on the information received in the EOI. Disputes over whether a particular string is geographical will be contentious, but there will be no resources in place to reach an informed outcome. Similarly, debates over whether a particular participant should be considered community-based, in the absence of the remainder of the application, will not be a good use of resources or serve to advance the implementation process.

7. The participant and string information will be made public.

This is an issue that has required careful balancing. There is a range of options for publication of data received from the expressions of interest; however, full transparency of all information collected is the preferred option in accordance with ICANN’s commitments. Unlike the IDN ccTLD Fast Track EOI, ICANN is able to publish string information. If not, would create significant risk for ICANN to hold business confidential information securely.

The risk that publication of the strings will lead to pressures on or conflicts for ICANN Board and staff members must be carefully managed. Participants may try to create changes to the process to facilitate their application or block others. They will also attempt to effect changes to the Guidebook as it reaches completion.

Inclusion of the intended strings risks conflicts with contracted parties and other ICANN stakeholders. It will lead to pressures to amend the Guidebook (e.g., new categorization or new grounds for objection), and the need to address requests from parties to change their

strings. For these reasons, it is the intention for the Guidebook to be as functionally complete as possible before ICANN receives any information from participants.

Publication of strings will be seen by some as the de facto start of public comment and objection processes, inducing potential intervention of governments on specific strings, and exerting pressure to start contention negotiations and objection processes before the application process has actually opened. Therefore, publication could result in additional delays to the program (identification of additional implementation and policy issues) and create conflicts for ICANN staff in its relations with participants in day-to-day matters. ICANN will create a channel to collect comment on the published information. This will be accompanied by a clear statement that ICANN will not respond to or act on such comment until the gTLD application submission process is underway.

Disclosure of strings could discourage participation due to the need for participants to keep plans confidential; however, it is expected that those who participate in the EOI process are prepared to declare a commitment, and will accommodate this step in their plans. All participants will be on a level playing field in this respect, since they will all disclose the same information.

The alternative proposal, not publishing strings, has some advantages as it would tend to drive the focus of the discussion of the data toward numbers in the context of economic analysis, operational readiness, and root zone scaling, avoiding issues of support and objection for particular strings. Collecting and publishing additional demographic information (e.g., designation of strings as community-based, geographical, or IDN) could provide more transparency into the process in the absence of the strings themselves.

However, publication of strings reflects a fully open and transparent process, in line with the Affirmation of Commitments. Full transparency of the process is also the best way to mitigate litigation risk, an area which represents a large part of the risk involved in conducting an EOI/Pre-registration process.

Prospective participants cite additional benefits to publishing strings, such as early opportunity to resolve contention, being able to firm up investment and marketing activities, and other advantages. It should be noted that participants wishing to resolve contention situations early would do so based on a presumption of contention sets – ICANN will not have performed any evaluation on the strings nor created contention sets out of the information submitted, so the opportunity would be most useful in the case of strings that are identical.

It is likely that some participants would announce their strings publicly even if not included in the EOI or published by ICANN.

Costs of the Model

Estimated costs for execution of the EOI process are relatively low, with some overlap to outlays that were already accounted for in the program budget. These include:

- Development of infrastructure for an online registration system (already being done as part of application interface build, with minimal modification for use in EOI process).
- Communications. The EOI would essentially shift the timing and focus of communications efforts, adding incrementally to expected costs.
- Document drafting and review. To mitigate several of the risks highlighted above, the EOI documentation must be carefully drafted and reviewed. There could be some additional legal review costs, while staff time is already allocated to the program.

It is expected that the administrative costs would amount to no more than 5-10% of the currently recommended deposit amount. Interest income from deposits could help to offset these additional costs. If additional analysis indicates that there will be complexities resulting in significant costs, the fee structure can be revisited before the EOI/Pre-registration process begins.

Next Steps

This model, with possible changes based on public comment, will be submitted to the Board for consideration at its February 2010 meeting.

The recommended sequence of events is:

- Work will continue in parallel on the issues of vertical integration and IDN string requirements, with solutions for these and other issues expected to be published in draft v4 of the Applicant Guidebook. Publication of draft v4 of the Guidebook is a prerequisite to moving forward with the EOI process.
- Upon approval of the EOI model by the Board, ICANN will execute a focused communications campaign leading up to the EOI process. This campaign will continue for at least four months, in line with GNSO advice.
- Operational readiness for the New gTLD Program continues to move forward and will be leveraged to manage the EOI process.

All of these steps must be completed before the EOI process can be launched.