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Subject: [Ext] updated RySG Re Fee Offset proposal

Hi Akram, Cyrus and Xavier,

On behalf of the gTLD Registries Stakeholder Group (RySG), attached please find our updated proposal to offset new gTLD Registry Fees. This continues the discussions we began at the GDD Summit in Los Angeles, and addresses concerns raised in the previous iterations.

We realize you'll need time to review and digest this proposal, and hope that we can schedule a follow-up call to address any questions or concerns in the coming weeks.

Best, P

Paul Diaz

Chairman, Registries Stakeholder Group

RySG Proposal to Offset New gTLD Operator Registry Fees

Background

ICANN projects in its Fiscal Year 2017 Budget that by the end of the New gTLD Program it will hold excess application fees of US\$96.1M.¹ Essentially, ICANN projects that the revenue from the US\$185K application fees will exceed ICANN's actual and finally anticipated expenses by over US\$96M. This "surplus pool" exists because ICANN set fee levels conservatively and anticipated only 500 applicants. Because ICANN assessed the application fees solely on a cost-recovery basis, we believe that the participants of the New gTLD Program should have first right to propose ways to effectively use their application fee surplus funds.

In the interest of adhering to the cost-recovery purpose of the 2012 excess application fees and in furtherance of ICANN's mission, the Registries Stakeholder Group (RySG) proposes that a portion of the 2012 excess application fees be used right away to offset registry fixed fees owed to ICANN. The RySG shares ICANN's New gTLD Program commitments to competition, choice and security, and believes that this proposal is consistent with those goals. Moreover, the proposal enhances the ICANN Strategic Plan's mission to "support the evolution of domain name marketplace to be robust, stable and trusted."²

ICANN has a fiduciary duty to return the surplus application fees to registry operators. The RySG recognizes ICANN's reluctance to settle accounts before the smoke clears from the 2012 round and all the gTLDs are delegated and yet, ICANN is sitting on nearly \$100M in applicant money that could enhance competition and consumer choice. If ICANN is unwilling, or unable, to return the excess funds before all of the current round TLDs are delegated, then we ask that ICANN consider this interim proposal that will help achieve the same goal, while preserving the vast majority of the funds.

Note: While many registries may be experiencing the financial challenges described below, many registries are not. All registries will benefit from increased competition and awareness.

Challenges

Currently, new gTLD registries all are required to pay an annual \$25,000 "registry fixed fee." In addition, new gTLD registries that complete over 50,000 transactions in any quarter, or over four consecutive quarters, must pay a "transaction fee" of \$0.25 per name.

Registries that are not operating under the new gTLD contract do not have to conform to the same fee structure. In particular, they do not have the same registry fixed fee.

As of today, only 63 new gTLDs have registered in excess of 50,000 names and there are literally many hundreds with fewer than 10,000 registrations.³ A new gTLD registry operator with 1,000 names must pay ICANN \$25 per domain name each year, a 5,000 name registry must pay ICANN \$5 per domain name each year, and a 10,000 name registry must pay ICANN \$2.50 per domain per year,

¹ See 2017 Budget at Section 5.3 -- <https://www.icann.org/en/system/files/files/adopted-opplan-budget-fy17-25jun16-en.pdf>

² See ICANN Strategic Plan at Section 2.3 (<https://www.icann.org/public-comments/op-budget-fy17-five-year-2016-03-05-en>).

³ See nTLD Stats (<https://ntldstats.com/tld>).

all while trying to compete against legacy gTLDs whose operators pay just \$0.25 per domain name.

These challenges are especially daunting for new gTLD Internationalized Domain Names (IDNs). To date, only three such IDNs -- .网址 ("web address"), PYC ("Russian") and .信息 ("knowledge") – have over 50,000 domains under management (DUM).⁴ In fact, only 8 IDNs are in the Top 100 new gTLDs in terms of DUM, and the 90 currently delegated new gTLD IDNs average only 8,109 registrations – down to 5,392 if you don't consider .网址 (where over 99% of its names are registered to the back-end provider). The low volume of registrations can be partly attributed to lack of consumer awareness, which has been stymied by under investment in IDN marketing.

Fee structures that limit new registries ability to effectively compete on price and the lack of awareness and integration for IDNs is clearly detrimental to the ideals of promoting competition and innovation embodied by the New gTLD Program, and further detrimental to enhancing the robustness and stability of the domain name marketplace – one of ICANN's strategic goals.

Proposal

Our proposal addresses these challenges in phases.

First, we propose that registry operators of all delegated new gTLDs receive a 75% credit for their \$6,250/quarter Fixed Registry Fee. Upon approval, this \$4,687.50/quarter offset would last for four consecutive quarters, and would be eligible for renewal based on ICANN approval.

The total outlays would depend on the number of eligible registries, but would be a fraction of the almost US\$100M in the excess application fee pool. For example, 900 delegated gTLDs only would draw from the excess pool at a rate of \$4.219M per quarter or \$16.875M per year.⁵

Second, the RySG is acutely aware of the need to focus on reducing the costs for registrants and end users, and to increase global awareness and universal acceptance of new gTLDs. In the long run, all stakeholders in the new gTLD ecosystem – registries, registrars and end-users, not forgetting ICANN itself – would benefit from cost reductions and awareness building. We therefore also propose that ICANN create a fund, to be seeded with US\$3M at start-up, to promote universal awareness of new gTLDs to the general Internet user community, and universal acceptance of new gTLDs across the Internet. The money should be earmarked for active campaigns and outreach, rather than salaries and studies. We urge ICANN to help us build the internet of the future by assisting registries in helping end-users all over the world access the internet in all languages.

These measures combined would support ICANN's mission to promote competition for the public interest and operational interoperability of the internet.

Why Now?

Applicants paid ICANN their application fees over four years ago. They waited and waited for their applications to be processed and some still are waiting due to no fault of their own. All the while, they had to pay staff, incur other expenses, and many had to start repaying lenders. As described by

⁴ Ibid.

⁵ The RySG is open to proposals that achieve a similar result but that comply with any accounting rules to which ICANN must adhere.

the .KIWI registry operator over two years ago, many new gTLD registry operators believe ICANN fees have hampered their success and put them at a competitive disadvantage.⁶

The fee structure itself does not reflect the reality of the market new gTLD operators find themselves in. The Fixed Registry Fee is a steep hurdle for all operators and as described above, impacts smaller operators particularly hard. Whilst operators who are not signatories of the new gTLD contract do not have to bear the burden of a fixed fee, this is imposed on all new gTLD operators who are already placed at a competitive disadvantage due to their products being much less well known by the Internet user. This "double whammy" effect becomes even greater as TLDs reach the threshold of 50,000 transactions and trigger the \$0.25 per transaction fee.

The per transaction fee is the only one that runs across gTLD operators, be they signatories of a new gTLD contract or not.

As a construct of the new gTLD contract only, the Fixed Registry Fee contributes to an uneven playing field between those who have signed the new gTLD contract and those who have not. Reducing this fee would help all new gTLD operators regardless of their business model or registration volume.

So the time is now to help new gTLD registry operators instead of continuing to compound this problem by burdening them with additional excessive fixed fees during their formative years -- all while ICANN is sitting on close to US\$100M in excess application funds. ICANN should use the excess for the benefit of the parties that paid the fees in the first place and help them provide competition, consumer choice, and benefit to the domain marketplace and its users.

Consumer awareness of new gTLDs is not as great as anticipated and ICANN has not funded any kind of consumer awareness campaign. A number of gTLD operators are struggling. Instead of having these funds sit idly by, registries would instead be able to use these amounts to run their own consumer awareness campaigns in their own communities.

We are proposing drawing down on less than 20% of this fund over the next year, so there is absolutely no risk of using too much too quickly. There still will be US\$80M or so available to ICANN above what has been required to cover the costs of new gTLD applications. By accepting the proposal now, ICANN is in a position to help these entities when such assistance could have the greatest impact.

ICANN should not wait until the last gTLD is delegated to make a difference. Deferring action could reduce the diversity of registry operators in the marketplace if some new gTLD registry operators believe it is necessary to leave the industry. Waiting another two years before the round closes would only exacerbate that risk.

Why Only Registry Operators?

This proposal does not preclude ICANN from considering at a later date some form of refund to all applicants. Indeed, the Registry Stakeholder Group welcomes such consideration. Rather, the proposal accounts for only a small percentage of the enormous excess application fund that should be used right away to support ICANN's goals and mission by providing welcome fee relief drawn from a massive "surplus pool." Only those applicants that actually are registry operators are able to promote competition and consumer choice and can help enhance the domain name marketplace's

⁶ http://www.circleid.com/posts/20141003_new_gtld_fees_threaten_the_diversity_of_the_name_space/

robustness and security, and only registry operators could provide benefits to end users of domain names.

Moreover, applicants that do not become registries already have the right to receive significant refunds of their application fees pursuant to the Applicant Guidebook Section 1.5.1, ranging from US\$37,000 to US\$130,000. In fact, according to the ICANN FY17 Budget, ICANN projects providing in excess of \$52M in refunds to unsuccessful applicants and \$0 to successful ones.⁷

It is perfectly appropriate for ICANN to refund part of a successful applicant's fee as it does for the unsuccessful ones, especially as only actual registry operators can help ICANN meet its strategic goal to promote competition and consumer choice, as well as enhance the domain name marketplace.

End Users Benefit

Lower fixed costs would give registries more ability to provide lower prices to end users and compete more fairly with legacy registries. As we stand now, if a registry needs to pay ICANN US\$10 per name, how could it reasonably be expected to compete on price with legacy TLDs? Additionally, this fee waiver would help end users by adding to the security and stability of these new registry operators – a more successful gTLD means a more secure one.

Registries obviously have a high level of interest in making sure the Internet user is aware of new gTLDs. But so does ICANN, as the originator of the new gTLD program. Yet there has so far been a lack of investment from ICANN on Universal Awareness of new gTLDs. Our proposal seeks to redress this to some extent, and only assigns a very small percentage of ICANN's new gTLD proceeds to the task, thereby keeping ICANN's financial situation very safe.

These proposals are built upon direct industry feedback on the hurdles facing new gTLD Registry Operators in today's market. They are designed to help ICANN succeed in its goals of providing true consumer choice and competition, as well as supporting a stable, trusted and robust domain marketplace. If these goals are achieved, ultimately it will be the end users that benefit from having much wider range of naming options on the Internet being offered through a stabilized system where the load on the industry to fund ICANN is fairly, and evenly, distributed.

⁷ See 2017 Budget at Section 5.2 -- <https://www.icann.org/public-comments/op-budget-fy17-five-year-2016-03-05-en>.