

Date November 10, 2013

Steve Crocker, Chair, ICANN Board of Directors
Cherine Chalaby, Chair, ICANN New gTLD Program Committee

Copy to ICANN Secretariat

RE: Smaller Applicant Position Paper

Dear Mr. Crocker, Dear Mr. Chalaby,

As one of the many smaller applicants in ICANN's New gTLD program, Stable Tone Limited has drafted the attached position paper in the hope that Small-Lot applicants can be better identified, and looked after, in this program.

We hope some of the suggestions and ideas stated in this paper can be considered by the ICANN Board and the New gTLD Program Committee as they continue to work to make new gTLDs a reality and to remain true to the program's original community-stated ideals.

We appreciated your consideration of this paper and would be delighted to work with you on defending the smaller new gTLD applicants.

Best regards,

Jason Du
CEO
Stable Tone Limited

POSITION PAPER

STABLE TONE LIMITED

November 2013

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Overview

Introduction

Simply put: smaller applicants are at risk in ICANN's new gTLD program.

This position paper is an attempt to highlight some of these risk areas. It is not meant to be a comprehensive list of all the pitfalls that lie in the path of smaller future registry operator, but rather an exploration of some of them aimed at stimulating discussion (and hopefully action).

The positions and suggestions made in this paper are partly based on our own experience as a small-set registry applicant, and also on conversations and exchanges with other applicants, some of similar size and scope, others not.

Through these, we have found there to be a common thread of difficulty. As we have worked to prepare for our own TLD launches, we have found ourselves limited by certain aspects of the program that are either unclear or limiting in our efforts to successfully launch and operate our TLDs.

The new gTLD program was created in part to foster diversity in the pool of TLD operators. Yet today Small-Lot applicants face a stiff challenge in getting to the finish line successfully. Also, because they must often concentrate their resources on their applications alone, they are not able to participate in the ICANN processes as much as some of the larger portfolio applicants who know and understand these processes extremely well.

If politicians only listen to representatives of big business, then the laws they work on will probably not be well suited to the smaller entrepreneurs. As it works to launch the new gTLD program successfully, ICANN faces the same challenges of not only listening to the views of the people who are loudest or have the resources to come to ICANN meetings in person.

This paper is an attempt to bring the smaller applicant's voice to bear as well. Their situations and needs are often very different, and in bringing them to the community's attention, we also want to be a positive force of suggestion and suggest some pathways that might help smaller applicants succeed.

We also hope that some of these ideas might mature into actual implementation changes which, if made in a timely manner, will better ensure that the new gTLD program retain a satisfactory mix of large portfolio and small-set TLD operators once all the first round application delegation work is complete.

About this position paper

This position paper is submitted by Stable Tone Limited, applicant for two Chinese character IDN TLDs which can be translated as Dot WORLD (ICANN application ID 1-1708-19635) and Dot HEALTHY (ICANN application ID: 1-1708-88054).

For any questions or follow-up comments to this paper, please contact Jason Du, Stable Tone Limited CEO, at [jasonscdu<AT>aol.com](mailto:jasonscdu@aol.com).

Surviving the new gTLD application process

"The new gTLD program will create a means for prospective registry operators to apply for new gTLDs, and create new options for consumers in the market."¹

The premise of the new gTLD program is a move away from the historical predominance of a very small number of gTLDs to an ocean of possibilities for would-be operators and Internet users alike.

Serving target communities

For entities such as Stable Tone Limited, the new gTLD program opens up new horizons through the use of IDNs and the strong focus on servicing non-ASCII users that the program carries.

When we first heard of the program, these messages resonated strongly with us and convinced us to wade into what was then completely uncharted waters. We had no prior knowledge of ICANN, the registry-registrar ecosystem and the constantly changing environment that is the process of developing and implementing gTLD policy at ICANN. Needless to say we have found this environment challenging, but we have done our level best to conform to each and every requirement.

From our point of view, the possibilities created by these new namespaces make the struggle to complete a gTLD application worthwhile. We are convinced that our two TLDs will benefit Chinese-speaking Internet users by augmenting their browsing experience far beyond what the current 22 incumbent gTLDs allow.

We would expect most other applicants that are new to the world of domain name registry management to be motivated by the same drive to bring new opportunities to targeted communities of Internet users, be they language and cultural based communities or groups sharing the same business interests.

To finish first, you must first finish

For many of the smaller applicants, building and running a viable TLD is like running a marathon. From the idea to finish line, there are pitfalls aplenty. Convincing themselves and their backers (financial, technical or otherwise), devoting countless hours to defining and refining the TLD project, working through the program's rules and regulations • just surviving is quite a challenge.

Yet the smaller applicants foster the very diversity that the new gTLD program was supposed to be designed to bring to the Internet. For them, the starting point is the idea. The DNS

¹ ICANN gTLD Applicant Guidebook <http://newgtlds.icann.org/en/applicants/agb>

experience comes later. These prospective new gTLD operators are applying true entrepreneurial mindset to pushing open the existing boundaries of the Internet's global namespace. In so doing, they are also building strong communities around them.

Having an idea, getting a project started and getting support of a target community is a major step towards fulfilling a new gTLD ambition, but it's not enough to guarantee success. Entities that are not domain industry incumbents, and do not have a large number of strings to fall back on if one of them runs into problems, will sometimes find it just too difficult to continue. The recent withdrawal of DotGreen Community Inc.'s application for •.GREEN, is clear evidence of this.

Here was a very popular application that carried with it the hopes of an entire community. Through its honest approach, DotGreen had managed to become synonymous with the string it was pursuing despite •.GREEN, having been applied for by others. Unfortunately, they have been forced to withdraw.

According to DotGreen Community Inc.'s website², this bid was defeated by the ICANN application process itself: "Despite grass roots efforts and collaborative support from Environmental leaders of the Green Community, three Internet industry registry companies have submitted competing applications to DotGreen Community's application to the Internet Corporation for Assigned Names and Numbers (ICANN) for the .green TLD. ICANN, bound to a multi-stakeholder process of governance is moving to award the .green TLD to the highest bidder at auction. We feel strongly that this will not produce the correct outcome for a publicly supported environmental Top-Level Domain. It is not possible for The DotGreen Community, Inc. to move forward in an auction scenario that will award .green to the highest bidder."

DotGreen Community Inc.'s decision to withdraw was met with dismay. "A lot of people are surprised, shocked and even quite upset that the DotGreen application has been withdrawn," wrote one blogger in a post published by domain industry news site Circle ID³. "It's not the only application for the string, which is why it was withdrawn, but to many people in the ICANN space it was the applicant everyone associated with the string. The unfortunate reality of the new TLD process is that money speaks more loudly than anything else. Applicants with deep pockets can beat off applicants with good intentions."

Ours is not to judge which applicant should be successful in its bid for a contested string, but we do feel strongly that applicant size should not predetermine this outcome. Of course, it is up to each individual applicant to secure whatever financial backing it needs to succeed, but we think DotGreen Community Inc.'s plight is a good illustration of why smaller applicants need to be supported. It would only take detail tweeks in the new gTLD application process and rules to help them stay in it for the long haul.

Similar situations are aplenty. Take the DotKids Foundation for •.kids, for example. Whilst being the only applicant that qualified for the Financial Assistance Program, it is faced with

² <http://www.dotgreen.org/welcome/>

³ http://www.circleid.com/posts/20131012_dotgreen_is_no_more/

challenges from commercial giants when .kids, goes on the auction block for the highest bidder in a few weeks.

This is not just an issue of raising funds for the auction process. It is about the process and implementation of the new gTLD program itself. For example, consider the smaller applicants for .home, and .corp, who are probably shocked by the recent announcement that they will be deferred indefinitely. Although we understand the decision was made on technical stability grounds, nothing in the AGB reasonably suggested that such a significant change in the rules might be introduced more than 2 years after the AGB for round-one was approved by the ICANN Board.

Defining Small-Lot applicants

To defend smaller, TLD applicants, we must first define what we mean by the term.

There is no attempt to define applicants by size, experience, means or reach in ICANN's Applicant Guidebook⁴. However, most people would probably accept that a "smaller applicant" is one with few TLDs, probably with less financial backing and less experience, whether that experience comes from people on the applicant's team who have long been involved in the domain industry, or from the applicant itself being a long-standing member of that industry.

These criteria are in part subjective. Financial strength alone also does not seem a fair measure, otherwise entities that are giant corporations in their own business sectors and have been drawn for the first time to the domain industry by the new gTLD program might be excluded from carrying the "small applicant" label even though they are only applying for one string and have no prior experience of registry operations or the ICANN ecosystem. Also, if we consider that smaller applicants add to the "cultural diversity" of the new gTLD program, their level of finance is irrelevant in that regard.

Experience is another criteria that seems ill-fitted to defining what we consider to be a smaller applicant. How to gauge that experience? Is it that of the applicant's staff? Is it the back-end registry solution used? Although smaller applicants might be expected to seek the support of a third-party back-end provider, this is by no means an iron-clad litmus test. Some smaller applicants may elect to build their own systems and conversely, some larger applicants may prefer to use an external provider.

The only objective criteria for defining "smaller applicants" therefore seems to be the number of TLDs under management, and hence we suggest the introduction of the term Small-Lot Applicants, in contrast with what is now commonly referred to as Portfolio Applicants. Below is a summary of research we undertook to identify what might allow us to differentiate between Small-Lot and larger Portfolio applicants. The data was current at the time our research was carried out (September 2013), including any applications withdrawn, but is naturally subject to change.

⁴ <http://newgtlds.icann.org/en/applicants/agb>

We considered that the defining attribute of a Small-Lot applicant is the number of TLDs they actually end up with, not the number they initially requested. Furthermore, at this stage we have no way of determining how many other TLDs applicants will actually be awarded once they have cleared all the stages of the program's validation, contracting and delegation phases.

We therefore classified applicants by number of "uncontested" applications they are responsible for, as shown in Figure 1 below. For reference, we have added our own applications at the bottom of this chart.

Applicant	Country	Total apps	Contested	Uncontested
Donuts	US	299	158	141
Amazon	US	74	35	39
Charleston RR	US	96	58	38
United TLD	US	25	9	16
Afilias	IE	29	14	15
TLDH	UK	64	50	14
Verisign	US	14	1	13
Famous Four	GI	59	48	11
Uniregistry	KY	52	44	8
Radix	AE	29	27	2
Starting Dot	FR	4	2	2
Punto 2012	MX	3	1	2
XYZ.com	US	3	1	2
TLD Registry	FI	3	1	2
Merchant Law	CA	8	7	1
Top Level Dsgn	US	9	8	1
Whatbox	US	6	5	1
TLD Assets	US	3	2	1
Dot Registry	US	10	9	1
Stable Tone	HK	2	0	2

Figure 1. New gTLD applicants by uncontested applications.

The clear cut-off point Figure 1 shows between Uniregistry at 8 uncontested and Radix at 2 provides a good baseline for our definition of what a small applicant is. Considering that it is below 10 and above 0, we suggest using a guideline of 5 TLDs or less to define Small-Lot applicants. Our data shows that all the entities we would consider to be Small-Lot applicants are currently closer to 2 guaranteed TLDs. But allowing for them "winning" a couple more TLDs, either through normal attrition in the applicant pool or one of the new gTLD program's contention resolution processes, means 5 appears the more accurate measure of what a small applicant is.

Supporting Small-Lot applicants

Having defined what constitutes a Small-Lot applicant, we can now suggest specific areas in which this type of new gTLD program participant might usefully be supported.

In this paper, we discuss examples of problems faced by Small-Lot applicants where, by simply paying special attention to the smaller of its new gTLD applicants, ICANN and the community can help bring about the worthy goal of introducing more diversity and better service to distinctive communities that this program promises.

It is important to remember that when a Small-Lot applicant has successfully passed the Evaluation phase, it has in essence done what was asked and expected of him under the new gTLD program's rules. The very rules upon which the applicant built its TLD project and business plans in the first place. Introducing additional complexities post Evaluation is putting these applicants under significant risk of stalling at the last mile.

Large Portfolio applicants face the same concerns, but with different means. Because they have applied for a larger portfolio of TLDs, they are better equipped to weather additional delays and complexities by scaling them across their applications. Smaller registrants may find themselves in situations where they are forced to adapt their business and pricing models significantly as the timeline they initially build their project on stretches and forces them to differentiate even further from the homogeneous approach applied by larger portfolio applicants.

Because of their need to leverage their investments through economies of (large) scale, the Portfolio Applicants in the new gTLD market are akin to large department stores offering "lowest common denominator" products designed for mass production. In comparison, Small-Lot applicants are like boutique retailers. They cannot compete on price or volume alone, but instead offer more specialised services for more targeted communities.

Just as big-box retail chains have completely overhauled the consumer landscape in the real world, where independent small-box businesses have had to be supported so that consumers can continue to enjoy the benefits they bring, so we believe it is key that the same approach be applied to the new gTLD program so that big-box applicants do not end up turning the Internet namespace into a huge mall leaving very little space for the independent gTLD operator.

Delay management

For Small-Lot applicants, even the smallest of delays and changes can be deadly.

When your whole business venture depends on a couple of TLDs f or even just one f delays and rule changes brought on by last-minute program modifications cannot be leveraged across a whole swath of applications.

Unfortunately for the small applicant, the new gTLD program seems to be hardwired for delay. These come in many forms and have many causes.

There are, for example, administrative delays where applicants can only watch in disbelief as the smallest of change requests (even correcting a spelling mistake in a company denomination) take at least 2 months to be completed. At the same time, this process is usurped by some applicants to completely change their originally submitted business models (e.g. from a closed to open registry model) after having the benefit of seeing other applicant,s proposals for particular applications, without being disqualified.

There are also policy delays. The recent debate over new gTLD security risks has yielded a potentially complex solution which smaller applicants may have trouble implementing and which is dependent on further studies and analysis, or on the applicant agreeing to block names until further notice⁵.

Then there is the issue of GAC Advice. For example, at its September 28, 2013 meeting, ICANN's New gTLD Program Committee (NGPC) did not provide a definitive way forward for many applications which are covered in some way or form by governmental advice. Taking one such group, the applications covered by the "Category 1 Safeguard Advice", there the NGPC said that it "is working on an implementation plan for the advice and will inform the GAC of the details upon approval by the NGPC."⁶

In all these instances of added delays and increased complexity, we believe ICANN could implement better exception mechanism for Small-Lot applicants that would allow them, for instance, 1) not to be stalled by mundane change requests or 2) blocked by the need to await determination of wide-ranging governmental advice.

Increased flexibility

The launch phase is crucial for a TLD's success, whatever the performance indicators used to measure that success. To be sure of a good finish, it's crucial to first get a good start.

Getting one when you're a Small-Lot applicant is, like everything else, a challenge. Unique ideas may require unique business models and launch plans that do not fit easily into the standard startup scenarios built around traditional TLDs.

One such example of this is Section 3.2 of Specification 5 of ICANN's Registry Agreement⁷. This section allows registry operators the use of 100 names as follows: "Registry Operator may activate in the DNS at ALL Levels up to one hundred (100) names (plus their IDN variants, where applicable) necessary for the operation or the promotion of the TLD." (•) "At Registry Operator's discretion and in compliance with all other terms of this Agreement, such names

⁵ <http://www.icann.org/en/news/announcements/announcement-08oct13-en.htm>

⁶ Annex to NGPC resolution 2013.09.28.NG02

<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-28sep13-en.pdf>

⁷ Registry Agreement, October 16, 2013 version:

<http://newgtlds.icann.org/en/applicants/agb/agreement-approved-16oct13-en.pdf>

may be release for registration to another person or entity."

We are supportive of this provision, added after the original Registry Agreement was published on June 4, 2012⁸, as it allows applicants to plan for specific launch programs to support their TLD and cater for niche categories of applicants. Existing gTLDs operating on a contract which predates the new gTLD Registry Agreement have been allowed to implement such programs which have been dubbed "pioneer" or "founder" programs. In its Rights Protection Mechanism Requirements⁹, ICANN calls them Qualified Launch Programs (QLPs).

These programs are crucial to smaller applicants because, through cooperation with high-visibility registrants, they can raise much-needed awareness for the TLD in question. Providing smaller applicants with greater flexibility than the 100 name limit would allow them to create bespoke QLPs better suited to the versatile TLD models smaller applicants represent.

ICANN already has a presumption of approval for programs that are "substantially similar to an Approved Launch Program previously approved by ICANN under similar circumstances"¹⁰. We recommend that a presumption of approval for larger than 100 QLP names also be added for smaller applicants.

Whilst a volume limit may make sense for the universal model used by a larger applicant, Small-Lot applicants may actually be hindered by it if their intent is to develop alternative registry models aimed at communities with much more specific needs than that of large Portfolio registries. In that case, we contend ICANN's benchmark should not be volume, but value. Rolling out a QLP aimed at a community that may only have a few hundred members may help a smaller applicant differentiate itself whilst at the same time allowing that community to better promote itself on the Internet. Moreover, the limitation on number is not the best protection for IP rights holders either. What is even more important is an appropriate challenge process for rights holders to challenge allocations in these •pioneer, or •founder, programs to curb abusive activities.

It is exactly this kind of flexibility that smaller applicants can help reach if afforded enough support in the new gTLD program.

Level the playing field

Managing contention is a real issue for smaller applicants. Once again, the Dot GREEN example comes to mind when looking at situations where applicants that may only have one string find themselves in contention with much richer and much more powerful entities with many applications.

⁸ Approved Applicant Guidebook, June 4, 2012: <http://newgtlds.icann.org/en/applicants/agb/base-agreement-specs-04jun12-en.pdf>

⁹ Final RPM Requirements, September 30, 2013: <http://newgtlds.icann.org/en/about/trademark-clearinghouse/rpm-requirements-30sep13-en.pdf>

¹⁰ Final RMP Requirements, September 30, 2013, Section 4.5, subsection 4.5.2.

For the sake of diversity, would it not be better to give smaller applicants a more even playing field when they come up against larger portfolio holders in the contention process? The new gTLD program has several mechanisms for resolving contention, the last of which is an auction. We are not disputing the principle itself. Clearly, when all else has failed, there has to be a solution of last resort.

However ICANN's auction process, where applicants bid and the winner pays ICANN, has not proven convincing to many. This is why the idea of private auctions *f* ones where the applicants themselves get together and determine their own rules *f* has evolved. However, we contend that private auctions are designed by, and for, larger applicants. They have nothing to lose in the private auction process. If their finances allow it, then they win the TLD. If their tactics dictate otherwise, then they "sell" the TLD to someone else by losing the auction, increasing their own war chest in the process.

But for a smaller applicant, such tactics are simply not possible. If you are applying for a very limited number of TLDs, losing even one may be disastrous. Small-Lot applicants aren't in it to make money out of TLD application auctions, they got involved to champion an idea through the use of new gTLD.

So Small-Lot applicants may be spooked by private auctions and go on to the ICANN auction. To give them a better chance at being successful, ICANN might consider changing the auction mechanism to pay the proceeds of an auction to the losing applicant, when that applicant is a Small-Lot applicant, or allow a Small-Lot applicant to pick another uncontended TLD string similar to their original proposal. For those with more than one application, this might bolster the remaining application(s) chances as well. Such a rule might also deter larger applicants, who are guaranteed to obtain many other strings and therefore have less to lose in the auction, from taking on smaller players or arbitrarily lifting the auction prices against competitive strings they already obtained without contention. And as under the current model, ICANN does not get the auction money anyway, this system would not hurt the organisation. That being the case, isn't it much better to use the auction system to boost TLD diversity by giving the smaller players a better chance? Although the Preliminary Auction Rules¹¹ published at the end of October 2013 do not include such provisions, these are subject to change and could be updated to reflect Small-Lot applicants' needs and specificities.

Increased visibility

Getting their TLD is not the Small-Lot applicant's only concern. Succeeding in making it viable long-term is also key. In the new gTLD landscape, where there will be a much greater number of TLDs competing for Internet users' attention, marketing and communication plans around TLDs will be crucial.

Each applicant has its own responsibility to come up with the right level of marketing and PR. But smaller applicants may have limited means to devote to doing the right level of

¹¹ <http://newgtlds.icann.org/en/applicants/auctions/prelim-rules-31oct13-en.pdf>

marketing for their intended TLDs. In addition, the program's many delays may have impacted them hard and forced them to divert resources initially planned for marketing simply to remain in the race.

So far, the larger applicants have garnered a lot of media attention. That is only to be expected. Large brands or major investments being applied to new gTLDs are easier to focus on for the mainstream media. So whilst ICANN's communications plan has to be about the program as a whole, why not use it to the smaller applicants by spotlighting them as part of this plan?

Giving smaller applicants the media footprint they may not be able to achieve by themselves can only contribute to making the program as a whole a success. Having them fail because they weren't able to develop a large enough media presence would be detrimental to the program as a whole.

For example even in press releases or communication materials developed by ICANN, there has to be some •example, new gTLDs provided. The choice of the placement, size, etc. of those TLD strings could also be developed to better support Small-Lot registries.

Conclusion

In the real world, a lot of our focus goes to the major corporations that grab the headlines on a daily basis as the big success stories of our time. But the mainstay of our economies is actually the millions of small businesses out there that cater to our specific needs right on our doorstep.

In the new gTLD program, this entrepreneurial spirit is carried by the smaller applicants. By adding to the diversity of projects, ideas, innovations and communities that this forward-looking program is able to span, these smaller registry businesses are the mainstay of the evolving domain industry.

They deserve to be looked after. Because they aim to operate at most a few TLDs, they cannot leverage development costs across a wide range of applications. Nor can they guarantee financial backers a return on their investment through volume of TLDs alone. Just like their real-world counterparts, these DNS entrepreneurs must explore alternate routes to success and deploy a great amount of ingenuity to get there.

Giving them the flexibility to do so is good for them and the new gTLD program as a whole. Of course, larger applicants also play a key role in the program's drive to rewrite the Internet's namespace. But this ambition cannot rest on their shoulders alone. Smaller applicants enrich the program by allowing tens, if not hundreds, of communities and interests to be addressed in a culturally diverse way, with business approaches that are not uniform or based extensively on what domain industry has already done in the past. Today, the Internet is restricted to a small number of gTLDs. ICANN's community consensus driven program should help break away from that situation, not replace it by one where it's all about a small number of registry operators.

If they are properly supported, Small-Lot applicants will help different methods and mindsets flourish and reach the Internet user. The examples used in this paper, and the subsequent proposals, are possible ways of achieving this.

But recognising the need to help smaller applicants must happen now. We respectfully submit this paper in the hope that it will highlight the fact that, the more we wait, the more we risk seeing noble causes deprived of TLDs designed for them by like-minded DNS entrepreneurs. ICANN itself was born with a mission to bring an end to the monopoly that then existed on the Internet's biggest suffix: Dot COM. That ideal, to "introduce and promote" competition in the registration of domain names where practicable and beneficial in the public interest¹² is also prevalent in the new gTLD program where different business ideas, models, communities and scales must be actively supported so that they can coexist for the greater good of Internet users worldwide.

¹² ICANN Bylaws, section 2 "core values" #6: <http://www.icann.org/en/about/governance/bylaws>