November 16, 2012

ICANN
Fadi Chehade, CEO
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Re: New gTLD Application Process

Dear CEO Chehade:

I am writing this letter not as an applicant for a new gTLD string but as a concerned member at large who represents a substantial internet community. I have personally been involved with internet domain issues since the mid 1990's and my company, Commercial Connect LLC, submitted an application for .shop during the initial gTLD offering in 2000. We are the only remaining applicant that has been completely approved throughout the application process without being delegated.

ICANN's board asked us to come back at the next gTLD application phase whereby it would consider giving us delegation. Since 2000, we have continuously adapted our application and gained community support to offer the .shop as a secure eCommerce offering. We remain cognitive of ICANN's vision and have strived to participate and abide by its processes and therefore resubmitted our application for .shop in 2012.

Similar to RosettaNet's model, we have built a community from differential and highly competitive entities and have brought these companies' ideas and concerns together via a new representative body. Submitted with our application were the names of over 1,100 significant and relevant supporters who recognize us as a community representative and leader. These supporters represent in excess of $666 (USD) Trillion in annual sales.

We have identified concerns that we believe should be addressed to save significant time and effort on the part of ICANN as well as the 1900+ applicants of new gTLDs. We may be able to offer a different perspective that may assist ICANN in this process. This is aligned with the analogy of looking in from the outside versus within. We, as a community entity, are not entrenched in consulting and providing TLD services to anyone other than .shop and feel we can provide a unique view to ICANN but at the same time acknowledging that we do have a major stake in this process.

It seems there are two major issues that need immediate attention. By addressing these issues, you might discover vast opportunities for enhanced operational quality and cost efficiency.

The first issue is that of string similarity. Throughout the process, there has been an understanding that no new gTLD would be released that had similar meaning, sound, or appearance to any existing TLD. This has roots in protecting the end user from being confused about which TLD should be used and lends credibility to the intent of the process. The premise of keeping the internet a safe, secure and user friendly environment for all stakeholders supports this rule.

It seems that many influential entities and individuals have purposely tried to ignore and/or change this. It is clearly contained in the guidebook and should not be ignored nor downplayed for financial gain.

If, in fact, our promise is to make all decisions in the public interest then we must adhere to the guidebook and any deviation or re-interpretation that prioritizes financial gain over public interest is in critical need of assessment.

If this issue gets the focus it deserves, many other painstaking processes could be avoided. In the last webinar, there were several participants asking why ICANN is not being transparent on string similarity and why they have not provided information as to how this is being decided and when the results will be presented. The entire process and procedures for this subject seem to simply be non-existent.

If this matter is addressed, many controversial and troublesome issues might be avoided altogether. These include Trademark Clearinghouse, application queuing, and the cost and effort of purchasing of tickets (in person) for 1900+ applicants.

After many discussions and research, Commercial Connect LLC and eCommerce World Retailers along with various community members, ICANN members, applicants, consultants and academia collaborated and performed a mock similarity analysis on the new gTLD applications. Since there have been no defined rules/processes proposed, published, nor provided, this analysis was difficult. However, assuming a marginal allowance, you may find the results useful.

This analysis removed some 647 unique branding applications as well as some 89 unique geographic applications and assumed that these TLDs would be granted as stated in the guidebook. This leaves only 966 applications for the "generic" TLDs.

We reviewed the strings for the 966 applicants and grouped by their meanings. For the purpose of the analysis, we treated the IDN the same as other applications. Of the 966 applications, only 56 appeared to be unique. In other words, there were only 56 words or "meanings" that were applied for.

While some may disagree as to which groups the strings belonged, they hopefully would agree on how they could be confused with other strings. For instance, .auto and .car have the same or similar meaning. On a much broader scoper, .shop, .store, .buy, etc. would confuse the end user as to which TLD would be appropriate for eCommerce.

If we look at the number of TLDs that need to be analyzed instead of the number of applications, the near insurmountable task suddenly becomes much more manageable.

With only 56 TLDs in contention and 37 of these are community applications, (community represents 66% of the applications) there remains a few as 19 that may have to go to auction. While it is understood that some of the community applicants may not qualify for community status, the more relevant data indicates that the numbers are rapidly decreasing for contention sets.

Once community applications are determined, the size of these communities can be calculated. With this data, ICANN can process the applications in an order whereby the largest community would go first thus serving the most people the soonest while always remembering to not leave any application unconsidered. This provides an intrinsic mechanism for the order of processing applications into the root.

Since community has always held priority status with ICANN, community evaluation and determination would logically be the next step after the string similarity analysis is completed. We do realize that this is what ICANN has always intended this logical order but some influences seem to stray from this plan by identifying other issues that may or may not become relevant if proper order is observed.

The result could mean that only 19 TLDs remaining with threat of going to auction. I have attached a copy of our analysis for public perusal and invite any and all comments. We may have not completed the exact analysis ICANN had in mind but this is a nice jumping off place to gain insight on how we might bring this application round to an impressive conclusion. This analysis has been circulated in certain working groups and does exist on various websites.

The process for these final few applicants can be determined also by the number of expected applicants they will serve.

By the time these methods will be considered, the Los Angeles ticket assembly would have occurred then this queuing would be already be in place thus no need to alter the process at stage.

By doing community evaluations and publishing the results immediately after confusingly similar string analysis, many non-community applicants would be able to accept their loss and process their request to receive a partial refund. Ordering all applications by number of people served would eliminate the queuing issue. Since branding TLDs only serve one corporate entity and would suffer no financial nor operational shortfall, they would logically be at the end of the application consideration process. These are not new ideas nor were they highly contested.

This process takes the public into consideration instead of financial incentives and provides a fair and equitable solution to many issues.

By viewing this as a Utilitarianism type process which would take into account the number of people benefitting first but not leaving anyone out, would seem to be a universal acceptable good.

With this new information, ICANN might also recognize the uselessness of bringing 1900+ applicants to Los Angeles for a drawing.

The next realization might be that if only 56 or so true generic applications will be delegated, the issue of flooding the root of an excess of 1,000 applications is now quashed. Transparency is restored and ICANN's processes are once again aligned to its mission.

At this point will the Trademark Clearinghouse still necessary? If many of the 56 TLDs are groups (20+) then at most only 36 would have innate concern to the business constituency. If 66% of these are community related, approximately 20 would qualify thus cutting the true generic TLDs down to only approximately 16 that the business sector can easily accept.

The second concern is the expedited decision that IDNs have been deemed to have some sort of preference over all other applications. We feel that this decision or consideration is seriously flawed. At first glance this seems harmless and keeps in line with ICANN's commitment of diversity. A closer look reveals a risk of harm.

While we all want a safe, secure and user friendly world wide web, it is essential to consider existing practices and structures. If there is either an existing TLD or a new applicant, the IDN should not get priority. This issue has been discussed for years and only community strings were to receive priority. In other words, the "Greater Good" principal applied. The most represented or the most served comes first unless there are extraordinary issues.

This issue of string similarity raises it head on IDN prioritization. If you gave preference to the IDN for .food in HANI script, then all other applicants for the English equivalent of .food would not be considered since they cannot be similar nor confusing. Therefore you essentially are giving undue preference to any non-English TLD at the expense of the English TLD applicants.

In addition, should an applicant apply for a Deva script of .org and they are not working with Public Interest Registry who operated the English version of .org we would essentially be creating two versions of the internet and again lead to confusion. It would seem that an application for a new IDN that has similar meaning to any existing TLD would have to be working with the original registry to share the database of registrants since in reality this is not a new TLD but a replicate version of an existing TLD. Since English the universal language, English TLDs should at least have equal consideration when evaluating new TLDs. IDNs should complement English TLDs not make English TLDs unobtainable.

The same holds true for eCommerce related TLDs. If an IDN was awarded for .shop or a similar string such as .buy, it would eliminate our chances of obtaining the community based application that has over 13 years of building support and developing our application into one of the most qualified in this round of applications. Would it be fair to allow a new company with less than a year to apply and be granted delegation on a project that so many have dedicated over a decade to support and promote?

This letter is written to open dialog and aid in alleviating burdens, helping to recognize possible issues and provide suggestions and/or solutions so that everyone has a fair chance for consideration. We have followed the rules for nearly 13 years and are hoping that they are not changing at the last moment to our detriment.

We are very much aware that many hard working individuals at ICANN and worldwide are involved in this process. We also realize that many thousands of hours have been committed to establishing processes and best practices. In all likelihood, ICANN's similarity results will closely match those of this mock analysis. Once ICANN has published its results, however, it appears there is no mechanism for dialog or dispute.

We all want to assist ICANN in building stakeholder consensus. It is our hope that this letter serve as a tool to open dialog and express genuine concern over this process. This is fundamental to achieving a successful outcome which will serve the public interest and maintains a safe, secure and user-friendly world wide web.

Sincerely,

Jeffrey Smith, CEO
Commercial Connect, LLC
JSS:csw

attachments