

## **Office of the Ombudsman**

**Case 12-00005**

**In a matter of a Complaint by NW**

**Report dated 8<sup>th</sup> March 2012**

### **Introduction**

This investigation stemmed from a complaint made by NW about the lack of publicity for the new gTLD program, in particular for him, as someone who resides in A, in the country B, but more widely as well.

### **Facts**

The essence of the complaint is that (as quoted to me in the complaint, with names deleted):-

“Please investigate the issue of unfairness in ICANN’s global outreach program. Some countries like B and S were not approached by ICANN as the same level ICANN did in England for example. ICANN is doing remarkable work and taking a huge under taking with the new gtld program, the geo tlds can have a real impact on some of our cities in terms of tourism and e commerce that have been valued in the 100s of millions of dollars in some cases a year. Cities like A are being put at a competitive disadvantage having to come to this process very late. please study this issue and if you find this to be true , please ask ICANN board to grant extension of the application window of 3 to 6 months so some people can complete the work” and further

“Icann never communicated with the (local person) clients or cities or had any media outreach. honestly, i suggest icann should issue press released in the (geographical location) and other places where is effort is not visible and give people time. One thing, i need to congratulate icann on the huge effort and work on the gtld program, but you said fairness is key. so a 3 month extention to allow someone interested to finish his work is fair even if a (local person) was there with you and did a bad job.”

### **Investigation**

To undertake this investigation I have looked at the ICANN publicity campaign, and examined the plans, outreach and reports on outreach for the program. I have also investigated and discussed the aims of the program. In particular, I have looked at the campaign in so far as B is concerned and the likelihood that sufficient notice of the program would have reached B. I have been provided with the relevant documents from the Communication Team as requested by me.

### **Issues**

The issue which I am required to investigate is whether the new gTLD program was unfair because no outreach was held in or near B.

## **Jurisdiction**

This is a matter where I clearly have jurisdiction to consider the complaint under the bylaws and in particular Section 3(2), and under the Ombudsman framework as approved by the Board of Directors<sup>1</sup>, as this is a matter relating to decisions, actions, or inactions by the Board and Staff of ICANN. Specifically the issue of unfairness in the outreach affects ICANN and supporting organisations

## **Facts**

The complainant says that the publicity campaign was not adequate because he did not become aware of the window to apply for new GTLDs. The concept of new GTLDs has been discussed over a number of years at ICANN meetings and through supporting organisation meetings. After the initial GLDs were set up, a few more were added, most notably being the very recent .xxx TLD. The current round was finally confirmed at the June 2011 ICANN 41 meeting in Singapore. The board decision to proceed was based on a considerable amount of discussion throughout the ICANN community, and was widely discussed at Singapore. The decision itself was covered on mainstream media such as CNN, BBC and other international news media.

This was followed by a campaign put into place by the ICANN communications team. It is important to note that the stated purpose of the ICANN communication team was not to solicit applications, but to communicate that ICANN had put into place a process for making applications.

The campaign has been outlined in a number of reports to the ICANN board, which have explained the basis of the publicity campaign and also recorded metrics for measurement of the impact of the campaign. In particular, there is a report "Initial report on new gTLD communications program" which outlines what has been done and the measurements.

Specifically there has been outreach to the (geographical location)<sup>2</sup>, and the materials have been published in multiple languages.

## **Reasoning**

The complainant's issue is that because he did not become aware of the campaign that the campaign was inadequate. I note however that his complaint was made before the application window opened, and that the window for making the applications closes on 29 March 2012. It is also well known that many of the leading players in this area have offered services to potential applicants and are making multiple applications for their customers.

In the course of this investigation I read as much as I could find about the new gTLD program and the history and development. The ICANN gTLD<sup>3</sup> site is valuable for that purpose, although I have

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<sup>1</sup> <http://www.icann.org/en/ombudsman/framework.html>

<sup>2</sup> <http://newgtlds.icann.org/en/program-status/past-events>

also looked at News Media reports as being outside of and independent of ICANN<sup>4</sup>. I have also specifically requested the material produced by the ICANN communications team for the purpose of publicity, which included plans, reports to the ICANN board and measurement of the impact. I have extracted part of that history, as it is a valuable reminder that the program has had a very long gestation.

It is important to note that the particular country where the complaint stems from, has a member appointed to the GAC and who presumably would be aware of the new gTLD program from the GAC communications. It is of course not the function of GAC to provide such publicity, but I am aware from the material which I have read, that GAC has taken a role in the program and in particular was interested in the use of country names and geographical names. That is important because this complaint was that the campaign was insufficient to let the complainant to know within sufficient time to apply for the city name which is the capital of the country where he resides.

Part of the problem may be that the GAC representative from this country appears not to have been active. Again however, I emphasise that it was not his function to publicise the program in his country.

It would not have been possible for ICANN representatives to travel to every country around the world to present the program. There has in fact been criticism from some quarters about the extent of the travel saying that it was excessive. Indeed the very basis of a company based on the Internet, is that online publicity would appear to be appropriate in any event.

Specifically I note that the program has been in development for many years. The whole decision took some years and was thoroughly discussed and debated. There were very strong advocates both for and against the program, and reading through the various websites which provide a contemporary commentary on ICANN, often in a robust fashion, the program is certainly controversial in the eyes of some. It seems logical therefore that anyone who had an interest in the domain name industry, would have been aware of the possibility that the program would come into force, and certainly the ICANN meeting in Singapore in June 2011 received international news coverage.

One matter which did trouble me was the possibility that information about the program could have been caught up in media censorship in B. The International Organisation, Reporters without Frontiers,<sup>5</sup> does express concern about press censorship in B. It is difficult for me to determine whether this would have affected publicity about the program. It is equally difficult for ICANN to become involved in an issue such as this in the context of a publicity campaign. But the fact of the matter is that the complainant had become aware of the program.

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<sup>3</sup> <http://newgtlds.icann.org/en/>

<sup>4</sup> <http://www.bbc.co.uk/news/business-13849135>, <http://www.bbc.co.uk/news/technology-13835997>, <http://edition.cnn.com/2011/TECH/web/06/20/domain.names.explainer/index.html?iref=allsearch>

<sup>5</sup> The reference is available but for reasons of confidentiality, I have not published this.

## Result

As a result of this investigation, I consider that there are a number of matters which are clear. The long period of time during which the concept of new gTLDs was discussed before approved, and the subsequent publicity campaign undertaken by ICANN, make it clear that ICANN has undertaken a thorough and professional approach to the publicity campaign. The metrics support the very wide reach of the campaign. The issue is whether the publicity campaign for the program was unfair to the complainant. His complaint is specifically that the publicity did not reach him in B and that this was unreasonable, and therefore unfair. The outreach which I have cited, and the report made to the board on the effectiveness of the campaign <sup>6</sup> make it clear that the campaign was thorough and adequate having regard to the resources available. It is unlikely that he was not aware of the campaign especially if he has an interest in Domain Name issues. His first contact was made before the window for applications opened. Since there are a number of players who have extensively advertised their ability to help applicants, this is not something he would have had to struggle with on his own. It is my determination that the campaign was indeed adequate, and that the complainant has had the ability to apply, and can still apply, and that there was therefore no unfairness. I therefore do not uphold his complaint.

The complainant also sought an extension of the program. I have no jurisdiction over this aspect, and if I considered this was an issue with fairness, then all I could do, would be to recommend such an extension. Because I find that the publicity campaign was adequate, then it is not necessary to consider whether I should make such a recommendation.

Chris LaHatte

Ombudsman

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<sup>6</sup> FINAL Interim metrics report on new gTLD communications

## Appendix 1

### History of new gTLDs

This is an extract from the ICANN Site

In 2005, ICANN's Generic Names Supporting Organization (GNSO) began a policy development process to consider the introduction of new gTLDs, based on the results of trial rounds conducted in 2000 and 2003. The GNSO is the main policy-making body for generic top-level domains, and encourages global participation in the technical management of the Internet.

The two-year policy development process included detailed and lengthy consultations with the many constituencies of ICANN's global Internet community, including governments, civil society, business and intellectual property stakeholders, and technologists.

In 2008, the ICANN Board adopted 19 specific GNSO policy recommendations for implementing new gTLDs, with certain allocation criteria and contractual conditions.

After approval of the policy, ICANN undertook an open, inclusive, and transparent implementation process to address stakeholder concerns, such as the protection of intellectual property and community interests, consumer protection, and DNS stability. This work included public consultations, review, and input on multiple draft versions of the Applicant Guidebook.