



The Internet Corporation for Assigned Names and Numbers

June 7, 2011

The Honorable Robert Goodlatte
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Goodlatte,

Thank you for the opportunity to provide additional information after the May 4, 2011 hearing regarding ICANN's new gTLD program before the House Subcommittee on Intellectual Property, Competition, and the Internet.

Below you will find ICANN's responses to Representative Coble's written question, as well as further information on questions raised during the hearing.

Please let me know if you have any further questions.

Best regards,

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Representative Coble's Written Question

Question:

ICANN continues to encourage brand owners to register and use top-level domains which correspond to their brand names. ICANN's rules, as set forth in the most recent iteration of the Draft Applicant Guidebook, do not provide the brand owner with the ability to wind down or close their brand registry on their own terms. Instead, these draft rules would allow ICANN to reassign or redelegate the brand registry to a third party without the brand owner's consent.

Since reassignment of a brand registry to a party other than the brand owner is likely to confuse consumers and damage the brand, why isn't ICANN providing the brand owner with the ability to wind down the brand registry rather than re delegating it to a third party? If the brand registry is re delegated, how will the owner be compensated for any dilution?

Answer:

The potential for a brand owner to operate a TLD corresponding with its brand name has been one of the ideas for innovation in the top-level domain name space that the community has brought forward during the years of discussion of new TLDs. Just as with community-based or geographic TLDs, ICANN has responded to community comment in refining the new gTLD program to address a wide range of potential registry and business models. The most recent Applicant Guidebook, posted on May 30, 2011, contains a new provision responding to community concerns similar to those raised within your question.

The ICANN Bylaws state that preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet should guide ICANN's decisions and actions. In pursuit of this principle ICANN identified the need to define processes to transition a new gTLD from one registry operator to another, the Registry Transition process. This process will ensure that a transition occurs in a secure, stable and reliable manner, while minimizing the impact on registrants and gTLD users, and providing transparency to the parties involved in the transition.

This initial Registry Transition process within the new gTLD program however, as pointed out by the community, did not address circumstances when the gTLD was solely for the benefit of the brand holder. As those comments were well taken, the Applicant Guidebook now addresses circumstances where Registry Transition is not necessary for the protection of the public interest and where ICANN would *not* transfer the operation of the TLD absent the Registry Operator's consent. The proposed Registry Agreement set forth in the Applicant Guidebook posted on May 30, 2011 states:

After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process; **provided, however, that if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) transitioning operation of the TLD is not necessary to protect the public interest, then ICANN may not transition operation of the TLD to a successor registry operator upon the expiration or termination of this Agreement without the consent of Registry Operator (which shall not be unreasonably withheld, conditioned or delayed).**

It is not up to ICANN to determine how Registry Operators will use new gTLDs. If one potential usage is for a company to apply for a gTLD for the sole benefit of the brand owner and no unaffiliated third party holds any registrations in the TLD, that Registry Operator has the ability to wind down operations as it sees fit and not open itself to the risk of a transition against the Registry Operator's consent.

Questions Raised During the Subcommittee Hearing

Question 1:

What is the most powerful, persuasive reason for the launch of new gTLDs? Why do we need to do this?

Answer:

The launch of new gTLDs will bring competition, innovation and consumer choice to the Internet. It will bring new protections to consumers (as well as brand holders and others) that do not exist today in the DNS. Within this safer environment, community and cultural groups are already anticipating how they can bring their groups together in new and innovative ways. Companies and consumers that do not use the Latin alphabet will be brought online in their own scripts and languages. Industries and companies will have the opportunity to explore new ways to reach customers. The years of community work in planning have produced a robust implementation plan, and it is time to see that plan through to fruition.

As the Subcommittee heard during the May 4, 2011 hearing, there is general support for launching the new gTLD program. All of the witnesses at the hearing testified that they were in support of a launch of new gTLDs. While my fellow panelists may have disagreed on the scope or timing of the launch, or noted their wishes for additional changes to be in place prior to the launch, each panelist offered compelling reasons to support the launch of the program. It is now time to move forward.

The launch of the new gTLD program arises as a result of ICANN's accountability to its bottom-up, multistakeholder model and adherence to ICANN's mission. The introduction of new top-level domains into the domain name system (DNS) has been a fundamental part of ICANN's mission from its inception, and was previously specified in ICANN's Memorandum of Understanding and Joint Project Agreement with the U.S. Department of Commerce.

How did that mission become Internet policy? The ICANN community has done an extraordinary amount of work towards the launch of new gTLDs. There have been two planning rounds in 2000 and 2003, which allowed a limited introduction of new TLDs. In 2005, ICANN's Generic Names Supporting Organization (GNSO) initiated a policy development process that culminated in 2007 with an overwhelming supermajority vote of ICANN stakeholder groups approving policy recommendations to guide the launch of the new gTLD program under consideration today. The ICANN Board approved those community-created policy recommendations in June 2008, and since then the community has been hard at work creating, commenting on, and refining the implementation of this policy.

At the hearing, I reported to the Subcommittee that there had been six versions of the Applicant Guidebook detailing the guidelines and requirements for the evaluation process, and 55 explanatory memoranda. On May 30, 2011, ICANN produced a seventh version of the Applicant Guidebook, accompanied by three additional explanatory memoranda. The current Applicant Guidebook provides further refinement to items that have been under discussion for years, and incorporates many additional areas of agreement with ICANN's Governmental Advisory Committee (GAC). Subject to final consultations at the upcoming ICANN meeting in Singapore, the new gTLD program is ready to move forward.

The launch of new gTLDs is limited. It is limited in time, through a firm application window. It is limited in delegation rate, to assure the security and stability of the DNS. After the launch of the first round of new gTLDs, a second application window will only be opened after ICANN completes a series of assessments and refinements – again with the input of the community. A launch of the program does not signal the end of ICANN's or the community's work. Rather, a launch will allow further improvements based upon experience.

Question 2:

Do ICANN employees have a financial interest in moving the New gTLD program forward in June? Will the program transform ICANN into a for-profit institution? Can you provide additional information on ICANN salaries?

Answer:

A June 2011 approval of the new gTLD program will not directly benefit any ICANN employee. As I discussed at the hearing, as the manager of the new gTLD implementation, some of my at-risk (bonus) compensation is based upon the timely completion of work to provide the ICANN community and the Board with information on the program that may serve as the basis for a Board decision on the program. This includes such work as meeting the Board-approved deadlines for the posting of the Applicant Guidebook and other program materials. Compensation is not dependent upon the Board's decision to approve the program. The timing of the approval of the Applicant Guidebook is a decision that rests with the ICANN Board. The Board set the timeline under which ICANN staff is operating.

ICANN has been careful in accounting for the new gTLD program. The ICANN community, as well as the policy itself, has advised that the new gTLD program should be revenue-cost neutral. Fees collected and costs expended for the operation of the program will be accounted for separately from ICANN's general funds. On May 17, 2011, ICANN posted its draft FY12 Operating Plan and Budget for community comment. The Draft FY12 Operating Plan includes a detailed breakdown demonstrating ICANN's budget with and without the launch of the new gTLD program within FY12. See <http://www.icann.org/en/financials/proposed-opplan-budget-v1-fy12-17may11-en.pdf>, at pages 59-60. More information regarding the budgeting and cost reporting for the program is available in a new gTLD program explanatory memorandum on the New gTLD Budget, at <http://www.icann.org/en/topics/new-gtlds/explanatory-memo-new-gtld-program-budget-22oct10-en.pdf>.

As a not-for-profit, ICANN salaries are set carefully in accordance with IRS rules and regulations. ICANN obtains advice from independent professionals with appropriate expertise in compensation arrangements for U.S. based non-profit tax-exempt organizations, including with respect to organizations possessing a global employee base. ICANN needs to remain competitive in its salaries, so that it can recruit and retain excellent talent. As discussed at the hearing, trillions of dollars of commerce now take place on the Internet, with millions of transactions occurring. The work of ICANN officers and staff is integral in maintaining the security and stability of this globally-interoperable system.

Extensive details regarding ICANN's compensation practices are posted publicly, along with regular updates on ICANN key employee compensation. The most recent posting on ICANN's compensation practices is available at <http://www.icann.org/en/financials/compensation-practices-01mar11-en.pdf>. The Compensation Practices document provides in depth discussion regarding the calculation of all ICANN employee salaries, including the calculation of at-risk or bonus compensation. In accordance with IRS regulations, ICANN also identifies on its annual Form 990 return its highly compensated employees.

There is a need to clarify one statistic regarding the salary of ICANN's CEO that was cited at the hearing and is incorrect if taken out of context. Both at the hearing and in other venues, a statistic has been circulated that ICANN's CEO, Rod Beckstrom, is "guaranteed" \$2 million dollars. To be clear, this is not Mr. Beckstrom's annual salary. The "guarantee" is in reference to the three-year term of Mr. Beckstrom's contract, which calls for an annual salary of \$750,000. As discussed in the Compensation Practices document, Mr. Beckstrom's salary is set by non-conflicted Board members, in compliance with IRS rules and regulations.

Question 3:

Will ICANN commit to create a block list of globally recognized trademarks?

Answer:

As Michael Palage discussed at the hearing, more than a decade ago, the World Intellectual Property Organization (WIPO) investigated the development of a global "register" for well-known marks, but was unable to identify objective, globally acceptable criteria. At that time, WIPO suggested that a quantitative measure, such as the number of countries in which a mark is registered, as the IRT (Implementation Recommendation Team) suggested, is not the proper basis for protection. Even if a mark is not registered on a global scale, WIPO pointed out, it may still be globally recognized. Creating objective criteria to determine what should be on such a globally recognized list, however, proved too difficult. ICANN relies on existing rights and official lists in creating its rules.

Additionally, much of the ICANN community does not support the creation of such a broad list. For example, ICANN's Governmental Advisory Committee (GAC) has advised ICANN that "it would not support the extension of the reserved list into a de facto 'Globally Protected Marks List' (GPML)." For the limited list of names that are currently reserved from registration, "the GAC supports ICANN's continued application of very tightly drawn criteria for inclusion on the reserved names list." The time, commitment and resources (from ICANN and the community) needed to create and maintain such a list would provide only marginal benefits as such a list would apply only to a small number of names and only for identical matches of those names.

Question 4:

Are there any proposed safeguards against the introduction of a new top-level domain containing terms such as racial epithets?

Answer:

The new gTLD program as set out in the Applicant Guidebook – the document that describes the application and evaluation procedures for the proposed new gTLD program – contains multiple safeguards against sensitive strings such as these completing the evaluation process.

First, all applied-for strings will be publicly identified during the evaluation phase, and posted for community comment. This provides the public with an opportunity to be aware of the applied-for strings.

Second, governments – through ICANN’s Governmental Advisory Committee – may provide direct advice to the ICANN Board of Directors on public policy matters relating to any application, particularly those that may violate national law or raise sensitivities. The consensus opinion of the Governmental Advisory Committee will create a presumption that the application should not be approved. Individual governments may also file objections as set forth below.

Third, members of the public may formally object to applications for TLDs that: infringe the legal rights of the objector, misappropriate community names, are contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law, or raise a likelihood of user confusion with another TLD. For example, some of the grounds upon which an applied-for string may be considered contrary to generally accepted legal norms relating to morality and public order are:

- Incitement to or promotion of violent lawless action;
- Incitement to or promotion of discrimination based upon race, color, gender, ethnicity, religion or national origin, or other similar types of discrimination that violate generally accepted legal norms recognized under principles of international law; or
- Incitement to or promotion of child pornography or other sexual abuse of children.

Fourth, an Independent Objector, responsible for acting solely in the best interests of the public that uses the global Internet, may file an objection against “highly objectionable” applications to which no other objection has been filed, using process set out above.

ICANN has also considered the issue of financial support for funding the objection and dispute resolution process to better enable the community in filing objections as deemed appropriate. ICANN has committed to provide funding to the At-Large Advisory Committee for objection filing and dispute resolution fees. The At-Large Advisory Committee is the home within ICANN for the voice of the Internet end-user, and is expected to create a robust process to vet potential objections. In addition, ICANN has committed to provide funding to individual national governments to support the filing of individual objections.