

Introduction of New gTLDs: GNSO/Staff Discussion

Los Angeles 10-11 April 2008

Overview

The purpose of the meeting was to inform the GNSO of implementation planning progress for the new gTLD policy and to discuss key implementation aspects. The meeting on 11 April gathered 45 participants, whereof 13 remotely, from the GNSO Council, constituencies, observers and ICANN staff. An introductory briefing on purpose and outlines was held late on 10 April with 26 attendees.

The purposes as stated were to convey the staff vision and implementation work for each of the policy recommendations, to demonstrate the mapping between the recommendations and the implementation work, and finally to garner advice regarding implementation choices to be made from those who are knowledgeable.

Overall, there was support for the implementation vision and steps taken so far. Current and former Council members, as well as attending observers, expressed a strong sense of agreement that the policy should be implemented, and provided useful advice by deliberating on the advantages and drawbacks of potential implementation solutions. For example, discussions took place on two implementation issues: the relevance of algorithmic determination of string confusion and on who should have standing to object on grounds of morality and public order. Candidate implementation discussed models both complied with the policy recommendations.

Suggestions and comments are briefly stated below per topic. The points below reflect comments from all participants: current and former Council members, potential applicants, and other interested parties (most of the participants had some position of interest related to new gTLDs).. This is a fairly complete list of the issues discussed. Nearly all of them were discussed with an air of agreement across the parties and interests in the room – this agreement extended among staff and counselors. The advice was most often in alignment with the current implementation model. In some areas there was disagreement among counselors regarding an implementation approach, by-and-large, this was due to the interests of the parties involved.

The introduction slides are available at

<http://gns0.icann.org/correspondence/new-gtlds-policy-discussion-11apr08.pdf>.

MP3 recordings of the meeting are available at <http://audio.icann.org/gns0/gtld-1.mp3> and <http://audio.icann.org/gns0/gtld-meetings-2-20080411.mp3>.

RFP Information

- The communications plan is important for awareness raising but it should not become a promotion campaign.

- Definitions are important for the RFP and related to applicable law. Clarify the dispute resolution procedures in this regard as well.
- The RFP should require a statement on the gTLD's intended use, to enable objections.
- Provide sufficient leeway in the conditions to allow for innovation, while preventing deceptive behavior.
- Make the applicant's promises in the RFP answers part of the contract, with provisions in case of breach, especially for community applicants and if the applicant has won in string contention.
- Alternatives to the foreseen web interface as sole means for lodging applications might be needed for developing countries.
- There may be a need to cure applications and that could require a procedure to handle material changes.
- Staff stated that outreach efforts were foreseen with particular support to developing countries and that there would be opportunities for applicants to rectify administrative errors.
- Keep the fee structure simple, evenly across all applicants.
- Potential objectors should have access to a report on the applications before the objection window closes.
- On a request, staff confirmed that there would be no delays for those having passed the initial evaluation with no objections.

Technical and Operational Criteria

- There were diverging views on the meaning of technical minimum criteria - either absolute minimum levels for all or criteria related to projected volumes.
- Requirements are not necessarily the same for a small localized community-based gTLD and a gTLD with global ambitions.
- Volume dependence could be seen as a compliance matter for the ability to scale the operations.
- Staff explained that compliance with technical criteria will be verified before each new gTLD is entered into the root, with a more extensive verification than the current IANA check.

Technical Service Provider Qualification

- There was agreement that back-end providers could facilitate for applicants but diverging views regarding the usefulness of having an accreditation scheme.
- Back-end provider solutions have worked well so far and formal accreditation would just make the procedures more complex.
- Existing registries are "seen" as certified and using them could make the process more efficient, simplifying the review of this technical criterion.
- An accreditation scheme would call for ongoing compliance checks.
- There shouldn't be any requirement to use a back-end provider, but a check of a new registry's ability to scale.

- ICANN's primary responsibility is in relation to the registries and the contractual obligations should be on the registry level only.
- Classification societies could be helpful if the accreditation approach is pursued.
- There is a difference between fulfilling an organization's own needs and acting as a contractor.
- A side effect of accreditation could be that it becomes a de facto necessity due to "requirement inflation".
- Accreditation should rather be considered for escrow providers.
- Limit any back-end provider accreditation to DNS aspects only.

Communication and transitions between application rounds

- Views about a suitable timeline to announce for the subsequent application round ranged from merely stating commitments regarding principles and resources to declaring a firm timeline of 12-18 months after the first round.
- Potential applicants not yet fully ready to apply could be more inclined to wait, rather than rush, if the delay until the next round is short.
- There is a risk for further delays if no clear time commitment is made.
- Rounds could overlap with starting points at 6 month intervals.
- Evaluation of the processes should be an ongoing matter.

String contention and community-based applications

- The proposed comparative evaluation criteria are too broad - the task is only to verify which applicant enjoys the community's support.
- The community application preference is only in the string contention context, not in other respects.
- There is a risk for gaming by applicants claiming community support just to gain an advantage. Communities can also be "bought", enabling further gaming of the rules.
- On a question if community applications lead to restrictions, staff responded that there would be a need to differentiate the contracts.
- IDN aspects may make community definitions more complex, for example when a script is used by multiple language groups.
- An expert panel based on clear criteria would be better than overburdening the Board like in the sTLD round.
- The PDP discussions brought up .bank and .library as examples of strings directed to particular communities. Such strings should not be auctioned, so a process to deal with those was needed.
- Community support evaluation should only be done to identify a clearly winning party. Auction is better to solve commercial cases, and also if a comparative evaluation is unlikely or unable to elect a clear winner.
- Auctions tend to favor the wealthy, so there is a need for a process that does not disadvantage less prosperous communities.

Country, territory and place names

- Notification of the governments/GAC should fulfill the GAC request for consultation with governments if ICANN has any doubts.
- A clear process should be outlined to the GAC, for their understanding on when and how to file objections.
- It is unclear whether GAC views should trump other views and how to make a final determination unless in full agreement.
- Respect the subset of country names as stated as official by the country itself. ICANN could consider a strategy on how to relate to international law, like the Paris convention which prohibits use of country names as trade marks.
- It is impossible to expand any reserved name list to city names - rely on the objection process regarding city and place names.
- Don't go further in protection than based on the ISO 3166 list, since it is difficult to set any other limit.
- The GAC principle 2.2 reaches beyond any sovereign competence, like names on the moon, names in Antarctica etc.
- Notification to governments/GAC should only be for country names.
- Staff stated that lists of government contacts for notification are being established as part of the communication plan.
- ICANN could file objections if an obvious problem is spotted and nobody objects, and also file objections on behalf of a government.
- It is advisable to inform governments about all strings applied for.
- There should be a list with reserved names, for predictability and also to prevent lawsuits against ICANN.
- An objection process is OK, but a list would create undue rights.
- The fee for objections from governments may have to be waived.
- There should be a possibility to appeal when an application is denied.
- Consider the proposal made in Delhi to the ccNSO/GAC to temporarily reserve country names (as a principle, not a list) associated with ISO 3166-1 until the ccNSO PDP is finalized.

String confusion

- Any algorithm used should be available to applicants in advance.
- On questions, staff responded that an algorithm would not have a deterministic role in the process and that string confusion may be objection based or assessed in the initial evaluation, followed by expert panel determination in the extended evaluation.
- Asked whether both the algorithm and the panel would be kept to visual similarity, staff responded that this was the current approach.
- There may be cross-over cases between string confusion and rights issues.
- The use of an algorithm is questionable, since trade mark cases don't rely only on visual similarity. Algorithms are not used for legal determinations by trade mark offices, and ICANN should not do that either.

- Staff responded that algorithms were used by trade mark offices for advice to applicants and helpful there as a tool for a first assessment.
- An algorithm could be useful for applicants and identical strings would be discovered directly.
- There would be a conflict if existing registries apply for a string confusingly similar to their own.
- Staff responded that confusingly similar strings should not be accepted regardless of applicant.
- Any panel would need appropriate expertise to handle cases with IDN strings.
- It is unclear whether transliterated strings could cause confusion.
- A list of failed strings would be useful, but only indicative and not a given failure for the future.
- On a question whether applicants with confusingly similar strings could agree among themselves, staff responded affirmatively, provided that only one string remains, otherwise there would be a contention case.
- An option would be to change one string to avoid confusing similarity.
- The approach of earlier rounds with alternative strings per applicant should be avoided - keep applicants to one string per application.
- ICANN could contact consumer protection bodies for advice regarding the consumer protection role in avoiding confusingly similar strings.
- Standing to object is simply a money matter, due to the objection fee.
- SLD holders should have standing to object against confusingly similar strings to the TLD they are registered in.
- Standing to object calls for something more than just paying a fee.
- Staff noted that standing is not mentioned in the recommendation and that logical reason rather than interest may be the basis for standing.
- Divergence of views between Ry and BC representatives were expressed regarding if, for example, .museum would be granted an application for its string translated into Chinese.
- There is a need to prevent frivolous objections.

Objection-based processes

Rights of others

- The proposed process differs from the UDRP, with a mandatory stage to try to resolve the issue between the parties.
- Staff verified that mediation followed by approval was possible and that the criteria are more elaborate, with strength of mark taken into account, for example.
- Responding to concerns expressed over costs for the applicant, staff highlighted that the approach would be that the loser pays.
- Objections should be published, for others to be aware of them and possibly avoid having to object themselves.

Morality and public order

- A discussion about who should have standing to object showed divergence between those finding that only governments should have standing (since they legislate on such matters) and those supporting the approach not to exclude anybody.
- Protection of indigenous people's rights exemplifies where government objections could be insufficient.
- There would be a need to adapt to circumstances, possibly with regional adaptation of criteria.
- Staff responded that criteria would be narrow with discretion for the dispute resolution service provider, but based on one set of standards without regional differentiation.
- Draw on the rules for what is permitted in personalized car license plates in some countries, like Ireland.
- A quick look procedure to discard frivolous objections early on would prevent that applicants become unduly burdened with objections.

Community representation.

- All different types of communities should be kept in mind; like particular economic sectors, indigenous peoples etc.
- Views diverged on whether community-based applicants should enjoy a benefit beyond the objection process, with some questioning the merit in claiming community representation, even if it does not draw any objections. It would be inappropriate for an applicant proposing .shoe to get credit for claiming to support some unspecified community of shoe owners.
- Staff reminded that community support is important for standing in objection cases but not for the acceptability of an application as such.
- Long term establishment requirements for standing to object could disadvantage new sectors/communities.
- The objection process should be designed to enable objections against capture of generic terms.
- Staff stated that the objection test had to prove both community opposition and that the string clearly addressed the community.
- The test should prove strong association of the string to the community, not only reasonable association.
- It is straightforward to handle cases with explicit community targeting, but implicit targeting would call for difficult judgments.
- The implementation guidelines, in particular IG P, should be referenced for dealing with frivolous claims of community support and notions of detriment to the community.

String contention

- Community representation has a different role for string contention than in the objection process, so criteria could be different.
- Claims of community representation should be demonstrated and implementation guideline H is of relevance.

- On a question regarding refunds for losing parties in string contentions, staff responded that any refund would depend on when applicants withdraw and the costs for evaluation already incurred.
- There should be incentives for applicants to work with the communities they claim to represent.
- A discussion on a reference in implementation guideline P to the RSTEP procedure concluded that it should be seen as parenthetical in light of the discussion in the PDP.
- Concerning the status of the pending applications from earlier rounds, staff responded that a statement was posted recently but that status is still in the fact-finding stage with no final conclusion as yet.

Contractual conditions

- Governments may need special versions of the base contract, as for example regional authorities are involved in the gTLD projects for Brittany and Wales.
- Geographically oriented gTLDs may need special contract provisions to accommodate local law.
- Regarding whether structural separation between registries and registrars should be kept, staff mentioned that this issue is subject to an economic study.
- On a question whether completely individual contracts could be established, possibly for an extra fee, staff stated that this was not envisaged, only specific paragraphs could be modified.
- On a question whether a straightforward, unchanged base contract with a new gTLD registry could be signed without ICANN Board approval, staff responded no, but the Board could approve batches of applicants with base contracts.
- A first-come first-serve approach would only fully apply in an ongoing process but time-stamping of applications within a round was discussed during the PDP as useful to address queue situations in processing. Staff added that there could be other considerations in processing applications as well, like grouping similar applications.
- ICANN needs to be able to act if a registry fails.

Reserved names

- A reserved names list with common file extensions didn't muster any support, but voices were raised that there may be a confusion risk for users and reasons to proceed with caution.
- Views diverged on whether to check file extensions further - either ask for advice from additional experts and companies, or just note that the responsibility is on the applicant.
- A list of file extensions would create implicit rights and be nearly impossible to maintain, since there is no authoritative source.
- Some companies may have IPR on file extensions, but for such cases there is a specific objection process.

- No objection process for user confusion is foreseen in this context, but staff mentioned considerations to open an opportunity for technical review and opposition.
- Any exclusion from the name space should only be done with a good reason.
- Most exclusions imply further problems so do not extend the reserved names list - objection processes should be the main road.

Timelines

- The application period would probably only just start within the current year, an assessment that was confirmed by staff.
- Multiple voices were raised to have IDN gTLDs included in the first round, with one suggesting to wait for IDN readiness regarding protocols etc before launching the round.
- On questions regarding timing of the draft and final RFPs, staff responded that both need Board approval targeted for mid-year 2008.
- On a question whether anticipative objections could be introduced already before the round, staff responded that such attempts would be rejected.
- Information about the round need to be out considerable time in advance in order not to disadvantage anybody. Staff highlighted the communication plan and the 4 month timeline for that before the application window opens.

Participants

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