

# INTRODUCTION OF NEW TOP-LEVEL DOMAINS

## ICANN STAFF DISCUSSION POINTS

1. ICANN wishes to thank the GNSO's new TLDs Committee for its comprehensive and thoughtful efforts to produce the work found in the draft *Final Report* on the introduction of new top-level domains. The Committee's work, when finished, will have a significant impact on the organisation and its future operations. The draft Recommendations need input from the full range of ICANN's stakeholders. This discussion will ensure the final Recommendations are both implementable and balance the expectations of the Internet community.
2. The following sections are an addition to the draft *Final Report* and serve to highlight ICANN staff thoughts concerning the draft policy Recommendations proposed by the Committee.
3. ICANN is engaging in a set of activities to facilitate the eventual designation of new gTLDs. These are:
  - implementation planning and project management
  - Supporting Organisation and Advisory Committee consultations
  - taking into account the Strategic and Operating Plans and factors that affect ICANN's broader operating environment
4. Consideration of a wide range of factors in a comprehensive implementation plan is already underway, mapping the Committee's work and the

responsibilities of the organisation to maintain a stable and secure global Internet.

5. Work is also underway to ensure substantial and effective outreach to ICANN's other Supporting Organisations and Advisory Committees. In particular the Governmental Advisory Committee is working on the preparation of public policy principles relating to the introduction of new top-level domains. In addition, the Governmental Advisory Committee is holding discussions on public policy-related issues with respect to progress on implementing Internationalised Domain Names.
6. Finally, analysis of the draft Recommendations and ICANN's operating environment is taking place to avoid significant problems with the introduction of new top-level domains.
7. There are specific areas where further clarification or discussion is desirable on the potential effects of the Committee's draft recommendations. These questions are raised in an effort to ensure ongoing dialogue with the Committee to clarify its intentions and to ensure that ICANN is able to effectively implement the final policy recommendations in a global, multi-stakeholder environment.

7.1. Regarding the cost and cost recovery of the application process: the application process suggested by the Committee is comprehensive and complex. This means that further staff analysis needs to be undertaken to fully cost the application process to ensure both full cost recovery (as noted in the Committee's discussion) and a fair allocation of costs between applicants across a long application evaluation process with many separate stages.

- 7.2. The application process recommendations include, at a number of points, reference to expert panels of advisors to assist ICANN in making decisions about proposed strings. In some cases, there are not “experts” in a certain area but perhaps “independent” analysis can occur. This additional analysis may impose significant cost and complexity on the process that may create barriers to entry. Reference to expert panels also imposes significant additional application processing time that needs to be taken into account – from the perspective of potential applicants and from an ICANN operational perspective. At the end, the policy must result in decisions that are as objective, time bound, predictable and stable as possible. Some suggestions have been made about simplifying this process that need to be explored further.
- 7.3. The policy and implementation concerns and complexities regarding the requirement that: “the string should not be contrary to public policy or accepted principles of morality or be of such a nature as to deceive the public” require additional consultation and discussion. Any such consideration must be consistent with GAC principles. It may be advantageous to discuss issues regarding morality and deception in a separate track.
- 7.4. Clarification is required regarding reserved names to ensure that global and multi-cultural considerations are taken into account when developing any reserved names list.
- 7.5. The Committee Report could expand on references to the independent materials that suggest that auctions can be used to resolve contention issues or scarce resource issues in an economical and timely manner. Committee members and commentators proposed several different

auction-like solutions. These suggestions need to be balanced with the views of others who contend that detailed comparative evaluations are the only way to make choices between applications.

7.6. The Committee suggested that ICANN may consider the establishment of a grants scheme to assist applicants. Further thought is required on this suggestion to balance the complexity and cost this would add to the application process and the potential benefits that may accrue with a wider diversity of new top-level domains. A discussion for funding grants will be helpful – should the costs be borne by other applicants, foundations, ICANN or by some other source? Further discussion is required concerning whether and how grants may be implemented.

7.7. The application process recommendations suggest an operational role for the GNSO and the Governmental Advisory Committee. More detailed discussion about the role of the Supporting Organisations and Advisory Committees and any appropriate expansion of their roles in a new top-level domain application process need careful thought.

7.8. To determine whether there is potential string contention, the policy recommendations might require public posting of string applications in internationally recognised publications, as part of a comprehensive notification process. Potentially, the applicant would pay for the publication. RFC 1591 could be referenced as part of the process in an attempt to have contending parties agree a way forward.

7.9. The Committee has requested that a draft Request for Proposal (RFP) be made available as part of this draft Report. The establishment of a “best practice” application process entails highly detailed work on the formulation of the RFP. An approved policy recommendation and a full

implementation plan are prerequisites to writing the RFP. This is clearly part of the implementation plan that is already underway, in conjunction with ICANN's legal team. In the interim, the Committee can expect that the implementation team will use ICANN's past experience and "lessons learned" with, for example, the .net and .org reassignments and the 2004 sTLDs process. We would expect significant improvements to match, much more closely, ICANN's commitments to accountability and transparency in addition to meeting the Committee's expectations of a straightforward, predictable and objective process. Finally, the draft RFP will be posted for public comment so that constituencies will have input into the document at that time.

7.10. The Committee has also requested that a draft base contract be provided as part of this document. ICANN is currently undertaking an economic study requested by the Board to provide illumination in this area. Any base contract content will also be informed by the final, approved policy recommendations the Committee decide upon. ICANN has never published a generic "form" for new TLD agreements, and such an undertaking would be a complex task without final policy recommendations and advice from the proposed economic studies. Whilst the draft Recommendations are clear about the desirability of a pre-published base contract other than certain "boilerplate" language, a meaningful agreement could not be proposed at this time. As stated above, all contracts are posted for comment, feedback and potential amendment before being submitted to the ICANN Board.

7.11. The Committee has reiterated its intention to ensure a predictable and timely process. One additional element to consider is whether this means that, for the first of the application cycles, there should be a

defined number of applications “allowed” through that system. ICANN would welcome recognition by the Committee that ICANN may explore the desirability of working to reduce the number of applications and limiting the number of approved applications during 2007 and then, after adding robustness to the process, a greater or unrestricted number of applications in subsequent application cycles may be addressed

7.12. The draft recommendation suggests creation of new tasks including the establishment of several expert or independent panels and bodies, and the engagement of experts. The combination of these highlights the complexity and potential cost of the draft recommendation versus the need for developing a predictable, objective, timely and efficient process. The new entities suggested in the draft report include:

- 7.12.1. evaluators to assess proposals for grants to cover application fees (see 2.2);
- 7.12.2. experts who can advise ICANN on string selection (see 2.5.1.1);
- 7.12.3. an entity to review ICANN Staff’s assessment of whether a proposed gTLD complies with the string criteria through “public comment processes” (see 2.5.1.2);
- 7.12.4. a panel of experts who can advise ICANN on string selection (see 2.5.1.3);
- 7.12.5. a new arbitration process to resolve disputes between a gTLD operator and ICANN over whether a proposed string is “confusingly similar” to an existing gTLD (see 2.5.3.1);

- 7.12.6. a new arbitration process whereby trademark holders can challenge an ICANN decision regarding a string (but see 2.5.3.2); and
  - 7.12.7. a mediation process to resolve disputes among applicants vying for the same string (see 3.2.3).
- 7.13. Committee discussions have also included IDN deployment. Some Committee members have expressed the opinion that IDN applications should be considered in the first round of new gTLD designation. This should be carefully balanced against the expectations of “clients” who invest in an application where there is not a complete process to evaluate it. Technical, policy or other issues could delay the deployment of IDNs and create negative consequences for the applicants and ICANN.
8. Regarding consultations with other Supporting Organisations and Advisory Committees, the Committee has made very good efforts to encourage observers to play an active part in the development of the draft Recommendations (see the Participation Table at Annex One in the draft *Report*). Those observers have, in large part, been drawn from the existing GNSO community. It is now clear that consultations need to take place on subsets of the recommendations with a wider range of stakeholders in similar ways to the targeted public comment periods that have been conducted during the PDP. This may entail modifications to the draft Recommendations to take into account, for example, unintended consequences that have not been fully considered by the Committee. The consultations should include:
- 8.1. ICANN’s Stability and Security Advisory Committee and Root Server Advisory Committee on proposed technical criteria for applicants; on proposed reserved word lists that may have an impact on technical effectiveness and on best practice standards for Internationalised Domain

Names. On the latter, further consultation between the President's Committee on IDN's and the newly formed GNSO IDN Working Group would be helpful.

8.2. ICANN's Governmental Advisory Committee on the public policy aspects of the introduction of new top-level domains. The Committee is aware of the GAC's efforts to produce a set of public policy principles that may have a direct effect on some of the draft Recommendations, particularly those that relate to public morality and national laws. In addition, individual GAC members and other governments will take an interest in the introduction of IDN representations of their country names. Attempting to finalise recommendations on the broader public policy aspects of new top-level domains is difficult without the engagement of the GAC and other international organisations.

8.3. ICANN's ccNSO with respect to a wide range of issues that are relevant to ccTLD operators and gTLD operators, particularly with respect to the use of IDNs.

9. ICANN staff reiterates their thanks to the Committee for its dedication and many hours of intense discussion on issues that require significant thought to balance competing objectives.

10. Finally, ICANN staff seeks to continue an open dialogue with the Committee and other ICANN stakeholders to arrive at a set of final policy recommendations that the ICANN Board can confirm in the early stages of 2007.