



## **USCIB Comments on Draft Expressions of Interest/Pre-Registrations Model**

January 27, 2010

The United States Council for International Business (USCIB) appreciates the opportunity to provide comments to ICANN on the proposed Draft Expressions of Interest/Pre-Registrations Model. USCIB is a business association whose membership includes some 300 leading U.S. companies, professional services firms and associations, representing a wide array of Internet stakeholders, including general business users, ISPs, IP Rights Holders, registries, and registrars. USCIB is a founding member of the ICANN Generic Name Supporting Organization (GNSO) Business Constituency and was very active in the formative stages of ICANN. The technical coordination of the Internet is of critical importance to all of our members given the amount of their business that is conducted over it.

USCIB recognizes ICANN's continued efforts to engage the Internet community in determining sound policy surrounding new gTLDs. ICANN and the community must work together to identify ways to effectively foster competition, protect trademarks, safeguard consumer interests, and ensure a secure and stable DNS as the process for possible introduction of new gTLDs develops. USCIB appreciates ICANN's determination at its recent meeting in Seoul to address outstanding issues. Based on these prior discussions and work now underway, the draft Expression of Interest (EOI) initiative presents significant concerns because it seems to jump ahead of more fundamental questions regarding new gTLDs and their effect on consumers, businesses and the security and stability of the Internet and domain name system. While an interesting concept, the EOI seems premature and needs to be explored more fully, with certain parameters of the model more clearly articulated, before any EOI process is finalized for implementation.

Most importantly, the EOI does not adequately recognize the need to have established rules in place in order for potential applicants to adequately assess their business strategies for any potential new gTLD application. The current model also appears to bypass the careful policymaking decisions that must go into the more fundamental questions surrounding new gTLDs. In this way, the EOI process could be viewed as a backdoor to moving the larger gTLD process along without addressing those critical underlying issues, such as ensuring adequate safeguards for trademarks and ensuring the security and stability of the Internet. An EOI also should not hinder the process for addressing these overarching issues and finalizing the rules for new gTLD applications.

USCIB recognizes the potential usefulness of an EOI in gathering data that may, if properly implemented, help inform ICANN about some important issues associated with the rollout of new gTLDs. However, USCIB cannot support the implementation of an EOI initiative until the final rules for the application process are fully developed and agreed upon by the ICANN community. Serious issues still remain with the current Draft Applicant Guidebook (DAG), and it is unclear that the ICANN community will reach final consensus by DAG4 on many important issues. As a result, USCIB members question how ICANN can expect potential new gTLD applicants to engage in a mandatory EOI process, with limited terms by which any investment deposit may be refunded, while the rules for applications are not yet finalized. It is extraordinarily difficult for business to even assess participating in an EOI when new or changed gTLD application rules could drastically impact business plans and models. Vague guarantees to tackle key issues before the EOI begins are not enough; ICANN should be explicit in determining exactly what key issues must be final before an EOI begins.

USCIB members agree that the two issues cited in the draft model, of vertical separation and 3-character requirements for IDN strings, must be finalized before any EOI moves forward. We would also strongly

suggest that the community reasonably agree upon critical IP and brand protections within the new gTLD rollout.<sup>1</sup> Rules on background checks, financial disclosures, lack of conflicts of interest, IPv6 and the technical requirements, as well as the ability to maintain a registry all factor into a potential application. The rules for new gTLD applications must be clear and final before businesses with interests in submitting applications for new gTLDs can participate in an EOI.

As a further point regarding the role of an EOI as an information source, ICANN should be careful in recognizing that while an EOI can help provide information on the number of new gTLDs that are likely to be applied for, such an indicator does not equate with public/registrant demand for new gTLDs. USCIB believes that an EOI would measure the demand for supply of new gTLDs, as opposed to the economic demand for new gTLDs themselves. Given this differentiation, an EOI cannot substitute for the promised independent economic analysis on the demand for new gTLDs. ICANN should quickly implement the Board's October 2006 request that such a study be conducted prior to launching the first application round for new gTLDs.<sup>2</sup>

USCIB supports ICANN's logic in developing parts of its model, such as the need for a reasonable deposit fee and a global communication campaign. USCIB agrees with ICANN's logic for an EOI fee at a level that balances the competing needs of being high enough to deter speculation but low enough to ensure the fee is not a barrier to entry. The overall EOI should not, however, be a cost-generator and any deposit or participation in an EOI should not be viewed by the applicant as a promise that they will be awarded a new gTLD, nor a basis to engage in raising capital and investors in the new gTLD.

Furthermore, USCIB is concerned that there will not be an opportunity to discuss the EOI publicly at the next ICANN meeting in Nairobi if the current model is slotted for decision by the Board in February. Likewise, it is unclear whether the GAC has been consulted as required by the Affirmation of Commitments. The GAC should have reasonable time to contribute its input into this process. We note its recent request to delay a decision on an EOI until after the Nairobi meeting.

Lastly, USCIB remains concerned about ICANN's overall timing of this proposal. While ICANN technically provided the community with a month to review, releasing the proposal alongside the important Affirmation Reviews proposal during the holiday period essentially reduced the comment period to three weeks. It is extraordinarily difficult for cross-sector organizations like USCIB to develop in-depth comments and build internal consensus on new issues within such a relatively short timeframe.

USCIB thanks ICANN for the opportunity to comment on the proposed EOI model, and we look forward to further engagement on issues related new gTLDs.

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<sup>1</sup> The Implementation Recommendation Team (IRT) Report from June 2009 laid out a useful set of instruments to help protect IP. USCIB feels that the IRT recommendations represented a rough consensus among business stakeholders in addressing intellectual property and trademark concerns around new gTLDs. ICANN should adhere to the overarching intent of the IRT recommendations in crafting RPMs for inclusion in any upcoming version of the Draft Applicant Guidebook.

<sup>2</sup> ICANN Board request on economic study available at <http://www.icann.org/en/minutes/minutes-18oct06.htm>