Google Registry

Re: GNSO Community Comment 2 (CC2) on New gTLD Subsequent Procedures Policy Development Process

Via Electronic Mail: comments-subsequent-procedures-22mar17@icann.org

May 30, 2017

We appreciate the opportunity to comment on the community consultation questions posed by the New gTLD Subsequent Procedures Working Group ("Working Group") and applaud the Working Group's effort to secure broad community feedback as it plans for a future round. While we have thoroughly reviewed the inventory of questions put forth by the Working Group, we have not limited our responses to these specific questions, nor endeavored to provide an exhaustive account of issues encountered during the 2012 New gTLD Application Program ("2012 Program" or "2012 Round"). Rather, our responses address the most significant issues to Google Registry as an applicant during the 2012 Round.

Identify a narrower set of issues that require policy change and are sufficiently critical so as to gate a future application process.

As a general comment, we are concerned by the expansive work plan that the Working Group has adopted. Under the proposed work plan nearly all aspects of the 2012 Program are reopened and treated as gating issues for the introduction of new gTLDs, regardless of whether they posed problems in the prior round or are matters of policy. This overly broad approach could stand in the way of the timely introduction of new gTLDs, a priority identified in the existing 2007 Generic Names Supporting Organization ("GNSO") Policy for the Introduction of New gTLDs ("2007 Policy"). ICANN staff and community volunteers have limited resources and should focus on key issues faced during the 2012 Round, rather attempting to revisit all aspects of the round as part of a single policy process. The scope of the community comment questionnaire evidences the cost to the community of the latter approach, with countless participants in ICANN encouraged to review and respond to over 100 substantive questions. A leaner approach would not prevent the community from addressing additional non-gating issues on an ongoing basis either through the GNSO Policy Development Process ("PDP") or through iterative process improvements for matters of implementation.

Another approach to addressing the expansive work plan would be to ensure that the Working Group prioritizes its recommendations. For all identified issues the Working Group should determine whether they should gate the introduction of gTLDs, or whether associated recommendations could be introduced iteratively after an initial application period had opened to balance the benefits of improvements against the imperative of timely progress toward future gTLD application processes.

Allow non-policy issues to be driven through a parallel implementation review track.

Related to the questions of scope and timing, it is unclear how a number of questions posed by the Working Group could require policy development. For example, questions related to

systems improvement (Q 1.8.1-1.8.2) and ICANN communications strategies and success metrics (Q 1.9.1-1.9.2) appear to be tactical and unrelated to policies put in place for the prior round. We believe that a better approach is to allow these issues to be handled through the ICANN-driven implementation review track, provided that ICANN offers opportunities for community consultation, input, and comment. These work efforts should be parallelized to ensure timely progress toward a future application process.

Consider how new gTLDs can improve competition and innovation in the Domain Name System holistically.

An additional benefit of an iterative approach to making improvements to new gTLD policies and operational requirements is that it would encourage the community to think holistically about how requirements could be tailored to support the goals of the New gTLD Program, namely fostering increased competition, innovation, and utility in the Domain Name System. Google Registry has found that restrictions such as fixed annual registration terms and billing cycles, presumptive renewals, and the requirement to use a registrar even for closed TLDs have a limiting effect on our attempts to innovate using our gTLD portfolio. Since these requirements are not specific to the 2012 Round they are not accounted for in the Working Group's inventory of issues. Endeavoring to consolidate all issues related to the 2012 Round into a single, gating PDP makes it less likely that other issues related to gTLD operations will be be appropriately prioritized relative to issues that are specific to the 2012 Program.

Abandon the concept of application rounds in favor of a continuous process.

In Google Registry's prior public comments on the Preliminary Issue Report on New gTLD Subsequent Procedures we recommended that ICANN transition from a rounds-based approach to the allocation of gTLDs toward a continuous application process, as is used for other categories of internet identifiers. We continue to believe that this approach offers several advantages compared to discrete rounds. These include minimizing the burdens of de-contention, establishing a steady state for ICANN staffing and resource management, and improving business predictability for applicants.[1]

We acknowledge that an additional, discrete application round may be required to address demand built up since the 2012 round. However, we believe that establishing a future date at which application procedures would transition to a continuous, first-come, first-served method would alleviate several of the issues presented by the Working Group in the longer term. For example, issues related to string contention, community priority, and new gTLD auctions, would not exist under a continuous first-come, first-served allocation mechanism.

Review whether requirements regarding registry-registrar relationships are fit for the current marketplace.

Pre-existing requirements for registry-registrar relationships may not be fully tailored for today's domain name marketplace. One example is the concept of closed TLDs that emerged from the 2012 Round. In the context of a closed TLD the justifications for registry-registrar non-discrimination requirements do not clearly apply given that the registry, as sole registrant,

[1] See Google Registry Public Comment, Preliminary issue Report on New gTLD Subsequent Procedures (October 30 2015) for an elaboration of the advantages offered by a continuous allocation method.

will ultimately have discretion to select its registrar regardless of whether multiple registrars have been onboarded onto the platform. While the change made through the introduction of Specification 13, wherein qualified .brand TLDs could select one to three "preferred registrars," aim to address these issues, it may only be a partial solution. The Working Group should consider whether to permit closed TLDs to self-allocate all domain names given that those domains will be self-registered, not sold. In any case, carve outs granted to .brands should be extended to TLDs that qualify for an exemption to the Registry Operator Code of Conduct since these TLDs also have a single registrant.

Likewise, while registry and registrar separation restrictions were developed to promote competition in the marketplace, they may impede new entrants to the marketplace from competing effectively with legacy players. Google takes the requirements associated with cross-ownership of a registry and registrar seriously and, accordingly, has experienced inefficiencies and additional cost on account of some of the separation requirements. These restrictions would likely have harsher effects on smaller businesses trying to enter the domain name marketplace.

Introduce incentives around TLDs that support user expectations and trust.

The report by the Competition and Consumer Trust ("CCT") Review Team found that registration restrictions for TLDs as part of the 2012 Round aligned with user and registrant expectations and evoked trust.[2] Conversely, apart from Community Priority Evaluation ("CPE"), the structure of the 2012 Program disincentivized registries from operating restricted TLDs. Regardless of model, registries were required to pay substantial fixed fees to ICANN, creating incentives for registries to target a broad registrant base through open, unrestricted registration models in order to recoup operational costs. Given that CPE in its current form is all-or-nothing, both for the applicant seeking community status and other contending applicants, we believe that a high bar is necessary for this particular process. However, this high bar fails to account for alternative models that allow a greater connection between a TLD and users' expectations about the types of content or registrants within that TLD. Given this environment, it is perhaps unsurprising that relatively few of the new gTLDs offer registration models that differ significantly from major legacy gTLDs. We support the recommendation put forward by the CCT Review Team to create additional incentives for restricted TLDs that align with user expectations for the meaning of the TLD.

Preserve openness in a future gTLD application round.

Much of the discussion around future gTLD application processes has revolved around whether the application processes should be restricted to certain application or application types. We believe that an unrestricted process has better potential to unlock innovation, competition, and enhanced utility of the DNS and maximize the benefits associated with a future application process. Further, we believe that the Working Group should consider whether waiving the broad prohibition on "closed generics" that was introduced late in the 2012 Program would support these goals. We continue to believe that even for strings consisting of commonly utilized terms,

---

[2] See Competition, Consumer Trust and Consumer Choice Review Team Draft Report of Recommendations for New gTLDs (March 7, 2017) Recommendation 14.

a more structured and managed registry model may have the potential to provide a secure and innovative namespace, and can result in a well-understood community that benefits users.[3]

Identify opportunities to streamline repeat processes for applicants for multiple gTLDs and Registry Service Providers.

We believe that many of the topics raised with respect to technical evaluation are not matters of policy and would be better addressed through a parallel implementation review track led by ICANN staff with community consultation. However, in response to the questions posed by the Working Group we agree that there were overall inefficiencies in evaluation and testing procedures, as well as in application systems that created undue work and financial burden for multiple-TLD applicants and Registry Service Providers ("RSPs"). There is little benefit to having evaluators review multiple sets of identical technical documentation as part of Initial Evaluation, nor to carry out a pre-delegation test for each TLD an applicant launches, where there are no differences in the TLDs' proposed registry operations that could have implications for the test. Further, testing these TLDs individually is not a meaningful way to measure scalability of a registry. A better approach is to identify service level expectations related to scalability, and have a mechanism for notifying the registry and, potentially, initiating additional tests once the platform reaches identified thresholds.

We are generally supportive of the proposal to create an RSP Accreditation Program to improve efficiency for RSPs and applicants alike, and disagree with the notion that such a program would create a "race to the bottom." Beyond operational efficiency we believe that an RSP Accreditation Program could help bring competition to the market for providing registry services by providing a well-defined path into the business for potential RSPs and at the same time providing greater certainty for registry operators that a given RSP will be accepted by ICANN. Just as the introduction of a streamlined accreditation program dramatically increased competition in the provision of registrar services beginning in 1999, the PDP should resist calls for unnecessary or overly burdensome restrictions on RSPs, or for ICANN endorsements based on incumbency in the space.[4]

Address inconsistencies experienced within application objection procedures through the introduction of a streamlined and balanced appeals process.

During the 2012 Round the String Confusion Objection Process resulted in numerous inconsistent outcomes. For example, despite conditions being effectively the same, one ICDR panel came to the conclusion that .HOTEL and .HOTELS were not confusingly similar, while another determined that .PET and .PETS were confusingly similar. There were multiple other examples of such inconsistencies, e.g., .CAR and .CARS found not similar (in a proceeding involving Google Registry), and .GAME and .GAMES similar. Unfortunately, even the ad hoc mechanisms created by the ICANN Board to address these discrepancies were inadequate, as they were not made available to both sides of a particular contention set, creating the

[3] See Public Comment on Closed Generic Top Level Domains by Google Inc. (March 7, 2013) for a more detailed discussion of the potential benefits offered by closed generics.

[4] Despite the 1,930 applications received as part of the 2012 Round, comparably few unique RSPs were represented and the top four providers in terms of applications represented supported over 70 percent of gTLD applications received.

presumption that the rights of gTLD applicants were given more weight than the rights of objectors.

We support the recommendation made in the comments by the RySG that a more equitable approach is to introduce the option of a defined appeals process for all applicants that identify either a reasonable inconsistency in outcome or a specific argument as to why the panel failed to apply the proper standard. A narrowly-tailored appeals process with explicitly delineated grounds for appeal and a relatively high standard for overruling panel decisions, e.g., a "clear error" standard, should also alleviate stress on the Reconsideration Request process, which was infrequently used prior to the 2012 Round but became inundated by requests from applicants to review unfavorable outcomes related to the objection procedures.

Apply a clearer standard for string similarity determinations.

We support several of the recommendations made by the RySG to bring greater clarity and rigor to the String Similarity Review Process including eliminating the SWORD tool and consolidating single-plural pairs as part of the String Similarity Review process, including the recommendations for how consolidation could occur. We continue to believe that consolidation of single-plural pairs would generally decrease the probability of user confusion. However, in the event that the Working Group adopted this approach, we would recommend that a process be introduced to review exceptions wherein the single and plurals strings were likely to evoke different meanings for users. By way of example, a hypothetical .cats TLD that was devoted to videos and other content about the household pet could potentially be differentiated from the existing .cat TLD, which is used to highlight Catalan language and culture. The process could rely upon market research on the user expectations and the likelihood of confusion to determine whether exceptions should be granted.

Provide options for registries that apply for strings that are subsequently determined to be ineligible at the outset of the application process.

ICANN or the Working Group should establish at the outset what happens when an applicant applies for a string that is subsequently determined to be ineligible or indefinitely blocked from delegation. These affected applicants should be presented the option of having their full application fees refunded. The failure to consider how "ineligible" strings would be handled as part of the 2012 Round has left several applicants for the .home, .mail, and .corp TLDs in limbo, with no clear path toward resolution nearly five years from the closure of the application window.

Sincerely,

Stephanie Duchesneau
Domains Policy and Compliance