

EC paper on ICANN: New gTLD process

EUROPEAN COMMISSION

ICANN – informal background paper

New gTLD process

1. General description of the issue

The GAC have provided ICANN with public policy advice over several years on the new gTLD issue. While much of this advice was taken on board by ICANN, several outstanding public policy concerns remained outstanding when the Board finalised the programme on 20th June 2011 and announced that new gTLD applicants would be able to submit their applications in January 2012.

The procedure adopted by ICANN states that public authorities will be notified about the applications received and will be invited to indicate which TLDs might raise public policy concerns (GAC early warning). In addition, the GAC will be able to raise formal objections later in the process. In parallel, the "draft Statement of work" annexed to the recent "Notice of Inquiry" published by the US government in relation to the IANA contract suggests that

"For delegation requests for new generic TLDs (gTLDs), the Contractor shall include documentation to demonstrate how the proposed string has received consensus support from relevant stakeholders and is supported by the global public interest."

Taken together, these provisions represent an innovative but potentially complex series of procedural steps to be faced by GAC members. They also present GAC members with the unwelcome possibility of having to determine the merits of very politically sensitive or divisive issues related to national identity, freedom of speech, human rights and ethnic diversity.

Ideally, the objective should be that the GAC are not called on to deliberate on the merits of any application that does not already demonstrate a minimum level of support from the respective community that the TLD intends to serve.

Another related issue is the possibility for GAC members to request the reservation or blocking of domain names at the second level under new gTLDs. The operator of ".XXX" has recently invited GAC members to identify such names in relation to "culturally significant" names, but this is likely to prove challenging for many countries given the short deadline provided. Moreover, with the prospect of several hundred new gTLDs being introduced in the coming years it is not practical or

sensible for GAC members to repeat this exercise each time. Logically, GAC members should construct a reference list for all new gTLD operators to use and ICANN should ensure compliance through the contract it negotiates with new gTLD registry operators.

2. Possible initiatives

- The European Commission is supportive of the proposed requirement in the US Government "Draft Statement of Work" that ICANN should be required to demonstrate that a new top-level domain "has received consensus support from relevant stakeholders and is supported by the global public interest" and therefore advises to include this provision into the new IANA contract. In this context, the European Commission considers that defining what constitutes consensus (including how it is achieved and expressed) lies within the prerogatives of GAC itself. It welcomes that GAC has initiated work in this area and encourages the GAC to push that work forward – and stands ready to continue actively participating therein – with the aim of substantially improving the GAC's effectiveness.
 - In parallel, to add a requirement to the Draft Statement of work that any applicant, upon request, demonstrates the support of the relevant Internet community related to the string applied for before ICANN seek the opinion of its supporting organisations and advisory committees (including the GAC) on the application. As many applications will likely prove to be non-controversial, this requirement should be activated on a case-by-case basis, notably as part of the GAC "early warning" procedure (in other words, if the GAC issues an early warning, the applicant would be automatically required to demonstrate the support of the relevant Internet community).
 - In relation to reserved and blocked names at the second level, the IANA contract should require the contractor to develop appropriate policies to allow governments and public administrations to identify names to be included in a reference list to be respected by all new gTLD operators. The contractor should also be required to ensure that governments and public administrations can raise concerns about particular names after their registration if a serious public order concern is involved, and with a view to the registry "taking down" the name concerned.
-

3. Possible implementation

- The recent Notice of Inquiry for the IANA contract includes a "draft statement of work". It appears that the USG has inserted draft language to require proof that a new top-level domain "has received consensus support from relevant stakeholders and is supported by the global public interest". This clause should be included in the new IANA contract.
- The IANA contract should include a provision requiring applicants to positively demonstrate the support of the relevant Internet community in advance of

formal consultation of the GAC (and other supporting organisations and advisory committees), in cases where there are prima facie grounds to believe that the application may raise a public policy concern.

- Additional provisions should also be considered to deal with public policy issues at the second level.
-

4. Timeline for implementation of these modifications

Additional provisions in the IANA contract: to be introduced by the USG in the next contract (start date to be confirmed, sometime between 30th September 2011 and 28th February 2012).