



USCIB comments on ICANN's Draft Applicant Guidebook for New gTLDs

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The United States Council for International Business (USCIB) appreciates the opportunity to provide comments to ICANN on its New gTLD Program Draft Applicant Guidebook: Draft RFP (hence to be referred to as RFP). 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 efforts to engage the Internet community in determining policy surrounding new gTLDs. We also recognize the challenges this presents overall, given the array of factors to be considered in introducing new top level domains. USCIB has in the past put forward several general principles that our members have adapted for use in response to the draft Guidebook and respectfully request that they be given due consideration as ICANN continues its evaluation of the Guidebook and with any introduction of new gTLDs:

- The process for introducing new gTLDs should be deliberate, in keeping with the goals of increasing competition and choice in the DNS, maintaining differentiated space, and ensuring DNS security and stability;
- Adequate protections must be established to protect brands and trademarks;
- New applicants must demonstrate clearly that the particular new gTLD, is sustainable, contributes to innovation in the domain name system, and is reliable so as to prevent registry failure and the resulting negative impact that such a failure would have to users;
- Objective criteria must be developed against which applications should be judged, including technical and operational requirements for applicants, as well as criteria to assess gTLD sustainability concerns; and
- Introduction of non-ASCII domain names must balance complex issues, including technical considerations, demand for internationalized domain names, and continued security and stability of a single authoritative root.

We recognize steps by ICANN to address some of the principles set forth in the RFP. The following points highlight our main questions and concerns. We look forward to continuing to engage in this process as ICANN further refines its guidelines for new gTLD introduction.

Competition

USCIB recognizes ICANN's role promoting competition and innovation in the domain name system, including domain registry services, in order to promote user choice. This commitment must be kept in mind in implementing policies to introduce new gTLDs.

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Trademark and brand protection

USCIB appreciates the work ICANN has put into recognizing that protecting trademarks and brands in the implementation of new gTLDs must occur at both at the top level and the second level. Requiring new registry operators to utilize brand protection measures for second level domain names within their registry agreements is a positive change to the prior rounds of gTLDs. However, provided the potential scope of new TLDs, some of our members believe that it would be helpful for ICANN to provide additional guidance on how new registries should evaluate and implement low-cost mechanisms to protect brands given the important role they play in protecting consumers from fraud.

For applications for new gTLDs, the Dispute Resolution Procedures module of the RFP serves as a mechanism designed “to protect certain interests and rights,” including legal rights objections and community objections. These objection processes offer one way for businesses and other trademark rights holders to protect their respective brands against potentially incursive gTLD applications. USCIB believes further information regarding the proposed objection processes would be helpful. Questions and concerns to be considered include:

- The DRSP decisions are only advisory, as it is ICANN staff that ultimately makes decisions regarding contentious gTLD applications. Why would such decisions not be binding? Will there be an appeals process? Has due consideration been given to the creation of a reserved list for new gTLDs strings that were proposed, but were the subject of a successful objection and thus denied for implementation?
- Filing an objection regarding a proposed top level string [gTLD] can cost anywhere between a few thousand dollars to over a hundred thousand, depending on what objection process and DSRP is used. Such wide variance of costs makes it difficult for businesses to forecast potential objections. Further details on exact costs would help in this regard. Also, will consolidated objections result in reduced fees?
- The range of considered factors within the community objection process could be subject to numerous interpretations. For example, criteria for what constitutes a “well-defined community” and “substantial opposition” are open to subjective interpretation (3-14). Are certain community objection criteria weighed more so than others?

These are some of the types of questions that arise in considering the dispute resolution procedures. USCIB urges ICANN to engage in further consultation with stakeholders to discuss these specific questions and identify any additional concerns in order to develop a comprehensive and predictable set of rules to govern the objections process for top level strings.

With regard to competing applications for strings that are either the same or very similar to each other, USCIB wonders whether existing trademark rights will play any role within the selection process? We find it unclear how the process will deal with trademark concerns between competing strings. For example, how will the use of a string confusion test comport with the trademark law standard of “likelihood of confusion,” based not only on visual similarity, but a sound, sight and meaning test?

The initial evaluation related to similarity with other strings and user confusion appears to focus on an analysis of existing TLDs and other pending applications. Our members seek clarification as to whether this evaluation will also apply to “well-known” marks, and if so, what the method for that evaluation will be?

Given existing treaties, such as Article 16 of the WTO TRIPS Agreement, and principles related to trademarks and the GAC principles on new gTLDs that instruct ICANN to make allowance for third party

rights, USCIB suggests that robust and low cost rights protection mechanisms at both the pre and post allocation stages are essential to ensure that the introduction of new gTLDs are undertaken in a manner consistent with existing law and public policy. This is particularly important given the possibility of an environment that could lead to ever-increasing numbers of gTLDs.

Consumer Protection

USCIB appreciates the potential role that new gTLDs can play in increasing competition in the DNS, and the positive effect this can have in lowering prices to register domain names and increasing choice for businesses, NGOs, and independent registrants. However, if gTLDs are rolled out without careful consideration of the unintended consequences on all Internet stakeholders, the result could wind up raising costs for businesses, and ultimately consumers.

Based on concerns raised that unlimited new gTLDs could increase the opportunity for consumer fraud and consumer confusion (eg. site spoofing, spamming and phishing), we urge ICANN to be deliberate and prudent in its ongoing analysis, rollout, and its evaluation processes once new gTLDs are launched.

USCIB thanks ICANN for the opportunity to comment on the draft RFP on new gTLDs. Please note that our comments pertain to the full applicant guidebook, in that they are not broken out by section. Providing further details on the issues mentioned here will be constructive in moving this process forward, and USCIB looks forward to further engagement.