

Below are comments from Melbourne IT that have been submitted to ICANN for consideration to further clarify and improve the proposed gTLD process. The comments are based on face-to-face discussions with a number of Melbourne IT's corporate domain name clients in Europe, USA, and Australia.

1. General feedback from corporate clients

- Most see that the cost for protecting their brands will increase.
- Given the high costs of applying for a new gTLD, many will take a "wait-and-see" approach.
- Those that feel they need to register for "brand protection" reasons don't see the need for more new gTLDs except in limited circumstances (e.g. for under-served language or cultural groups).
- A few see new opportunities - especially around new product launches and possibly new business initiatives.
- Most clients feel that ICANN has taken reasonable steps at the top level to protect the namespace, but have serious concerns about the need to spend significant resources protecting their core brands and misspellings of their brands at the second level within new gTLDs.

1A. Distinguish between "open" and "closed" gTLDs

- Melbourne IT recommends that ICANN distinguish between "open" and "closed" gTLDs.
- "Open" or "Community" gTLD - is open for registration at the second level by third parties that are not affiliated with the applicant. Third-party registrants take full responsibility for use of the domain name at the second level.
- "Closed" gTLD - only allows registrations at the second level by the applicant, and the applicant takes full responsibility for use of the domain name at the second level. This type of gTLD could be used by corporates wanting to create their own hierarchy of domain names under a new top level domain.

2. Cost

- Corporations are concerned about the high application fee of \$185,000 and the \$75,000 annual fee, when they are registering names purely for brand protection purposes.
- There is also a high cost for those wanting to apply for their brand in multiple languages or for multiple brands in the same industry sector (e.g brands of cars).

Recommendations:

- For "closed" gTLD - offer a lower annual fee for when a trademarked name has been approved, but not yet requested to be in the DNS - e.g small holding fee \$5000 per year.
- Allow a lower application fee for a "closed" gTLD where the applicant has a trademark on the gTLD string, as costs for reviewing and risk is likely lower. Recommend \$90,000.

- For "closed" gTLDs - offer a variable annual fee based on the number of approved applicants. E.g \$75,000 per year if less than 100 new gTLDs, \$50,000 per year (100-200), \$40,000 (200-500), \$30,000 (greater than 500). This is because ICANN will obtain economies of scale with more gTLDs, and the costs of managing compliance for "closed" gTLDs will be lower (as there are no third party registrations at the second level).
- For "closed" gTLDs - for applicants that apply for multiple names that are trademarks for the same legal entity (e.g product names), provide a 10% discount on application and annual fees for each additional name, up to a maximum of 50% of all fees. This can be justified as ICANN staff can have a single interface with the applicant for multiple names, and the cost of reviewing multiple applications will be lower as most of the content of each application will be the same except for the string being applied for.
- Allow a discount for multiple applications for names that have the same meaning in different languages (e.g travel in Arabic or Chinese). This can be justified on the basis that the technical and business aspects of the proposals would be the same, and only the strings need to be checked.

3. Technical criteria

- It is likely that many proposals will use an existing gTLD or ccTLD registry operator.

Recommendation

- ICANN should consider accrediting organisations to act as back-end registry operators to allow applicants to select one of these operators. This would reduce ICANN costs of carrying out technical evaluations on an application by application basis and possibly lower the application fees for applicants. In terms of potential legal risks, ICANN could make clear that it has reviewed the operators as passing a technical standard based on their application, but the applicants should perform their own due diligence on such operators. This should be a similar risk as for the process ICANN uses to accredit registrars.

4. Rights protection

- One of the main concerns of brand holders is the potential costs of brand protection at the second level of new gTLDs.

Recommendation

- ICANN fund a central database of authenticated trademarks that registry operators will be able to use in their sunrise processes - this will save costs for brand owners from having to pay the costs of separate authentication at each registry operator.
- Use the same principles of legal protection designed for the top level at the second level

ie second level registrations are posted for evaluation prior to going live at the second level.

- Existing brand holders have the right to raise an objection under either confusingly similar objection to existing name (applicant would need to show rights in a name that could be considering confusingly similar) or legal rights objection - if the applicant challenges the objection they pay a filing fee and an upfront dispute resolution fee.
- The winner gets a refund.
- Removes the incentive to make money from advertising while a UDRP dispute is underway, and also balances the costs to ensure that the applicant at the second level pays the dispute fees if they lose, should they proceed to the dispute resolution process.

5. Open versus community based applications

- There is uncertainty over the prospect of a community based application getting precedence over an open application. This will tend to encourage applicants to propose they represent a community to try to gain a commercial advantage at the time of contention.
- There is potential for gaming.

Recommendation

- If there is contention amongst applicants for the same name and one of the applicants claims they represent a community - allow any of the other applicants to provide information on community support before using a comparative evaluation process to resolve contention.

6. Options for resolving contention amongst parties

- The current rule states that the only option for reaching agreement amongst multiple parties is for some of the parties to withdraw and allow one of the parties to proceed.
- This does not allow the forming of new joint ventures to "share" a new gTLD string and limits the options for parties to reach a mutual agreement.

Recommendation

- Allow some flexibility for multiple applicants for the same string to agree on new legal structures to support a particular string.

7. Timeframe

- There is uncertainty over when a second round would occur, and this may artificially put pressure on brand holders to register in the first round.

Recommendation

- Announce the second round as starting 6 months later than the date of publication of the strings applied for in the first round.
- Allows potential applicants to review the type of names being applied for, and provides sufficient time to prepare an application.

8. Single organisation - registry/registrar separation

- Melbourne IT supports allowing a single organisation operating a "closed" gTLD to operate both the registry and registrar functions.

Recommendation

- To avoid gaming - limit this situation to "closed" gTLDs, when the single organisation is the "registrant" for all second level domains - ie second level domains are not able to be licensed to third parties.

9. Hybrid model - proposal to allow a registry to own a registrar as long as not for its gTLD

- There are no real clear benefits in this proposal for new start-up registries and there is room for abuse, where a registry can have access to domain name check availability searches and contact information to give it an unfair advantage in other gTLDs.
- The rules for registry-registrar separation are also not clear when a registrar provides back-end registry services for an applicant (and hence may not be designated as the "registry operator").
- Small start-up registries will want the option to operate their own registrars to help with the direct marketing and sales of names to get the TLD started.

Recommendation

- Where a registry offers registrations to third parties, allow the registry to operate its own registrar as well as allowing other ICANN registrars to offer names on the same commercial terms up to a cap of 50,000 names in total. Once that cap is hit the registry would no longer be able to operate registrar services for new registrations but could support their existing base. A registry would not be able to operate a registrar for other gTLDs in this model.