



Comments on Second Milestone Report on Applicant Support in the New gTLD Program

Status:
Final
29 July 2011

**Commercial & Business Users
Constituency (BC) Comments**

GNSO//CSG//BC

Submission:

BACKGROUND:

As a follow-up to its first Milestone Report on Applicant Support for new gTLDs, the Joint Application Support Working Group (JAS WG) submitted a Second Milestone Report to its chartering organizations, the ALAC and GNSO. This second Report specifically recognizes issues raised by the two chartering bodies, the ICANN Board and Governmental Advisory Committee (GAC) and is open for public comment through 29 July 2011.

The BC has consistently stated for 10-years that it supports community-based gTLDs and IDNs as the optimal way to expand the name space. The BC has also said that the name space expansion should create differentiation and added-value, where added-value encourages registrant and user demand.

In this way, expansion will enhance choice, competition and be in the public interest. Allowing new gTLD community-based applicants to serve their markets in whichever script a registrant wants also adds value to the DNS. The Economic Framework on new gTLDs notes that *“a potentially important source of differentiation is in the allowable characters in a gTLD...New gTLDs, however, will be able to use Internationalized Domain Names (IDNs) with characters from other alphabets. IDNs can already be used in some second-level domain names (depending on the rules of the registry), but extending the character set used in the top level domains should reduce confusion and difficulty in using the Internet”*. (Para. 30)

As noted in past comments, the BC particularly supports the JAS WG recommended “Support for Build-out in Underserved Languages and Scripts” (2.2.1 in the first Milestone Report; 3.1.2 in second), noting that ICANN should design incentive mechanisms to encourage the build-out of IDNs and small or underserved languages.

Today 27% of Internet users use English, 23% use Chinese scripts, and of the top ten languages found on the Internet, five use non-ASCII scripts while hundreds of other languages from around the world are also in use. The ICANN Board and staff have acknowledged that some applicant processing costs would be avoided when evaluating additional strings from the same applicant. The BC stated that reduced fee should be set such that all incremental costs are covered by the applicant and not shifted to other applicants.

The BC welcomes this opportunity to comment on the second Milestone Report of this community working group. The BC commends the JAS WG for diligently addressing the enormous challenges surrounding reducing obstacles for proposed gTLD applications by communities in developing economic environments at this late hour, i.e. in light of the ICANN Board approval of the new gTLD application window (12 January 2012 – 12 April 2012) at the Singapore meeting. In principle, the BC is in general agreement with the JAS WG’s Report with some suggested additions and comments, as noted herein.

COMMENTS:

Part 1: Why provide new applicant support?

The Nairobi meeting Board resolution requested ICANN stakeholders "...develop a sustainable approach to providing support to applicants requiring assistance in applying for and operating new gTLDs." At its Brussels meeting with the GAC in February 2011, held to discuss the scorecard, the Board confirmed that ICANN could implement a differential fee schedule for applicants in need of assistance, but added that appropriate criteria and mechanisms would need to be proposed to enable it to happen.

The BC agrees with the Board's decisions and rationale however it feels strongly that two further criteria for support for new applicants should be whether (or not) the applicant is proposing a non-ASCII string and whether the applicant is in a contention set with another applicant who didn't receive support (see comments in 4.1.1). The position of the BC is that ICANN should design incentive mechanisms to encourage the build-out of IDNs and small or underserved languages.

Part 2: When should support be offered – in this round or later?

Board Resolution 2010.03.12.4647 clearly expressed the need to ensure that the new gTLD Program is inclusive. The JAS WG has determined that in order to be most effective, this program should be implemented in the first round and subsequent rounds.

The JAS WG argues that the diversity, competition and innovation that the new gTLD Program could bring should be a shared opportunity since the Internet is a global resource that belongs to all. It further argues that ICANN has the obligation to fulfill its responsibility to serve the global public interest by allowing accessibility and competition from all around the world.

The BC supports the JAS WG arguments for two reasons. First, due to the already lengthy timeline, as this current new gTLD round will almost certainly not be finished before early 2013 (with the estimated 6 months until applications are accepted; 9.5 months until applications are published; 18-24 months until review process is completed; 24-30 months until launch of a new TLD). Second, since ICANN cannot give any clear indication when future rounds will take place it is fair to assume that following a community review of the first round application processes, it will be at least another 24 months after that review is completed before the second round TLDs will come to market (i.e. at least 5 years from now). This will clearly disadvantage already disadvantaged communities and language/script users.

Part 3: Who qualifies for support, and how are gTLD applications evaluated against the criteria?

As is often said, the devil is in the details, and in this case that saying could not be more apt. The JAS WG has done an admirable job of detailing eligibility, but the BC feels that further work is still needed on definitions and language to ensure that the applicant support program cannot be gamed. Moreover penalties for self-declared inaccurate or untrue information that enable an applicant to gain the right to have support under this program should include a mechanism to recoup any and all funds paid out to such applicant.

3.1.1 Support by and/or for distinct cultural, linguistic and ethnic communities

The BC strongly supports this criterion because it is one of the long-held BC positions, i.e., community-based gTLDs and IDNs are the optimal way to expand the name space.

3.1.2 Service in an underserved language, the presence of which on the Internet has been limited

The JAS WG notes in the 2nd Report that:

- a) there is broad support for incentives to facilitate the build out of underserved scripts for needy gTLD candidates; and
- b) both general price cuts and ‘bundled pricing’ have been discussed; although there is real concern about the issue of the possibility of gaming connected with bundling (i.e. the idea that benefit will flow to developed world applicants).

The BC acknowledges the need to be vigilant against gaming and strongly supports using the new gTLD program to build out services not just for – but also based in – the developing world.

The BC position has long been that every community-based applicant should be allowed to increase their utility within their specific community by having the option to apply for their respective IDN-equivalent TLDs for a nominal additional fee (per IDN or translated equivalent), and feels that the same standard should be used in the case of developing economies.

Once an applicant has met the technical, financial and operational criteria detailed in the AG, and have been approved to have its string delegated, asking a community-based applicant to pay an additional \$185,000 for each translation of that approved string cannot be justified in a cost recovery model.

3.1.3 Operation in an emerging market or nation

In consideration of giving support preference to those applicants originating within the world’s poorer economies, the BC agrees with the JAS WG that rather than undertaking the distracting task of being the arbiter of which economy should be ahead of another, ICANN should utilize the internationally agreed upon UN DESA list, as recommended in the Report.

3.2 Notes on Financial Need

Regarding the second criteria (noted here):

Where applicants anticipate scheduled fees, such as for extended evaluation, the applicant must be capable of contributing a quarter of the scheduled fees.

The BC opposes this recommendation. The purpose of developing a set of policies around cost reduction for those applicants from developing economies is to encourage an inclusive process in the new gTLD regime. This levels the playing field for all to participate and is in-keeping with ICANN’s core principles.

However, in the BC’s view, if the JAS WG’s recommendation serves to give one applicant an advantage over another by providing discounts for various parts of the review process is antithetical to ICANN’s impartiality. Once an application is submitted, each and every applicant must face the same processes and costs established in the AG to ensure a fair and equitable procedure.

3.3 Notes on ineligible criteria

The BC is unclear about the nature of "...Government applications from Developing Countries for support"; the BC would like to understand under which circumstances governments would petition ICANN to provide applicant support to said government. More information is required for the BC to comment.

Part 4: What benefits do qualified applicants receive?

4.1.1 Cost Reductions

The BC supports the JAS WG on the following:

- Waiving the Program Development Costs (cost recovery element of US\$26,000)
- Lowering the risk/contingency cost (now US\$60,000)
- Review Base cost (now US\$100,000) to see if reduction can be made
- Cost reductions to encourage the build out of IDNs in small or underserved languages.

However, in the BC's view, if the JAS WG's recommendation serves to give one applicant an advantage over another by providing discounts for various parts of the review process it is antithetical to ICANN's impartiality. Once an application is submitted, each and every applicant must face the same processes and costs established in the AG to ensure a fair and equitable procedure. Therefore, any fee reductions should be reapplied to the applicant in the case of string contention with a non-qualified applicant. In other words, in the case of an auction between a JAS-qualified applicant and a non-qualified applicant, both applicants should start at a level playing field by not having one applicant paying lower fees than the other with such reductions to be used for the auctions. This change would help avoid the potential of "gaming" that is of concern to the BC.

The BC would like to receive more information on the following to better understand the JAS WG logic:

- Lower registry Fixed Fees

This is the same issue addressed above in 3.2 above, and therefore, devoid of further information, the BC would oppose this recommendation based on the principle of ensuring a fair and equitable procedure.

- Exemption or deferment of IPv6 implementation requirements as possible

If ICANN is working toward narrowing the digital divide between lesser- and more-developed economies through this applicant support program, this recommendation appears on its face to be counterintuitive vis-à-vis keeping that same lesser-developed group up to the same global standards. Therefore, without further information, the BC would oppose this recommendation.

The BC opposes the following:

- Reduction of the Financial Continued Operation Instrument Obligation to 6-12 months

As noted in 3.2 above, in the BC's view, to give one applicant an advantage over any other by providing discounts for various parts of the review process is antithetical to ICANN's impartiality. Once their application is submitted, each and every applicant must face the same processes and costs established in the AG to ensure a fair and equitable procedure.

4.1.2 Staggered Fees

The BC opposes the recommendation that instead of paying the entire fee upon acceptance of the applications, applicants meeting the criteria established for support could pay the fees incrementally.

As noted in 3.2 above, in the BC's view, to give one applicant an advantage over any other by providing discounts for various parts of the review process is antithetical to ICANN's impartiality. Once their application is submitted, each and every applicant must face the same processes and costs established in the AG to ensure a fair and equitable procedure.

4.1.3 Partial refund from any auction proceeds.

The BC opposes the recommendation that qualified applicants receive a partial refund from any auction proceeds.

As noted in 3.2 above, in the BC's view, to give one applicant an advantage over any other by providing discounts for various parts of the review process is antithetical to ICANN's impartiality. Once their application is submitted, each and every applicant must face the same processes and costs established in the AG to ensure a fair and equitable procedure.

4.2 Non-financial support / relief from ICANN

The BC supports the JAS WG on the following:

- Awareness/outreach efforts including efforts to ensure more people in underserved markets are aware of the new gTLD program and what they can do to participate in it
- Relaxed vertical integration regulations

The BC would like to receive more information on the following to better understand the JAS WG logic:

- Logistical assistance
- Technical help
- Legal and filing support

Without further information, outside of coordinating workshops – organized by the community – on such issues as those noted above at regularly scheduled ICANN meetings, the position of the BC is that it is not ICANN's mandate to provide such assistance to one subset of the ICANN community. This may, or may not, be the JAS WG's view so more information is needed to clarify this.

The BC opposes the following:

- Deferred requirement of DNSSEC

As security and threats become ever more important issues, absolving any gTLD registry of its obligation to meet current ICANN standards is antithetical to ICANN's core mission of facilitating the stability and integrity of the Internet.

4.3 Support from third parties facilitated by ICANN

4.3.1 Pool of collected resources and assistance

The BC supports the JAS WG on the following:

- Translation support
- Awareness and outreach

These are two activities that ICANN is currently undertaking for the whole of the community and, therefore, have the BC's full support.

The BC opposes the following:

- Logistical help
- Technical support
- Awareness and outreach
- Infrastructure for providing IPv6 compatibility
- DNSSEC consulting
- IDN implementation support
- Possible technical setups

As noted in 4.2 above, outside of coordinating workshops – organized by the community – on such issues as those noted above at regularly scheduled ICANN meetings, the BC position is that it is not ICANN's mandate to provide such assistance to one subset of the ICANN community.

4.3.2 Directory and referral service only for eligible applicants

The BC supports ICANN facilitating contacts with granting agencies and foundations limited to its coordination role for eligible applicants. This means that ICANN could provide introductions only, if and when approached by grant providers/facilitators. Anything else stands outside of ICANN's mandate.

4.3.3 IPv6 Support

The BC opposes the recommendation that ICANN take on the role of facilitator between IPv6 providers and registries located in areas where IPv6 connectivity is limited or unavailable to provide IPv6 gateways into registry IPv4 services. This stands outside of ICANN's mandate; further it contravenes fair and equitable procedures.

The BC does support ICANN facilitating community workshops on IPv6 at all regularly scheduled ICANN meetings.

4.4 Financial support distributed by an ICANN originated (Development) fund

4.4.1 Support Program Development function

By virtue of the Board resolution in Singapore, ICANN has contributed USD 2 million into the applicant support development fund. The BC supports the JAS WG recommendation that a dedicated committee be established to disburse funds to eligible applicants according to to-be-determined policies and looks forward to receiving more information on this critically important element of the program.

Part 5: How will the process work, and how will it relate to the gTLD AG?

The BC supports the JAS WG's recommendation that the best possible process to provide support for such applications is to be done through a process that is parallel to, and not a replacement of, the ICANN Applicant Guidebook. Thus, even after the Guidebook is formally approved, the JAS WG can continue its work to refine those components of its mandate which remain unresolved.

Finally, under the 'list of issues that did not yet receive thorough evaluation', the BC looks forward to seeing these ideas fleshed out and will comment on them as and when necessary.

SUMMARY:

The BC supports the principle that certain assistance should be given to eligible applicants to assist them in submitting their TLD application to meet ICANN's mandate of inclusiveness on a global scale.

However, once the process has begun, both 'assisted applicants' and those that apply through the standard/community-based AG process must be on equal footing through the entire process. In the BC's view, no single applicant should be given any unique benefits over any other – once the application review process has started. We follow this 'fairness principle' with the caveat that the BC does recognize that some assisted applicants, by virtue of language or location, already face a non-level playing field and recommend that ICANN ensure that public seminars on the nuances of the AG are on the agenda of all regularly scheduled ICANN meetings to mitigate such disparities.

After an applicant has passed through the process and had its string delegated into the root, it must then meet the same criteria as all other new gTLDs vis-à-vis its financial obligations to ICANN, i.e. no new gTLD manager should be given any financial dispensation once the delegation of its string has been completed. There are inherent costs of managing a TLD and every successful applicant must carefully plan their business to meet those costs.

In the BC's view, making the modifications recommended herein will enable ICANN to ensure that the process of applying for, and the business of managing, TLDs is fair and equitable for all applicants.

Constituency Support:

Rapporteur for this Discussion Draft: Ron Andruff

Level of Support of BC Members:

This document was posted to BC members for review and comment on 14 July 2011.

Comments from several BC members were incorporated in this document.

With the exception of two members, this document has full constituency approval.