

ICANN Calls for Expressions of Interest from Potential Dispute Resolution Service Providers for New gTLD Program

ICANN is the internationally-recognized not-for-profit public benefit organization that administers certain features of the Internet's domain name system. A general description of ICANN can be found at <http://icann.org/tr/english.html>.

ICANN was formed in 1998. At the time of its formation, there were very few "Top-Level Domains" that were available on the Internet. The most commercially recognized were ".com", ".net" and ".org." Since 1998, ICANN has facilitated the process of adding a number of additional TLDs to the Internet. Examples of "generic" TLDs – those TLDs that are available to members of the general public – include ".biz", ".info" and ".name."

ICANN and the ICANN community are seeking to create a process that will permit additional TLDs to be added to the Internet. At this time, ICANN does not know how many applications it will receive for new TLDs, but estimates have ranged from the dozens to the hundreds (or even more).

In connection with this process, one of the ICANN supporting organizations – known as the Generic Names Supporting Organization ("GNSO") – made nineteen recommendations related to the introduction of new TLDs. (The GNSO's report may be found here: <http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-part08aug07.htm>.) While these recommendations are still under consideration by the ICANN Board and are subject to revision, this call for Expressions of Interest is being issued in parallel with Board consideration in order to be prepared to implement the program as soon as practicable. Four of the GNSO recommendations involve disputes that may be referred to a Dispute Resolution Service Provider ("DRSP"). Those proposed recommendations are as follows:

Recommendation 2:

"Strings must not be confusingly similar to an existing top-level domain or a Reserved Name."

Recommendation 3:

"Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.

Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industry Property (in particular trademark rights), the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) (in particular freedom of expression rights)."

Recommendation 6:

“Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.

Examples of such principles of law include, but are not limited to, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Convention on the Elimination of All Forms of Racial Discrimination, intellectual property treaties administered by the World Intellectual Property Organisation (WIPO) and the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS).”

Recommendation 20:

“An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted.”

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ICANN is seeking to identify a DRSP that can administer the resolution of disputes arising under some or all of these recommendations.

ICANN envisions the following process. Once the application submission period concludes, ICANN will publish to the Internet community the applications and particular TLDs involved. This notification will commence and define the period for the filing of objections to a proposed TLD. It is currently anticipated that objections will be filed with the DRSP. Once the deadline for filing objections has passed, the DRSP will be responsible for organizing the resolution of the disputes. Because of the possibility that multiple objections will be filed with respect to certain TLD applications, the DRSP, with ICANN’s assistance as needed, will determine which objections should be resolved in a single proceeding as opposed to multiple proceedings.

ICANN is working on a number of memoranda that will address the procedural process for filing and maintaining objections as well as on substantive guidelines that would assist the DRSP in resolving disputes associated with each of the four GNSO recommendations referenced above (assuming the ICANN Board approves the recommendations). Of course, ICANN will work with the chosen DRSP before finalizing these memoranda so that the DRSP’s own processes may be observed (or, when necessary, modified).

ICANN presently envisions that each dispute will be addressed by a three-member panel. The disputes will be streamlined and will not involve “traditional” discovery, although ICANN envisions that the panel (and perhaps the parties) will be able to request certain information. Many of these details are yet to be addressed. Further, ICANN has not yet reached a conclusion

as to whether the resolution of these disputes will automatically involve hearings – ICANN does not envision multiple-day hearings – or whether the panels will be able to determine that they can resolve disputes without hearings.

The panel will then issue its opinion. ICANN envisions that each opinion will follow an agreed format that will address both procedural and substantive issues within approximately three to five pages. Note that we do not refer to these opinions as “awards” because ICANN does not view this process as involving “arbitrations” or “arbitration awards.” Instead, ICANN is seeking the opinions of these panels, which opinions will then be “appealable” to a five-member standing panel that the DRSP will establish to hear appeals of all disputes related to a particular GNSO recommendation. ICANN will establish limited grounds for any appeal to the five-member panel.

The TLD applicants and those who object to the applications will be required to pay all fees and costs associated with the DRSP process. The DRSP may be authorized to assess fees and costs on the losing party, although this is an operational area which will be further discussed and considered with the DRSP. ICANN also may require payment of an administrative fee in connection with each objection.

Because ICANN does not know how many TLD applications will be filed, ICANN cannot predict how many possible objections may be filed in response to all of the TLD applications. But while the scale of this project is unknown, ICANN must have an established and transparent process that anticipates as many issues as possible and is available publicly before the TLD applications are due so that all applicants and objectors understand the rules of the process. Thus, ICANN requires a DRSP that has the following qualifications:

- (i) an established organization that has provided international dispute resolution services for at least ten years
- (ii) operational capabilities to process all of the objections that are filed, understanding that the number of objections is unknown;¹
- (iii) ability to manage the sequence of the resolution of objections;
- (iv) ability to manage the process of selecting each of the three-member panels;²
- (v) ability to ensure that the panels, where appropriate, can adjudicate certain objections quickly and without any hearings because the panel determines that the objection is not “significant”;
- (vi) ability to manage the hearing process, including hearings that may be conducted in languages other than English;

¹ ICANN has not decided whether all applications and objections will have to be filed in English. Accordingly, DRSP will have to inform ICANN of their capabilities in languages other than English. For example, the six official languages in which the United Nations conducts business are Arabic, Chinese, English, French, Russian and Spanish.

² In this regard, ICANN anticipates that most of the panelists may be selected from the DRSP’s “normal” pool of panelists; however, the DRSP must be in a position to secure appropriately qualified panelists for each panel.

- (vii) ability to create and maintain five-member panels to hear appeals; and
- (viii) ability to ensure the DRSP panels draft and submit opinions in a timely manner within the timeline to be established.

Submissions of Expressions of Interest

ICANN is hoping to select a DRSP in early 2008. Accordingly, ICANN is eager to commence a dialogue to determine whether your service is interested and would be capable of participating in this process. As part of the process, ICANN requests Expressions of Interest from potential providers that include information showing that your organization can fulfill the requirements set forth above, as well as background information about your organization, relevant experience and additional qualifications you believe would be relevant, but that are not addressed above.

Please submit Expressions of Interest no later than 18 January 2008 to gtlddrp@icann.org. Any questions or comments may also be submitted via this URL.