



# GNSO Issues Report

## Introduction of New Top-Level Domains

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## ***Summary***

1. As requested by the GNSO Council at its 22 September 2005 teleconference (<http://gnso.icann.org/meetings/minutes-gnso-22sep05.shtml>), this document sets out past decisions on the policy for implementing new top-level domains, provides relevant references and sets out other considerations in four issue areas. These issue areas are whether to introduce new gTLDs, selection criteria, allocation methods and contractual conditions.
2. It is recommended that the GNSO launch a focused policy development process, in close consultation with the broader ICANN community including the Government Advisory Committee (on the public policy aspects of new top-level domains) and the ccNSO (on internationalized domain names). The report proposes draft Terms of Reference for this work.



## ***B. Objective***

1. This report is designed to give the GNSO Council the information necessary to make a decision about whether to proceed with a policy development process on a new top-level domain strategy. It should be read in conjunction with the Background Report on Internationalized Domain Names which is being prepared for a separate process to be undertaken in conjunction with the ccNSO.
2. The GNSO Guidelines for Issues Reports have been used to frame this document. In particular, the Issues Report describes the key issues, provides directly relevant background and links; recommends whether to proceed with the policy development process and proposes Terms of Reference for a GNSO Working Group.



### **3. Background**

1. The GNSO is tasked with determining whether to continue to introduce new gTLDs and, if this determination is affirmative, developing robust policy to enable the selection and allocation of new top-level domains.
2. Following discussions at the ICANN meeting in Luxemburg on the strategy for introduction of new gTLDs, ICANN staff and the GNSO Council have cooperated to compile decisions and documents relating to the introduction of new top-level domain names. The compilation covers main documents and decisions since 2000. The latest version is available at <http://gnso.icann.org/issues/new-gtlds/new-tlds-31aug05.htm>. This compilation has been the subject of discussions on the GNSO Council mailing list and the source for an analysis in table format available at:  
<http://www.gnso.icann.org/mailing-lists/archives/council/msg01249.html>.
3. On 1 September 2005 a process proposal was presented at the GNSO Council meeting. At this meeting, the Council recalled the



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original Names Council recommendation of 18-19 April 2000, which stated:

*“The Names Council determines that the report of Working Group C and related comments indicate that there exists a consensus for the introduction of new gTLDs in a measured and responsible manner. The Names Council therefore recommends to the ICANN Board that it establish a policy for the introduction of new gTLDs in a measured and responsible manner, giving due regard in the implementation of that policy to:*

*(a) promoting orderly registration of names during the initial phases;*

*(b) minimizing the use of gTLDs to carry out infringements of intellectual property rights;*

*and (c) recognizing the need for ensuring user confidence in the technical operation of the new TLD and the DNS as a whole.*

*Because there is no recent experience in introducing new gTLDs, we recommend to the Board that a limited number of new top-level domains be introduced initially and that the future introduction of additional top-level domains be done only after careful evaluation of the initial introduction.”*

4. The view of the Council was that ICANN should complete the evaluation of the introduction of a limited number of new top-level domains, as described in the report from the New TLD Evaluation Process Planning Task Force. The report (<http://www.icann.org/committees/ntepptf/final-report-31jul02.htm>) described four aspects to evaluate (technical, business, legal, and process). Part of the evaluation dealing with Policy and Legal issues



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was completed in July 2004 (<http://icann.org/tlds/new-gtld-eval-31aug04.pdf>). Further experience is also available as additional sponsored top-level domains are introduced in 2005 (for example, .travel, .mobi, and .jobs). The Council considered that the evaluation work could proceed in parallel with development of a comprehensive new gTLD policy, with the expectation that the evaluation would be complete before any final policy recommendations were presented to the Board for approval.

5. At a conference call on 22 September 2005 (<http://gns0.icann.org/meetings/agenda-gns0-22sep05.htm>) the Council resolved to request ICANN Staff to produce an Issues Report. On the basis of the Issues Report, a decision would be made to conduct a policy development process on the introduction of new top-level domain names. The issues report should cover the following core issues: whether to continue to introduce new gTLDs; the criteria for approving applications for new gTLDs; the allocation method for choosing new gTLDs and the contractual conditions for new gTLDs.
6. The GNSO Council determined that the Issues Report would cover all four issue areas, with a presumption of an affirmative answer to



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the first issue area; the question whether to introduce new TLDs.

This document is prepared in response to this request, with four parts corresponding to the issues listed above. The rules for Issues Reports also require that ICANN Staff provide confirmation of the relevance of the work to the GNSO and to the ICANN community. Finally, in compliance with the Issues Report Guidelines, ICANN Staff are required to provide draft Working Group Terms of Reference. These are found at the end of this document.

7. The GNSO Council made a simultaneous request for ICANN Staff to provide a separate background document featuring existing documents and decisions associated with the introduction of internationalized domain names at the top-level. This work would be considered in view of a policy development process to be conducted jointly by the GNSO and ccNSO.
8. In addition to the compilation of ICANN documents mentioned above, reference material is available in studies and reports by other entities such as the OECD, WIPO, the National Research Council and Summit Strategies International which can be found in the Reference List at the end of the document.





#### ***4. Whether to introduce new top-level domains***

9. The work of the DNSO (later to evolve into GNSO and ccNSO) preceding the two-step “proof of concept” introduction of gTLDs produced a policy supporting the introduction of new gTLDs in a measured and responsible manner. Although this was a policy established for a temporary purpose, there is implicit recognition that additional gTLDs would be introduced, subject to evaluation of initial introductions. The evaluation has been made, but not completely, and a conclusion needs to be firmly drawn as to whether new TLDs shall continue to be introduced.
10. As stated above, the GNSO Council has determined that finalizing the evaluation is not seen as a prerequisite for starting working on the other elements of the GNSO Council resolution of 22 September 2005. Accordingly, work can proceed in parallel on these two fronts. Constituencies and other members of the ICANN community will be invited to review the submissions that they made to the original new gTLD policy development process in 1999 and 2000 and thereafter, and consider whether the limited introduction of new gTLDs has changed their views in any significant way.



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11. A short recapitulation of the emergence of top-level domains is provided in the following sections. Prior to ICANN's establishment, Dr. Jon Postel introduced the first generic top-level domains, implying a semantic structuring of the DNS with .COM intended for business users, .ORG for non-profit organizations, .NET intended for network users etc. During the early and mid-1990s, as country code TLDs were being delegated, the root zone was expanding by 10-20 TLDs or more per year for nearly a decade. From 1994 to 1996, 40 or more TLDs were added each year.
12. ICANN was established in November 1998. At the time, the .COM, .NET and .ORG gTLDs were commonly available for registration, while .INT, .EDU, .MIL and .GOV were available for registration by specific communities only. In addition, approximately 246 country code top-level domains were available for countries and territories to enable registrations of local domain names. A full list of all current TLDs, maintained by IANA, can be found at <http://data.iana.org/TLD/tlds-alpha-by-domain.txt>.
13. Since 1998 the industry has gone through an unprecedented development. The Internet is available across the globe and the number of users is approaching 1 billion. Internet access and use is



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now seen as mission critical for many users. ICANN itself has also changed substantially with an increase in the complexity and volume of its work and adaptation of its staffing, organization and working methods.

14. With respect to gTLDs, there are at present nine additional top-level domains. The registry agreements can all be found at <http://www.icann.ORG/registries/agreements.htm> and a full listing of all the registries can be found at <http://www.icann.ORG/registries/listing.html>. A further set of gTLDs will be added as new sponsored top-level domain agreements are signed during the course of 2005.
15. The market for domain names shows continued signs of growth. Domain name market data can be found in a variety of sources, for example in VeriSign's latest report, found at: <http://www.verisign.com/stellent/groups/public/documents/newsletter/030725.pdf>.
16. An article in DNJournal.com, at <http://dnjournal.com/columns/50million.htm>, foresees that if the 30% growth rate experienced in the year 2005 continues, the number of gTLD domain name registrations would double to 100 million in less



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than 3 years. Usage patterns are developing and studies from both the OECD and the NRC show that proven demand for new top-level domains is inconclusive, with contentions about advantages claimed by some in stark contrast to the drawbacks purported by others. The NRC report elaborates at some length on the advantages and drawbacks. The NRC Report also states that, from a security and stability perspective, the introduction of “tens” of new TLDs per year could be done without risks. The report calls for predictability in the introduction of new top-level domains by publishing time schedules as well as applying measures to follow-up and stop the process if need be.

## **CONSIDERATIONS**

17. The decision whether to introduce new top-level domains is informed by reviewing previous constituency statements (see the full list of reports in the Reference List); examining external studies and reports and taking account of developments in Internet use and the domain name registration industry. Some additional considerations are outlined below.



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18. Introduction of new gTLDs remains a matter of controversy in the Internet community. Additional TLDs are requested by many that see a business opportunity in running a new TLD. Whether there is true market demand for new TLDs from end-users is another matter and is likely to be conditional on multiple factors. There are also negative aspects associated with the introduction of new gTLDs such as the risk of marketplace confusion and additional costs for trade mark protection for intellectual property right holders.
19. While there seems to be a reasonable consensus within the Internet community that a measured introduction of additional TLDs can be undertaken with negligible risks for the security and stability of the Internet, assessments of suitable addition rates do vary. It should be noted in this context that the processes associated with TLD management/administration may set stricter limits than plain security/stability/technical considerations regarding how many TLDs can be added within a given time frame or how many can be maintained after their creation.
20. Additional information can be found in IETF documents, inter alia from [RFC 3071](#) , which provides a different typology of domain



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names and domain use, and from [RFC 3467](#), which elaborates on the uses of the domain name system.

21. Regardless of the chosen approach, the possibility of measuring the success or failure of the approach should be considered.

Accordingly, there is a need to foresee methods to evaluate, correct and possibly halt the process as appropriate.



### ***A. Summary of Previous Selection Criteria***

22. The following sections describe selection criteria which have been used in four previous ICANN TLD assignment processes. They provide a baseline for selection criteria to be applied in future allocations of new TLDs. Further work needs to be done to identify areas where modified or new criteria could be developed. Whilst some similarities exist across each of the four examples, the sections below illustrate the differences in each of the processes. In the interim, analysis of the evaluation of each of the four processes has been left out.

23. Previous GNSO work concluded that TLD strings should be proposed by the applicants and not prescribed by ICANN. However, there is also a need to develop policy that may place possible limits on strings that can be used at the top-level. Further discussion is required about establishing vetting processes which are objective and robust.

24. The selection criteria fit within the categories outlined below and are discussed in detail in the following sections:



25. Technical: The requirement to maintain the Internet's security and stability has been paramount. Through each successive round, the technical criteria have become more stringent and detailed. The technical criteria are designed to ensure that the registry meets all of ICANN's stability and security obligations, enables effective resolution of all domain names and reflects best practice technical developments. These criteria have evolved significantly over the last several years to now include requirements to conduct registry services with strong expectations of data and equipment security; the use of the latest software and hardware; the best technical personnel and ongoing commitment to technical improvements that reflect ICANN's requirements to run a stable and secure Internet architecture.

26. Financial and Business: The provision of detailed financial and business plans feature as critical selection criteria which have become more exacting and subject to, for example, international accounting standards, through each subsequent round. The criteria range across the provision of evidence that the applicant is financially viable over the long term; revenue and pricing models that demonstrate detailed understanding of the domain name





registration business; evidence of sufficient qualified staffing;  
customer service commitments in languages other than English on  
a 24/7/365 basis; innovative service offerings and the willingness to  
contribute to ICANN's budget objectives.

27. Legal and Regulatory: These criteria are difficult to analyze as each round had different objectives. The criteria revolve around commitments to ICANN's policy development process; to ICANN's consensus based decision making; to compliance with California-based contractual arrangements; and to public notification of terms and conditions of contracts. However, enhancement of competition in domain name registration services at the registry and registrar level, enhancing the diversity and utility of the domain name system and strengthening policy development procedures have also been key themes.

28. Community Expectations: ICANN's diverse community has very differing expectations but some central themes have emerged. Public comment periods on both selection criteria and evaluation methods are expected. ICANN processes have included deliberate periods of public comment during which the Internet community is able to comment on applicants and their application data. In



addition, applicants are able to ask questions and receive answers about the process which are posted on the ICANN's website. The public comment archives provide useful examples of the kinds of questions that were raised during the comment period. These comments were taken into account by the evaluators, particularly in the sTLD process and the .NET process. See, for example, <http://www.icann.org/org/tlds/net-rfp/net-rfp-public-comments.htm>.

29. Application Processes: The application process has become more stringent and robust with a shift to on-line application processes and full cost recovery fees for applicants. In addition, specific probity arrangements that prevent applicants influencing ICANN Board and Staff members have been established. There are also requirements for willingness to enter negotiations on the basis of draft contracts that set out standard terms and conditions and for availability to conduct follow-up evaluation negotiations.

30. External factors: The common element in the analysis of external factors is that whatever action ICANN takes to expand or modify the domain name space, there is sure to be intense interest from all areas of the Internet community in addition to the Government Advisory Committee and other ICANN entities.



## ***B. Selection Criteria 2000 Generic and Sponsored Top-Level Domain Process***

31. On 16 July 2000 the ICANN Board voted on a resolution (<http://www.icann.ORG/tlds/new-tld-resolutions-16jul00.htm#00.460>) to enable the introduction of a limited number of sponsored and unsponsored top-level domains.
32. The 2000 round of new TLDs applications resulted in the introduction of .biz, .info, .name and .pro as unsponsored top-level names and .aero, .museum and .coop as sponsored top-level domains. The formal documentation can be found at <http://www.icann.ORG/yokohama/new-tld-topic.htm> .
33. Instructions for applicants and early discussion about the initial selection criteria can be found at <http://www.icann.ORG/tlds/new-tld-application-instructions-15aug00.htm>. Forty five applications were received in the process. The key criteria in this initial round included the areas set out below.
34. Technical: These criteria can be found at <http://www.icann.ORG/tlds/application-process-03aug00.htm#1e>



and included a technical capabilities plan including “the following topics ...physical plants, hardware, software, facility and data security, bandwidth/Internet connectivity, system outage prevention, system restoration capabilities and procedures, information systems security, load capacity, scalability, data escrow and backup capabilities and procedures, Whois service, zone file editing procedures, technical and other support, billing and collection, management and employees, staff size/expansion capability, and provisions for preserving stability in the event of registry failure.

Required supporting documentation included: company references, diagrams of systems (including security) at each location, personnel resumes and references”.

35. Financial and Business: These criteria were contained in sections relating to the provision of business plans and required “detailed, verified business and financial information about the proposed registry”; company information, current and past business operations, registry/Internet related experience and activities, mission, target market, expected costs/expected budget, expected demand, capitalization, insurance, revenue model, marketing plan, use of registrars and other marketing channels, management and



employees, staff size/expansion capability, long-term commitment/registry failure provisions.

36. Legal and Regulatory: These criteria revolved around the treatment of (then) existing gTLD policies and proposals how new TLDs would be treated. There were no explicit requirements to commit to ICANN's policy development processes. However, explicit plans were expected to address name registration policies and the explanation of why applicants could argue that their application was unique and responded to unmet demand.

37. Community Expectations: There was a lot of discussion within the community about what top-level domains ought to be chosen, the history of which can be found at <http://www.icann.org.org/announcements/icann-pr16nov00.htm>.

38. Application Processes: The application process required the payment of a USD 50,000 non-refundable fee. The application materials differentiated between sponsored and unsponsored applications; required a "fitness disclosure", application for specific dispensation to hold material confidential and hard copies of application material delivered to ICANN's offices. There was a



publicly posted question and answer period and a public comment period.

39. External factors: At the time of the 2000 round, the Internet boom was at its height. There was a lot of industry interest in the potential to expand the domain name space which is evidenced by the number of applications ICANN received and the robust discussion which took place about the selection of seven new TLDs.



## ***5. Selection Criteria 2004 Sponsored Top-Level Domain Process***

40. The second process is the sponsored top-level domain round held in 2004 which, so far, has enabled the introduction of .mobi, .travel, .cat and .jobs. Other applications are still under consideration and include .post, .xxx, .tel (pulver), .tel and .asia.

41. The selection criteria for the 2004 sTLD round were posted on ICANN's website and, for the first time, an electronic website based application process was used to collect applicant information. ICANN provided a set of explanatory notes; set out what applicants needed to do to comply with the application process; provided a forum for answering questions about the application process and posted a timeline for applicants to follow.

42. One of the key characteristics in this process was the criteria for establishing a sponsoring community and organisation that would be responsible for domain name registration policies applicable for the top-level domain.



43. Technical: The minimum technical criteria were contained in Part E of the application material. Applicants were required to demonstrate their technical competence by showing how they would, for example, conduct registry operations; what kind of registrar-registry protocols would be required; how zone files would be managed; what facilities would be provided; how data escrow would be handled; what technical support would be available and how data and systems recovery would be managed.

44. Financial and Business: These criteria were contained in Part C and D of the application material which required detailed business plans and financial models. The business plan required appropriate staff to be identified; a marketing plan, plans for registrar management and appropriate fee structures. Most importantly, applicants were required to show why their application was unique and innovative; added community value to the domain name space, enhanced the diversity of the Internet and enriched global communities. In addition, applicants were expected to show how their operations would protect the rights of others through compliance with dispute resolution mechanisms and compliant registration systems.





45. Legal and Regulatory: A key element of the sponsored top-level domain application process was the requirement that applicants adequately define and demonstrate the support of a sponsored TLD community with evidence from a supporting organisation. The applicants were required to demonstrate that the proposed sponsoring organisation was appropriate for the purpose, would participate in ICANN's policy development processes and had support from the broader community.

46. Community Expectations: In this RFP, there were specific efforts made to diversify the domain name space; to demonstrate the attractiveness of different kinds of domain name spaces and to have different policy making processes that would be the responsibility of the sponsoring organisations. The public comments submitted for the sTLD process can be found at <http://forum.icann.ORG/lists/stld-rfp-general>.

47. Application Processes: Part F of the application material contained an Application Checklist to assist applicants in ensuring that their application materials complied with all sections of the RFP.



48. External factors: There were a number of special factors which arose throughout the application process including the status of regional geographic specific sTLDs; the treatment of identical string applications and the influence of the GAC principles of national governments with respect to public policy questions relating to some applications. The sTLD process is ongoing.



## **6. Selection Criteria .ORG Contract Reassignment**

49. The reassignment of the .ORG contract took place during 2002 with the final agreement between Public Internet Registry and ICANN being signed on 3 December 2002. PIR commenced operation on 1 January 2003. There is a wide range of material available on the ICANN website including the selection criteria, application material, staff evaluations and public comments on the process. These are found at <http://www.icann.org.org/tlds/org/rfp-20may02.htm>.

50. The final contract can be found at <http://www.icann.org.org/tlds/agreements/org/>. (Note that the contract is a very large file with numerous appendices.)

51. The key selection criteria for the .ORG contract were contained in an on-line “proposal form” which applicants were required to fill out and submit in hard copy. Ten applications were received by ICANN in a competitive tender process.

52. The selection criteria <http://www.icann.org.org/tlds/org/criteria.htm> on the .ORG reassignment focus on the “need to preserve a stable,



well functioning .ORG registry”, “ability to comply with ICANN’s policies”, “enhancement of competition for registration services”, “differentiation of the .ORG TLD”, “inclusion of mechanisms for promoting the registry’s operation in a manner that is responsive to the needs, concerns, and views of the noncommercial Internet user community”, “level of support for the proposal from .ORG registrants”, “the type, quality, and cost of the registry services proposed”, “ability and commitment to support, function in, and adapt protocol changes in the shared registry system”, “transition considerations”, “ability to meet and commitment to comply with the qualification and use requirements of the VeriSign endowment and proposed use of the endowment” and “the completeness of the proposals submitted and the extent to which they demonstrate realistic plans and sound analysis”. These criteria are consistent with, in particular, those applied in the .NET reassignment. The following sections set out the specifics of the selection criteria.

53. Technical: The RFP made specific reference to the size and complexity of the .ORG registry. In 2002 there were 2,700,000 domain names in the .ORG registry. The RFP asked specifically for applications from companies that already offered registry services



and who could demonstrate the capacity to run a “domain-name registry of significant scale”. The Technical Plan included specific information about transition planning. Other technical requirements were an explanation of registry-registrar models; database capabilities; data escrow and backup; physical facilities; publicly accessible WHOIS; technical support and compliance with technical specifications in RFCs.

54. Financial and Business: The .ORG selection criteria focused specifically on the following key areas: equivalent access for registrars, enhancement of competition, differentiation of the .ORG TLD (also relevant in the “community expectations” section) and supporting documentation (setting out the applicant’s business information, annual reports, business references and community support).

55. Legal and Regulatory: The .ORG RFP required applicants to comply with a draft agreement which was posted during the RFP process, available at <http://www.icann.ORG/announcements/announcement-24oct02.htm>. In addition, applicants were expected to agree to



requirements to comply with ICANN's published policies and to participate actively in new policy development initiatives.

56. Community Expectations: Responsiveness to the non-commercial Internet user community was a key selection criterion in the .ORG reassignment. Management of the USD 5 million .ORG endowment and provision of indications of community support also fit into this category.

57. Application Processes: The .ORG applicants were required to pay a fee of USD 35,000 in addition to the cost of preparing the application form. Eleven applications were received. The applicants used the application question period and public comments about the applications were received through the ICANN website. A "fitness disclosure" was also required in addition to a formal statement identifying materials that would remain confidential. The general information about applicants and the statement of information about applicants refers specifically to the emphasis placed on the applicants' ability to operate a large registry including identifying any outsourcing arrangements.



58. External factors: Key external factors were the management of the VeriSign endowment, the transition of a very large existing database and support for the non-profit sector: The process for effecting changes to the .ORG registry services agreement can be found at <http://www.icann.org.org/announcements/announcement-22apr02.htm>.



## **7. Selection Criteria .NET Reassignment**

59. The fourth example of a process with strict selection criteria was the reassignment of the .NET contract. The .NET registry had approximately six million registered domain names. The GNSO had recommended a distinction between absolute and relative criteria. The absolute criteria were developed with the broader ICANN community to “ensure that the .NET top-level Domain is administered at a very high level of safety, security, efficiency and fairness.” Each applicant had to satisfy all the absolute criteria. Comparisons were then made on the basis of the relative criteria and how well each applicant responded to those criteria.
60. There were five applicants for the .NET contract – VeriSign, NeuStar (as Sentan Registry Services), Afilias, DENIC and CORE. VeriSign was determined to be the successor operator after a comprehensive evaluation process.
61. The current version of the contract can be found at <http://www.icann.org.org/tlds/agreements/net/net-registry-agreement-01jul05.pdf> . A public comment period ran until 10 October 2005 on proposed amendments to the .NET contract.





Reference to the public comment period can be found at

<http://www.icann.org.org/announcements/announcement-22sep05.htm>.

62. In the RFP, there was a strong focus on absolute technical criteria, similar to those applied in the .ORG reassignment.

63. Technical: These criteria were absolute and included requirements for explicit descriptions (and substantiation) of existing registry operations; a “burdens and benefits” analysis of registry plans and all technical components of planned registry services. In addition, applicants were expected to provide detailed information on name server functional specifications; patch, update and upgrade policies; performance specifications; service level agreements, WHOIS specifications and data escrow arrangements. Explicit compliance with a range of RFCs was also required in addition to the provision of information about technical capabilities; sourcing of expert staff and highly detailed technical plans for ongoing operation in addition to detailed technical migration plans.

64. Security and stability of operations was a critical element of the absolute selection criteria. This included technical and business



failure contingency plans in addition to robust transition and migration plans.

65. Financial and Business: These criteria ranged across the provision of information about directors, officers, key staff and number of employees; the kind of organization and its core business. In addition, applicants were expected to provide pricing plans and demonstrate financial strength and long term viability. A detailed business plan was required, including staffing plans, expense models and cash availability.

66. Legal and Regulatory: These criteria included commitments to ICANN's existing consensus policies and compliance with all future consensus policies; a focus on increasing the competitive supply of registry services and innovative registry services

67. Community Expectations: ICANN processes include deliberate periods of public comment during which the Internet community can state their views. The .NET process outcome was contested and the public comment archives can be found at

<http://www.icann.ORG/tlds/net-rfp/net-rfp-public-comments.htm>.



68. Application Processes: The application process for the .NET contract required payment of a USD 200,000 application fee (with a graduated refund payable depending on the number of applicants). Each unsuccessful applicant received a USD 150,000 refund. There were procedures for non-compliant proposals and a requirement that portions of the application material be made public (and then commented upon by members of the ICANN community). Probity and conflict of interest measures were put in place to prevent applicants from attempting to influence ICANN Board and Staff members.

## **CONSIDERATIONS**

69. Doubts have been expressed about whether it is necessary for ICANN to qualify new gTLDs on the basis of support and sponsorship by a community; the provision of business and financial plans and addition of new value to the name space. The NRC report suggests pre-qualification of applicants on technical capability, basic financial viability, and adherence to registrant protection standards and compliance to ICANN policies.



70. As stated earlier, the presumption is that it should be left to the imagination of potential bidders to propose strings for new gTLDs. From that perspective, an essential aspect to analyze is what character strings are acceptable and under what conditions. This relates to elements such as string length, technical, linguistic, cultural or even political aspects. There is a case for investigating whether there are any external authoritative sources that could be useful for vetting purposes, where both negative and positive list approaches can be considered.
71. The GAC has stated clear views on how to consider certain strings for TLDs, inter alia in a letter to ICANN dated 3 April 2005 (<http://www.icann.org/correspondence/tarmizi-to-twomey-03apr05.htm>)
72. There are examples of negative list approaches concerning domain names on the second level, which may be of relevance also for TLD strings. Reserved names lists are also mentioned in the chapter on contractual conditions. A recent addition on this topic is [the reserved names list](#) for .EU that is now published, covering country names of EU Member States in a plurality of languages.



73. The selection criteria previously used can be assessed for future selection processes from both an overall perspective and from a detailed perspective on each criterion. It is clear that ICANN should strive for process simplicity, especially since simplicity is an integral element of ensuring predictability in its processes.



## **8. Contractual Conditions**

74. This section sets out analysis of the key contractual conditions relating to the initial 2000 round of new TLDs, the conditions for the new sTLDs and the contractual arrangements for the .ORG and .NET reassignment processes. The analysis is not intended to be comprehensive across each of the sets of agreements but rather to identify key points and areas where the agreements have evolved.
75. As noted above in the Selection Criteria section, contractual conditions have evolved to reflect the growing maturity of ICANN's organisation and the changing commercial environment in which registries operate. A list of all gTLDs can be found at <http://www.icann.ORG/registries/listing.htm> . All contracts between ICANN and gTLD operators and sponsors can be found at <http://www.icann.ORG/registries/agreements.htm>.
76. The change in approach for the 2005 TLD agreements was designed to streamline the agreement structure and to allow additional flexibility. Basic provisions have been reduced to key points; repetitious items have been removed and appendices have been simplified or eliminated altogether.



77. Other changes from the 2001 generic and sponsored top-level domain agreements include those set out in the following sections.
78. Obligations of Parties: The provisions have been simplified to eliminate clauses that repeated ICANN's mission as set out in the Bylaws. In addition, clauses relating to limitations around certain business practices by registry operators have been eliminated where they are overly prescriptive. Registry operator's obligations have been reduced to those covenants that are of fundamental interest to ICANN.
79. Consensus Policies: The old agreements provided a framework for the development of "consensus policies" including topics on which policies applicable to the registry operator may be developed. Since the original agreements were drafted in 2001, ICANN's restructuring and industry changes have had a significant effect on the way in which ICANN's policy development processes have been codified through the Bylaws. In the new form agreement, the reference to "consensus policies" includes all existing policies as of the date of the agreement, and all policies later developed through the policy development process, as part of ICANN's Bylaws. Some scoping of the development of policies under the agreement is included in the



2005 agreements. However, the Bylaws are intended to be the authoritative guide on the due process and procedure for the development of consensus policies.

80. Zone File Access: The updated registry agreements continue to obligate registry operators to provide zone file access to ICANN and to provide a free copy of the zone file to requesting parties.

81. Reserved Names: The identification of reserved top-level domain strings is simplified in two ways. One, a list on the IANA website that is updated from time to time and two, a list of names reserved from registration consistent with the relevant appendix which would be updated as needed.

82. Registry-Registrar Relationships: The existing framework of agreements for registry operators requires them to do business with (and only with) all ICANN-accredited registrars as well as mandating “equal access” to registry services and resources. The new .NET registry agreement continues this practice. The new .NET agreement prohibits registries from acting as registrars. However, registries may provide for volume discounts, marketing support and other incentive programs provided that the same





opportunity to qualify for those discounts and programs is available to all registrars.

83. Data Escrow: The 2001 registry agreement required data escrow (zone file copy) by the registry operator. In addition, the 2001 agreement also specified by appendix both the specifications for the data escrow and the form of data escrow agreement. The new .NET agreement also has this requirement.

84. WHOIS Policy: WHOIS policies (including consideration of public WHOIS, requirements for independent providers and ICANN's specifications) remained unchanged in the .NET agreement.

85. Functional and Performance Specifications: The functional and performance specifications were set out in Appendix C to the 2001 TLD agreements. The 2005 agreements set forth the specifications in Appendix 7.

86. Notice and Process for Proposed Registry Services & Product Changes: ICANN's pre-2005 registry agreements did not describe a procedure for ICANN to follow in considering registry requests to introduce new services or otherwise modify the registry agreement. A GNSO policy development process was launched in 2003 to



assist ICANN with developing such a procedure. The work of that GNSO PDP has been incorporated into all recent ICANN registry agreements

87. Dispute Resolution: The provisions governing dispute resolution contain mandatory arbitration provisions and also impose requirements that parties engage in co-operative discussions before proceeding to any arbitration demand. It is important to note that the intention of amending these provisions is to resolve any disputes through early informal processes (although these are mandated procedures). The new .NET provisions also contain specific performance provisions which give options to remedy non-performance through measures other than contract termination.

88. Termination Provisions: ICANN's termination rights revolve around an understanding of uncured and fundamental and material breaches of enumerated provisions relating to registry operator performance including those conditions relating to preserving security and stability; complying with consensus policies; handling of registry data; compliance with the process for approval of new registry services or material changes to existing services; and payment of ICANN fees.



89. Fees and Pricing: These conditions relate to fixed registry fees, transaction based fees and variable fees (essentially pass through of registrar fees when not collected from registrars directly).
90. Term of Agreement and Renewal: These conditions specify the time period for the gTLD assignment and conditions for renewal of the agreement.

## **CONSIDERATIONS**

91. With the current contractual conditions as a starting point, there is a need to select essential contract conditions on which policy decisions are possible. In addition, there is an opportunity to identify policy aspects on new suggestions for contractual provisions.
92. ICANN is moving towards simplification of the registry contracts and standardized contracts could also be considered. Such aspects are especially appropriate to consider if a large number of new top-level domain names are to be added to the root level. A detailed proposal to simplify current agreements has been introduced during a public comment period. When reviewing the contractual conditions, past and current policy debates on TLD use could be



considered. An example would be the discussions about to what extent sponsored TLD registries should be able to set and change policies for domain name registration.

93. Currently, the contractual conditions feature cancellation of the contract as the principal sanction available. This “nuclear option” is clearly only applicable in extreme cases of non-compliance and has never been used. Some recent registry contracts, however, feature arbitration with other sanction possibilities for the compliance regime and such approaches could be considered further.

94. Suggestions put forward in the WIPO report to safeguard the interests of IPR holders are relevant to domain name registration rules.

95. IETF findings and proposals provide input for reviewing certain contractual conditions. Examples are the technical best practices for TLD zones that the DNSOP working group has elaborated and the results from the CRISP working group relating to WHOIS.



## **9. Allocation Methods**

96. There are technical, processing and maintenance limits on the number of new gTLDs that could be introduced within a given time frame. The number of applications that meet stipulated selection criteria may exceed these limits, calling for an allocation method to handle such situations. Accordingly, policy choices about allocation methods need to be made. The policy choices should consider that combinations of such options are possible and could be related to different purposes. [check on RFC reference to numbers of TLDs that can be added]
97. There is a number of allocation methods to choose from and these methods can be grouped into the following categories; sequential or first-come/first-served, random selections in the form of ballots or lotteries, auction models (with increasing or decreasing bidding) and comparative evaluations, commonly known as “beauty contests”.
98. To date, ICANN has only used comparative evaluation methods. These evaluation procedures have differed in the details, by applying different criteria as explained in the selection criteria



chapter above. Evaluations have been performed in different ways; in-house, with mixed teams or by external consultants.

99. In the 2000 “proof-of-concept” round, ICANN used a comparative hearing process conducted by ICANN Staff and Board to select 7 out of the 44 applicants on the respective merits of their cases in fulfilling the specified selection criteria.

100. In the 2004 round for sponsored gTLDs, ICANN issued an open invitation for any applicants to propose new sponsored top-level domains. This time, ICANN engaged a project manager, selected by competitive bidding and assisted by three review panels, to determine whether the selection criteria were fulfilled or not. Allocation of a TLD to an applicant was to be conditional only upon fulfillment of these criteria. This process was designed to have an objective evaluation by experts insulated from lobbying by applicants, who were prohibited from contacting the evaluator. The intention was further to avoid lobbying pressure on ICANN Staff and Board as well as to minimize the risk for potential criticism about subjectivity in the process.



101. The .ORG reassignment was conducted in 2002 as a competitive tender process based on an open RFP with the selection criteria as specified in the previous chapter. Eleven applications were received and the evaluation was performed using a multi-team approach. The evaluation tasks were distributed by topic between consultants, constituencies and ICANN staff (as described in an evaluation report at: <http://www.icann.org/tlds/org/preliminary-evaluation-report-19aug02.htm> ). PIR was selected as the proposed new registry for this gTLD and the ICANN Board resolved in accordance with this proposal.

102. The .NET reassignment was conducted in 2004-2005 as a competitive tender process based on an open RFP with the selection criteria specified in the previous chapter. Five bids were received and the evaluation was conducted by an outside consultant, assigned to this task through competitive bidding and selection by ICANN Staff and Board. The final evaluation and recommendation by the consultant is available at: <http://www.icann.org/announcements/announcement-28mar05.htm>.

## CONSIDERATIONS



103. It should be recognized that the final decision to allocate a gTLD lies with the ICANN Board, where contractual arrangements are taken into account for the final approval. This implies that judgments can sometimes become complex, especially when an application attracts intense community and media interest. The .NET reassignment is a case in point, where the Board followed the consultant's recommendation to reappoint VeriSign as registry for .NET. However, community concerns were raised about the contractual conditions which, in response to those concerns, have been renegotiated, posted for public comment and presented to the Board.

104. ICANN has considerable experience in comparative evaluation methods. Two other allocation methods mentioned initially, first-come/first-served and random selection, are self-explanatory. ICANN has no experience of either model or of using auctions. Information about auction methods can be found in a variety of publications a selection of which are found in the Reference List.

105. The choice of allocation method has significance only if the number of valid applications is higher than the number of available slots for new TLDs. With criteria defined for a successful





application, it could be considered reasonable to accept them on a first-come/first-served as long as they meet the criteria, provided that the number of such applications is lower than, or equal to, the number of available slots for new TLDs. However, experience with “land rush” effects in domain name registrations show that first-come/first-served does not work when many valid applications are supplied at the same time. With this in mind, it is prudent to foresee the need for another allocation method from the outset.

106. The NRC report states that “If new gTLDs are to be created, the currently employed comparative hearing or expert evaluation processes should not be assumed to be the only processes for selecting their operators” and suggests that if the number of qualified applicants turns out to be less than the number of available slots, all would be chosen; if not, a market-based selection process, i.e. an auction, could be used to select among the applicants. The report further contends that “because of the wide range of intents and corresponding designs of such processes, they must be carefully designed, drawing on the wide range of previous experience in the design of auctions”.



107. In the process of determining the preferred allocation method, ICANN is constrained by some legal requirements that may limit the options for choosing allocation methods. Such limitations need to be investigated in parallel as soon as preferred allocation methods start to emerge in the selection process.



## ***10.Relevance***

108. Issues surrounding the creation of new top-level domains and the policies for undertaking that work are directly relevant to the GNSO's mission and the ICANN Bylaws. It is anticipated that very close consultation will take place between other parts of ICANN's organisation including the ccNSO, the Government Advisory Committee and expert technical working groups.

109. This work will have a lasting value and applicability and will establish a framework for future decision making. The work will also have an impact on existing policies for registry services.

### ***C. Staff Recommendation***

110. It is recommended that the GNSO launch a focused policy development process on the issues outlined in the 22 September 2005 resolution in close consultation with the broader ICANN community including the Government Advisory Committee (on the public policy aspects of new top-level domains) and the ccNSO on (internationalized domain names).



### ***D. Proposed Working Group Terms of Reference***

111. The draft Working Group Terms of Reference reflects very diverse objectives across the ICANN community. The GNSO is tasked with determining whether to continue to introduce new gTLDs and, if that is affirmative, developing robust policy to enable the selection and allocation of new top-level domains. The proposed Terms of Reference found below could be used as a guide for further work.

112. Term of Reference One: Should new top-level domain names be introduced?

- (a) Given the information provided here and any other relevant information available to the GNSO, the GNSO should assess whether there is sufficient support within the Internet community to enable the introduction of new top-level domains. If this is the case the following additional terms of reference are applicable.

113. Term of Reference Two: Selection Criteria for New top-level Domains



New Top-Level Domains  
Staff Recommendations & Proposed Terms of Reference

- (a) Using the existing selection criteria from previous top-level domain application processes and relevant criteria in registry services re-allocations, develop modified or new criteria which specifically address ICANN's goals of expanding the use and usability of the Internet. In particular, examine ways in which the allocation of new top-level domains can meet demands for broader use of the Internet in developing countries.
- (b) Examine whether preferential selection criteria could be developed which would encourage new and innovative ways of addressing the needs of Internet users.
- (c) Examine whether distinctions between restricted, unrestricted, sponsored and unsponsored top-level domains are necessary and how the choice of distinctions meets the interests of relevant stakeholders.
- (d) Examine whether additional criteria need to be developed which address ICANN's goals of ensuring the security and stability of the Internet.



- (e) Examine whether additional criteria can be developed to normalize and simplify the administrative process of selecting and implementing new top-level domains.

#### 114. Term of Reference Three: Allocation Methods for New Top-Level Domains

- (a) Using the experience gained in previous rounds of top-level domain name application processes, develop modified or new criteria which simplify and standardize the allocation methods for selecting new top-level domain names.
- (b) Examine the full range of allocation methods including auctions, ballots and comparative evaluation processes to determine the most predictable and stable method of implementing additions to the Internet root.
- (c) Examine how allocation methods could be used to achieve ICANN's goals of fostering competition in domain name registration services and encouraging a diverse range of registry services providers.



#### 115. Term of Reference Four: Contractual Conditions for New Top-Level Domains

- (a) Using the experience of previous rounds of top-level domain name application processes and the recent amendments to registry services agreements, develop modified or new contractual criteria which are publicly available prior to any application rounds.
- (b) Examine whether additional contractual conditions are necessary to improve ICANN's contractual compliance regime to provide predictability and security of registry services.
- (c) Examine whether a registry services code of conduct, in addition to contractual conditions, would improve a compliance regime which is easily understandable and recognizes differences in approaches to offering registry services whilst, at the same time, ensuring the stability and security of the Internet.

116. At the Council meeting on 28 November 2005, it was resolved to adopt Terms of Reference as follows:



New Top-Level Domains  
Staff Recommendations & Proposed Terms of Reference

117. Should new generic top-level domain names be introduced?

- (a) Given the information provided here and any other relevant information available to the GNSO, the GNSO should assess whether there is sufficient support within the Internet community to enable the introduction of new top-level domains. If this is the case the following additional terms of reference are applicable.

118. Selection Criteria for New Top-Level Domains

- (a) Taking into account the existing selection criteria from previous top-level domain application processes and relevant criteria in registry services re-allocations, develop modified or new criteria which specifically address ICANN's goals of expanding the use and usability of the Internet. In particular, examine ways in which the allocation of new top-level domains can meet demands for broader use of the Internet in developing countries.
- (b) Examine whether preferential selection criteria (e.g. sponsored) could be developed which would encourage





New Top-Level Domains  
Staff Recommendations & Proposed Terms of Reference

new and innovative ways of addressing the needs of Internet users.

- (c) Examine whether additional criteria need to be developed which address ICANN's goals of ensuring the security and stability of the Internet.

119. Allocation Methods for New Top-Level Domains

- (a) Using the experience gained in previous rounds, develop allocation methods for selecting new top-level domain names.
- (b) Examine the full range of allocation methods including auctions, ballots, first-come first-served and comparative evaluation to determine the methods of allocation that best enhance user choice while not compromising predictability and stability.
- (c) Examine how allocation methods could be used to achieve ICANN's goals of fostering competition in domain name registration services and encouraging a diverse range of registry services providers.



## 120. Policy to Guide Contractual Conditions for New Top-Level Domains

- (a) Using the experience of previous rounds of top-level domain name application processes and the recent amendments to registry services agreements, develop policies to guide the contractual criteria which are publicly available prior to any application rounds.
- (b) Determine what policies are necessary to provide security and stability of registry services.
- (c) Determine appropriate policies to guide a contractual compliance programme for registry services.



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Johnson, David and Susan Crawford, *A Concrete "Thin Contract Proposal"*, submitted 23 August 2003 as comments on new TLD contracts. On line version including proposed draft contract available at <http://forum.icann.org/mtg-cmts/stld-rfp-comments/general/msg00039.html>.

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World Intellectual Property Organisation, *New Generic Top-Level Domains: Intellectual Property Considerations*, WIPO Arbitration and Mediation Center, 2004. On line version at <http://arbiter.wipo.int/domains/reports/newgtld-ip/index.html>.

## ICANN Links

*GNSO gTLDs Committee Final Report on New gTLDs, May- June 2003*

9 May, v4: <http://www.dnso.org/dnso/notes/20030509.gTLDs-committee-conclusions-v4.html>

21 May, v5: <http://www.dnso.org/dnso/notes/20030521.gTLDs-committee-conclusions-v5.html>

02 Jun, v6: <http://www.dnso.org/dnso/notes/20030602.gTLDs-committee-conclusions-v6.html>

12 Jun, v7: <http://www.dnso.org/dnso/notes/20030612.gTLDs-committee-conclusions-v7-1.html>

IANA alphabetical listing of all TLD domains - <http://data.iana.org/TLD/tlds-alpha-by-domain.txt>.

List of Registry Agreements <http://www.icann.ORG/registries/agreements.htm>



List of Registries

<http://www.icann.ORG/registries/listing.html>.