**Potential Human Rights Issues Arising from the New gTLD Procedures**

The following document outlines the important human rights concerns involved in the new gTLD allotment and resolution procedures. The issues are categorized in accordance with the relevant rights which they may affect.

**Freedom of Expression**

1) Concerns of content-based gTLD String Evaluations- ICANN’s San Francisco GAC Communiqué March 16, 2011 states that the Corporation may move on to a system “*assuming an ongoing management and oversight role regarding Internet content”*. The Council of Europe Report at ICANN 50 suggested that this could mean that ICANN may extend its scope such that *“the approval or rejection of applied-for new gTLD strings may involve an evaluation process where judgments related to content are made.”* In other words, ICANN could examine applications for a gTLD string and prioritise certain types of content or speech over others, which would amount to a denial of free speech.

2) Community, Trademark and Public Interest Objections to gTLD strings- Currently, where there is a significant objection from the community to a certain proposed gTLD string, a panel of experts will review all objections designated by the applicable Dispute Resolution Service Provider (DRSP) to determine whether the objector has standing to object. Following this, the two parties either enter into dispute resolution process or the application/objection is withdrawn.

The concern arises because the definition of what amounts to ‘significant objection from the community’ is unclear, so that such objections can be made in an exploitative fashion against free speech even where there is no real or significant harm or effect accruing to any community.

The Trademark Objection may allow for companies to take action against gTLD strings which are used to make fair criticism of existing organisations. Eg. The .sucks domain.

Similarly, the Public Interest based objection to strings can take place where potential new gTLD is contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law. This also can potentially overreach its mandate, resulting in harm to the right of free speech. Eg.- When two TLD strings are identical/very similar, the string which is of greater value to the public interest will receive priority in evaluation- however it is unclear what the specific standard of public interest will be in this case.

3) Censorship- There is a possibility that gTLDs could result in easier censorship by governments, etc. For example, the Chinese government had made a proposal to only allow for domain names registered in China-<https://thestack.com/world/2016/03/29/china-proposes-foreign-domain-name-censorship/>. This may allow for automatic censorship of domain names blacklisted by governments, regardless of the location where the registration is to be done. This is the procedure suggested by .xyz and demonstrates how government pressure can affect the manner in which registries reserve or block domains.

<https://www.eff.org/deeplinks/2015/10/accepting-chinese-censorship-domains-registry-xyzcom-invites-more>

**Right to Security**

1) Registry Security- Under the new gTLD regime, it is possible for \_\_ to use either existing accredited registries or any registry service of choice. While this increases the choices available to users, potential concerns of unsafe or unsecure registries may arise due to insufficient oversight into their security procedures.

*2)* Protection against TLD Squatting- The threat of TLD squatting, which refers to use of domain names similar to well-known existing names so as to mislead the public. It is of great importance that ICANN protects internet users from confusing and malicious activities of this nature. *Further reading is available at*

*http://www.gizmodo.com.au/2014/06/are-new-top-level-domain-names-a-squatters-dream/*

**Due Process**

1) Base Registry Contract- The Base Registry Agreement exists between the registrar and registry. With respect to the new gTLDs, the public comment received to the Preliminary Issue Report suggested that some elements, such as registry pricing, sunrise periods and practices, and other things have been perceived by some in the community to have circumvent the intended goals/protections developed by the community, especially in regards to potential registrants seeking to protect their rights in names. For example, the treatment of certain names as ‘premium names’ where registry operators can charge a greater amount creates a potential for exploitation without ICANN ensuring oversight on registry pricing policies, with a clear guidance mechanism for registry pricing. *Report of Public Comments to the Preliminary Issue Report on New gTLD Subsequent Procedures at* [*https://www.icann.org/en/system/files/files/report-comments-new-gtld-subsequent-procedures-04dec15-en.pdf*](https://www.icann.org/en/system/files/files/report-comments-new-gtld-subsequent-procedures-04dec15-en.pdf)

2) Trademark Clearing House- The priority mechanism of the Trademark Clearing House, whereby any applicant having an existing trademark in a related gTLD string is granted priority over other applicants, is potentially restrictive process that can create monopolies. Due to the sunrise period clause, there is priority even if the trademark has not yet acquired a registration. As a result, the question of the validity of the trademark has not been properly addressed before the grant of the gTLD, leading to a concern of the absence of sufficient procedural safeguards.

**Diversity Issues/ Increasing Accessibility and Participation-**

1) Global Inequality in Allotment- According to ICANN’s statistics on the new gTLD program, 1586 of 1930 applicants from Europe and USA https://newgtlds.icann.org/en/program-status/statistics. As acknowledged in the Update to the Cost Considerations of the New gTLD Program, there remained concerns that $185,000 USD may act as a deterrent to applicants from developing nations, not-for-profits, and others with limited financial resources.

2) Applicant Support Directory- The applicant Support Directory created by ICANN allows for financially needy gTLD applicants to seek financial and technical assistance for their application. ICANN also sets aside a certain amount for assisting such applications. However, the extent of the initiative’s success is unclear. Can we request ICANN for information regarding the outcome of the requests and efficacy of the Directory/funds set aside by ICANN for donation?

3) Concerns with the FCFS Policy- Currently, gTLDs are allotted based on a first come first served (FCFS) basis. It is possible that this favours potential applicants who have prior access to information over others. As a result, applicants with the knowledge advantage would more likely receive their preferred allotments than the less privileged parties looking for a domain string.

4) Offensive gTLDs to some communities- Many governments have opposed new gTLDs on the ground of public interest, such as .catholic and .islam on the ground that the content associated with these domains may not be in line with the belief of these religions, thus affecting certain communities adversely. Saudi Arabia also made an opposition to .gay, .baby, .porn, .sexy, .adult, .hot, .sex, .dating and .virgin on the grounds that they are against public morality, particularly to its communities. While their opposition may not be viewed the same way globally, it raises the concern that domain names may offend certain groups and the weight given to each community’s views is of importance to ensuring diversity in participation and involvement.

**Competition, Choice and Consumer Welfare**

1) Internationalised domain names- While the IDN initiative is intended to be more inclusive globally, we must determine whether all countries, etc. have an equal opportunity to have their own representation of their language, country or dialect in the IDN system.

2) Currently, special rights are granted to non-governmental/ intergovernmental organisations to prevent registration by others of any TLD string similar to their name. However, this restriction must be narrow otherwise it will cause a restriction on choice available to applicants. Reservations are currentl in place for IGOs as well as many names related to IOC, ICRC and the National Red Cross movements. The IOC and ICRC related reserved names list is very expansive and can affect one’s potential to comment on their work through a .sucks or .fail domain, etc.

https://www.icann.org/sites/default/files/packages/reserved-names/ReservedNames.xml