



**Re: Initial Report on the New gTLD Subsequent Procedures Policy Development Process (Overarching Issues & Work Tracks 1-4)**

Via Electronic Mail:

September 26, 2018

We appreciate the scale of work and consultative approach adopted by the Working Group in publishing the New gTLD Subsequent Procedures Policy Development Process Initial Report (“Initial Report”). Google Registry previously commented on the Working Group’s Preliminary Issue Report and Community Consultation Questionnaire, and submitted specific comments on several issues addressed in the Initial Report.<sup>1</sup> We write to emphasize several of the recommendations made in those comments, focusing on four key objectives that we believe are critical to the success of any future application process:

- Improving the efficiency and predictability of the application process,
- Ensuring dispute resolution, rights protection, and abuse prevention mechanisms are fair and effective,
- Preserving the openness of the 2012 Round, and
- Fostering innovation in the domain name space.

**Improve the efficiency and predictability of the new gTLD application process.**

We generally support recommendations in the Initial Report to streamline the application process, including consolidating review of parallel applications or application sections by an applicant or backend registry service provider (RSP). As a note of caution, in developing parameters for an RSP pre-approval program the Working Group should avoid processes and structures that show undue preference to incumbent RSPs versus prospective RSPs. Programs should be equally available to incumbents and new RSPs provided that they are able to meet objective criteria established for the program.

Incorporating greater predictability in the application process is critical to the success of the New gTLD Program, and will encourage greater adoption by business users. We believe that the introduction of a continuous process, preceded by one clearly-delineated round to resolve pent up demand, offers strong benefits to prospective applicants in terms of predictability, by allowing them to apply for a TLD when internal demand and concrete use cases exist, rather than having to predict demand and apply preemptively in case business plans develop between discrete windows.<sup>2</sup>

**Ensure dispute resolution, rights protection, and abuse prevention mechanisms are fair and effective.**

We continue to support the proposals submitted by the Registries Stakeholder Group and described in the Initial Report to update the String Similarity Review and String Confusion Objection Process. The recommendations propose concrete steps that we believe would have the dual effects of better mitigating the potential for user confusion associated with visually similar TLDs, while also providing better predictability for applicants, who were subject to inconsistent application of standards and availability of review mechanisms during the 2012 Round.

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<sup>1</sup> For our prior recommendations on the matter please see Google Registry’s [2017 response to the GNSO Community Comment 2 \(CC2\) on New gTLD Subsequent Procedures Policy Development Process](#) and our [2015 comment on the Preliminary Issue Report on New gTLD Subsequent Procedures](#).

<sup>2</sup> A more comprehensive explanation of our position in favor of a continuous application process is available in our [2015 comments on the New gTLD Subsequent Procedure Preliminary Issue Report](#).

We believe that the rights protection mechanisms designed for the 2012 round have generally struck the right balance. However, we encountered minor issues related to the inability to consider “dot-span trademarks” in applying the Sunrise Dispute Resolution Process (SDRP).<sup>3</sup> We would recommend that ICANN adjust the terms of the SDRP such that a registry could treat dot-span trademarks as exact-matches when making SDRP determinations. The Working Group could also explore extending Sunrise and Claims services to domains that are exact matches of dot-span trademarks registered in the Trademark Clearinghouse.<sup>4</sup> This recommendation would not otherwise affect the requirement that Sunrise participants demonstrate use of the underlying trademark in commerce, nor the ability of registries to reserve names or designate them as premium.

### **Preserve the openness of the 2012 Round.**

We support the Working Group’s position that future application processes should be kept open, by avoiding restrictions based on applicant type, application type, or by volume. This approach is consistent with the goals of the 2012 Round as it ensures open competition in the marketplace for TLDs and maximizes the potential for utility innovation in the domain name system.

We further agree with the Working Group that the application categories established for the 2012 round were appropriate, and that no additional subcategories of TLDs need to be created.

### **Support innovation in the domain name space.**

Fostering innovation and improving the utility of the DNS should remain central priorities of any future application process. To these ends, we encourage the Working Group to look at restrictions posed by the 2012 round, as well as the 2012 New gTLD Registry Agreement, that limit registries’ ability to innovate with their domain portfolios. In particular, we highlight the following policies, which we believe should be reexamined in an effort to facilitate the creation of unique TLD business models that benefit Internet users

- **Closed Generics:** We continue to believe that permitting greater flexibility for registries to operate a variety of business models—including a single-registrant model for strings consisting of commonly-utilized, generic terms—may provide myriad benefits to users in terms of security, innovation, and user expectations.<sup>5</sup>
- **Registrar requirements:** The requirement to use a registrar should be struck for closed TLDs. Vertical integration restrictions preceded the introduction of closed TLDs; in the context of these closed namespaces, where the registry and registrant are a single related entity, they create unnecessary technical complexity and hamper innovation without any clear competition benefit.<sup>6</sup>
- **Fixed annual registration terms and billing cycles:** Providing registries with discretion to set registration terms and billing cycles in increments other than one year, including domains shorter or longer than the one and ten-year limitations, could provide additional opportunities for innovation or product integration.<sup>7</sup> Similarly, presumptive renewals may not be appropriate for all use cases.<sup>8</sup>

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<sup>3</sup> We use the term dot-span trademarks to refer to instances where the entire domain name, including the TLD, is an exact match of a registered trademark.

<sup>4</sup> For instance, for a TMCH entry for WALMART the brand owner would be permitted to register both walm.art and walmart.art during the Sunrise period for .art, and would receive claims notifications for either registration.

<sup>5</sup> For a more comprehensive discussion of our views on the potential benefits of closed generics, please see Google’s [2013 Public Comment on Closed Generics](#).

<sup>6</sup> Registrars have limited incentives to invest technical work in support of closed TLDs, which are likely to yield lower registration volumes than their open counterparts, or may charge prohibitively expensive amounts for technical work required to justify the lower anticipated volume. As the registry is ultimately the sole registrant in these TLDs it should be able to make these cost-benefit assessments independently by operating without a registrar and undertaking technical work directly.

<sup>7</sup> Many subscription services, for example, are based on a monthly or weekly billing increments, rather than annual cycles. Flexibility to align registration or billing terms with these services could support useful and innovative integrations, without requiring workarounds that are technically complicated and confusing to users.

<sup>8</sup> The [.wed application proposes](#) a use case in which presumptive renewals may not be appropriate, as wedding sites are generally ephemeral and couples’ names frequently repeat. To ensure that domains corresponding to popular

- **Incentivize restricted models:** Restricted TLDs that align with user expectations present a major opportunity for increasing innovation and utility. However, given the high upfront cost to operate a TLD registry operators face competing incentives to operate as fully open to maximize financial return. Incentives for these TLDs, such as a sliding scale for registry fees that accounted for the prospective registrant pool, could encourage a more diverse set of TLD business models.<sup>9</sup>

We appreciate the opportunity to comment and welcome any further questions by the Working Group on the recommendations herein.

Sincerely,



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Domains Policy and Compliance

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names were returned to the registration pool, the registry implemented a workaround where the price increased dramatically after the second year of registration. We believe that relaxing the requirement for presumptive renewals would have better accomplished these objectives; it is technically cleaner from a registry perspective and avoids the confusion faced by registrants who suddenly are subject to a dramatic increase in price.

<sup>9</sup> For additional discussion on this recommendation please see [Google Registry's 2017 Comments on the GNSO Community Comment 2 \(CC2\) on New gTLD Subsequent Procedures Policy Development Process](#) and [Competition, Consumer Trust and Consumer Choice Review Team Draft Report of Recommendations for New gTLDs Recommendation 14](#).