



26th September 2018

**ICANN
New gTLD Subsequent Procedures Policy Development Process Working Group**

Submitted via <https://www.icann.org/public-comments/gtld-subsequent-procedures-initial-2018-07-03-en>

Dear Sirs

MARQUES feedback on Initial Report of the New gTLD Subsequent Procedures Policy Development Process Working Group

MARQUES is the European association representing brand owners' interests. More information about **MARQUES** is included at the end of this letter.

The **MARQUES** Cyberspace Team has been following the work of the Subsequent Procedures Working Group closely. Whilst some brands in membership of **MARQUES** applied in Round One, all members were impacted by the changes it brought to the domain name system which demanded new strategies, increased vigilance and put pressure on budgets. Therefore, members of **MARQUES** have participated as members or observers of one or more of the Work Tracks or have attended updates at ICANN meetings. We have valued the opportunity to hear the views of other participants in the multi-stakeholder community on complex issues and thank ICANN for this opportunity to comment.

Following a face to face meeting attended by 15 of our members, we have focussed our comments on the Initial Report on a small number of priority issues.

1. Application Process

Although larger brands can cope with a first come, first served permanently open application process, **MARQUES** advocates a permanently open application system featuring predictable rounds as described in 2.2.3. d.3. For example, this might feature a three-month window of application between 1 January – 31 March in any year followed by a nine month closed period from 1 April – 31 December before the window opens again. We believe that all applications submitted in the open window should be treated equally (e.g. not on a first come first served basis). We think this offers all brands, large and small as well as governments and members of civil society the best opportunity to monitor applications

To the extent that ICANN is not able to complete the evaluation and processing of applications in any given round prior to the opening of the application window for the next round, it must complete the evaluation and processing of those applications submitted in the preceding

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round prior to commencing the evaluation and processing of new applications in the subsequent round.

2. Categorisation of Applications

With the exception of the recognized categories in the 2012 new gTLD Round (Communities, Brands, Geographic TLDs), **MARQUES** does not recommend the categorisation of additional types of applications because plans change and applicants who submitted an application in one category might wish to change business model in the future. **MARQUES** believes that there should be a uniform application process for all, without categorisation. However, within this uniform process each applicant should be directed down a path which facilitates participation and fair evaluation. Thus a brand applying for a single entity (Closed Brand) registry exclusively for their own purposes – as one third of all Round One applicants did - should not be required to submit information on their Board Directors if they are publically quoted, they should not have to submit an operating budget because they will not be selling domains, they should not have to connect with the Trademark Clearinghouse because there is no risk of third party infringement, they should be exempted from providing a Letter of Credit because if the registry fails, the only harm is to the brand itself.

3. Closed Generics

MARQUES believes it is important that the allocation of a TLD does not distort competition. If the ICANN community decides that Closed Generics should be allowed – because application itself is not anti-competitive or is otherwise in the public interest – then the applicant should be required to submit a Public Interest Commitment that the use of the TLD will not be used in an anti-competitive manner.

4. String Similarity

MARQUES believes that international trademark law should be followed in regard to String Similarity. Rights should not be awarded in a TLD that are not available under trademark law. Applications should therefore be carefully reviewed on a case by case basis. That said, **MARQUES** does support the recommendations by the Working Group on the treatment of plurals and singulars of the same term in the same language as similar (either for purposes of creating contention sets or for eliminating applications that are similar to existing strings).

5. Objections

MARQUES supports transparent processes for resolving conflicts. More care needs to be taken in selecting panellists or objectors to ensure they are free from conflicts of interest. There should be options in all cases for one or three person panels and PICs should be allowed to be amended in response to an objection (2.8.1.c 2-5).

Objections from Governments must include clearly articulated rationale including the national or international laws they are based upon as well as merit-based public policy reasons.

MARQUES also recommends that Governments should not have an automatic veto right over applications (2.8.1.e.1). Section 3.1 of the Applicant Guidebook provides a strong presumption that if the Government Advisory Committee (GAC) provides formal Advice against the delegation of a particular string or against an application, the delegation or application will not be approved. This is the case regardless of whether or not the application, which could be for a



famous or well-known brand with registered trademarks in many jurisdictions, met all of the Applicant Guidebook requirements. It allows the GAC to veto any application that otherwise followed the rules. We believe that there should be flexibility for the Board to "accept" the GAC Advice, and then to address the concerns behind the GAC Advice for example through the creation of Public Interest Commitments, thereby approving the application albeit subject to certain conditions.

To minimise objections, **MARQUES** recommends that all applicants should be given the option of submitting a "Second Choice" alternative string. Where there is an Objection or direct conflict, resolution could thus include abandoning the first choice string and moving to the second choice.

6. Fees

MARQUES accepts that the new gTLD programme should operate on a cost-recovery basis but believes that the \$185,000 application fee in Round One deterred many interested brand applicants. **MARQUES** also understands the concerns expressed about TLD squatting in the event that cost-recovery falls below a certain floor (eg., US \$15,000 - \$20,000). To enhance brand participation including from the Global South and SMEs, **MARQUES** proposes that there is a base application fee which all applicants should pay for standard evaluation with supplementary / top up fees paid for more detailed evaluation. Thus the fee for a Single Applicant/Closed Brand Registry, where the evaluators do not need to review a business plan should be lower than for an Open Registry.

We thank you for your time and consideration of our comments and we are willing to provide any further clarifications upon your request.

Yours sincerely,

On behalf of **MARQUES**

A handwritten signature in blue ink that reads "Nick Wood".

Nick Wood, **MARQUES** Council member and Vice-Chair of **MARQUES** Cyberspace Team



Introduction to **MARQUES**

MARQUES is the European association representing brand owners' interests. The **MARQUES** mission is to be the trusted voice for brand owners.

MARQUES unites European and international brand owners across all product sectors to address issues associated with the use, protection and value of IP rights, as these are vital to innovation, growth and job creation, which ultimately enhance internal markets. Its membership crosses all industry lines and includes brand owners and trademark professionals in more than 80 countries representing billions of dollars of trade annually. The trade mark owners and practitioners represented by **MARQUES**, together, own more than three million domain names and advise organisations of all sizes on rights protection in the domain name system. These domain names are relied upon by consumers across Europe as signposts of genuine goods and services.

More information about **MARQUES** and its initiatives is available at www.marques.org.