

MarkMonitor Comment on Subsequent Procedures PDP Initial Report (Overarching Issues & Work Tracks 1-4)

September 26, 2018

Dear Working Group Co-Chairs:

Please find MarkMonitor's comments on relevant sections of the Subsequent Procedures Working Group's Initial Report below.

2.2.1 Continuing Subsequent Procedures

MarkMonitor favors the opening of a next application round as soon as practicable and urges ICANN to begin budgetary planning for the next round as the work of this Working Group continues toward completion. This next round, structured similarly to the last, should be followed, after swift community review, by the perpetually-open and ongoing ability to submit applications for immediate review and delegation. Community wisdom has observed that most outstanding policy development issues are minimally relevant, if at all, to .brand (i.e. "closed" Specification 13) applicants. Accordingly, MarkMonitor supports the proposition that, if further policy development needs will likely delay this next defined round for any appreciable time, that .brand TLDs be able to apply in a dedicated round.

2.2.6 Accreditation Programs

MarkMonitor supports the proposal of RSP pre-approval, to the extent that it introduces efficiencies and does not serve as a barrier to entry for new market entrants. We caution that the effort to develop and implement such a regime could override any efficiency gains, and therefore would be less desirable than having clear and predictable technical and operational evaluation criteria for future applications.

2.5.1 Application Fees

MarkMonitor expects that efficiencies gained and lessons learned from the first new gTLD round, in conjunction with the suggested "revenue neutral" principle, will lead to a decreased

application cost for future applications. We note that application cost serves a purpose beyond compensating ICANN for its required evaluation and delegation costs, akin to the applicant's financial capability analysis, in ensuring the security and stability of the DNS. Accordingly, we suggest that the flexibility to employ a combination of these two factors might be appropriate for some applicants, especially those whose unique corporate governance, financial reporting, or intellectual property ownership structures may hinder clear evaluation of the applicant's true financial capability.

2.6.1 Application Queueing

ICANN should re-deploy random prioritization for applications in the next round. To avoid applicants gaming the system, priority determinations should be non-transferrable among applications.

2.7.1 Reserved Names

MarkMonitor believes that, in the interest of maximizing both consumer choice and value to the community, gTLD ownership and use should be minimally encumbered. Reservations for globally-recognized humanitarian organizations, such as the Red Cross and Red Crescent, are valuable to the community and are consistent with ICANN's Core Values. On the contrary, country names and two-character strings should not be reserved, especially for .brand TLDs, as they represent a significant value proposition of TLD ownership, and have dubious consumer confusion risk.

2.7.2 Registrant Protections

MarkMonitor is proud to support community policy development on registrant protection mechanisms, while noting that some of such protections are inapplicable and can be unduly onerous on .brand Registry Operators.

2.7.3 Closed Generics

MarkMonitor appreciates the arguments on each side of the closed generics debate, and believes that closed generics may be acceptable in some cases, with sufficient commitments and controls in place to prevent abuse.

2.7.4 String Similarity

MarkMonitor agrees that same-language/script plurals are likely to cause consumer confusion.

2.7.5 IDNs

MarkMonitor believes that IDNs are of tremendous value to the increasing globalization of the Internet, and agrees that IDNs should continue to be an integral part of the new gTLD program. We believe that many concerns about further IDN delegation can be addressed through smart policy on IDN variants and bundling.

2.7.7 Applicant Reviews

MarkMonitor supports transparent, efficient, common-sense application review. Efficiencies are encouraged where they do not jeopardize the validity of the evaluation, including where the same applicant submits multiple applications, and where multiple applications from different applicants share a common technical infrastructure. As noted above, we agree that criteria should not be one-size-fits-all, especially for applicants whose unique corporate governance, financial reporting, or intellectual property ownership structures may hinder clear evaluation of the applicant's true financial capability, and especially for .brand applicants who do not represent a risk to the registrants that this financial capability analysis is designed to protect. In such cases, MarkMonitor suggests that ICANN should accept notarized statements containing sufficient assurances from licensed attorneys, CPAs, or other professionals in a position to attest to the applicant's financial capability. MarkMonitor also supports the fast-track approval of standard RSEPs.

2.8.1 Objections

MarkMonitor believes that greater predictability is required for future objections. GAC advice is important and valuable to the community, and GAC advice-based objections should have the support of the full GAC, should cite a specific law, and should be limited to a specific string. Applicants should have the opportunity to resolve objections directly with the objector through means that include, but are not limited to, the use of PICs and RSEP commitments, as applicable. We support the proposition raised by the Work Track members that community objectors' standing should be substantiated, via "quick look" or otherwise, before applicants are assessed associated fees.

2.10.1 Base Registry Agreement

MarkMonitor supports the nondiscriminatory treatment of all Registry Operators, with common-sense exceptions including PICs necessary for registry business models and other provisions necessary for community TLDs and .brand TLDs.

2.10.2 Registrar Non-Discrimination

MarkMonitor believes, separately and distinctly from its admitted self-interest as an ICANN-accredited registrar, that registrars perform an integral function in the ICANN ecosystem, including but not limited to registrant protection. In .brand registries where the Registry Operator is the sole registrant (potentially along with its Affiliates and Licensees), this registrant protection function is less important. MarkMonitor believes the current 100 domain limit sufficiently provides the Registry Operator with the flexibility to utilize its TLD independently for its own purposes, while recognizing that increased domain registration volume above this threshold evidences Affiliate and Licensee registrations, which would require the registrant protection value provided by registrars.

2.12.1 TLD Rollout

MarkMonitor believes that the first round's TLD rollout measures serve to prevent TLD squatting/warehousing without delegation and minimal TLD use. Future rounds could include reasonable flexibility on these timelines.

Please let me know if you have any questions, or if you would like to discuss any of these points in further detail.

Best regards,

Brian J. King
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