

Good evening :

Allow me to offer a few initial comments on the review of the new gTLD PDP report currently in public consultation.

In general, the PDP has accomplished an enormous amount of work, but the present result is a voluminous document that may well not elicit the amount of informed comment that it deserves. Even the Annex C of questions is 66 pages long!

1. **Methodology:** It should be understood by newcomers to the PDP that this document is NOT an agreed result of the PDP's meetings: It is a concatenation of the reports prepared by each of several Work Tracks (WT) within the PDP. Members were repeatedly informed that the objective of PDP meetings was to establish that the text corresponded to the results of each WT, nothing more. Consequently, Members who were not beholden to any particular WT were repeatedly told that their advice and comments would not be taken into account and that the appropriate form was to issue a public comment.

As a result, PDP members who offered specific advice based on their knowledge and experience were repeatedly rebuffed. Several members of the PDP (including myself) think that their comments and advice should have been taken into account in the drafting of this report. Consequently, the Public Comment period is likely to be rather 'heavy'.

2. **The economic and business context:** in my view, from the users' perspective, there is a problem with the large numbers of new GTLDs from the last round which are underperforming. I do not have enough data to be more precise on this situation. I think that the PDP has gone too far down the road of assuming that there will be a market for even more (EN) gTLDs, apparently without data or justification. We all await with anticipation the CCT-RT Report.
3. **The next Rounds:** Assuming that ICANN goes ahead notwithstanding with future rounds, the definition of the categories becomes crucial. Additional categories are essential, such as IDNs per script, Geo-TLDs, underserved regions, Geographical Indications, not-for-profits, etc.

The policy issues pertaining to each category will be quite distinct. The expertise required of the evaluators in each category will be different. I think that sequential rounds should be opened, one at a time, for each category. This would also allow all interested parties, including At Large, to have a significant window of opportunity to propose adjustments and redirections to each of the applicants.

The current orientation towards a single 'opening' *urbi et orbi*, might overwhelm the resources of the interested parties, not to speak of the ICANN staff themselves. c.f. Discussion in Panamá about 'scaling' the ICANN's capacity.

4. **Geo-Names and WT5:** The preamble to this report establishes (at my insistence) that WT5 is not covered by this report. It would appear that WT5 can start from a clean sheet of paper, but this may not be quite the case because there are WT5 issues that have also been addressed by other WT in the PDP. These include: business models, restrictions on multiple applications, registrar policy and vertical integration, jurisdiction of incorporation, reserved names, and – more generally - the protection of all geographical names that are not already formally protected in applicable local laws.

That is a large subject that I have already addressed elsewhere, so enough on this occasion!

Except to recall the importance of Geographical Indications as a

5. **Closed Generics:** As a matter of language, and the permanent right of the public to use the generic words in their languages, I am skeptical about the current proposals. My position has been that an applicant could only apply for a closed generic in so far as it already held that string as an exclusive right (e.g. as a global Trade Mark).
6. **Freedom of Speech:** From At Large's point of view, the relevant freedom is that of the final users and Registrants. I fail to understand the discussion about the freedom of speech of the applicants. Their primary responsibility in this context is to protect the freedom of speech of their customers and users within the law.

In the WT5 context, freedom of speech of the applicant has been advanced as a justification for the appropriation of geographical names. In the real world, that would amount to cyber colonialism and would no doubt be called out as such.

7. **'Predictability':** Much has been made of the need for predictability of the application process from the point of view of the applicants. In practice this seems to be 'code' for restricting the opportunities for external parties (such the GAC, and even the ICANN Board itself) from intervening in particular applications.

But unless the GNSO in general and this PDP in particular manifests far greater understanding and sensitivity to the rights, interests and responsibilities of third parties, the desired degree of predictability will be politically impossible. (As has clearly been the case in the 2012 round.)

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These few observations, above, provide a flavour of the issues that will arise during the public consultation.

There are some others. My comments at this stage are based on a thorough review of all the PDP WT reports.

I have not yet had time to re-read the published version.

I look forward to further discussion within the At Large communities.

Regards

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