

Good evening :

Many thanks to Justine and Olivier for taking this up. Allow me a few preliminary comments with regard to the so-called Neustar proposal.

Needless to say what follows relates to my understanding of the Neustar proposal, and not to Justine's presentation of it which is highly instructive for which I am grateful.

This appears to go back to Donna Austin's October (pre-Barcelona) [article in Circle ID](#).

On page 3 of the slide deck:

- We have both 'unknown level of demand' and 'issues of pent-up demand'- One or the other, but not both?
- My understanding of the PDP's work to date is that there is NO expectation of an 'open round',_ever_.
Just imagine an open global round, all languages and scripts, all geographies, all national trademarks, all generic terms, etc.
I think that is just not going to happen.
- I rather doubt that the ICANN Board has been so imprudent as to commit to the next round 'as expeditiously as possible'. (I would stand to be corrected!)
- There is nothing new about a 'phased application process' which has been discussed in the PDP since months ago. There are however, indeed, significant differences as to what the phases, sometimes referred to as 'batches', should comprise.
- The primary constraint on the phases is the ability of ICANN staff to undertake the evaluation of applications in a fair, transparent and professionally responsible manner. It has become clear that cannot be done 'concurrently'.

Turning to Page 4 of the Slide Deck:

Phase 1:

- I see no reason to give .brands priority. The companies concerned already hold their well-protected trademarks and domain names. They will lose nothing from waiting their turn. (I also have doubts as to the ICANN community's ability to deal with .brands in IDN scripts, but that is another matter).

N.B. Acquiring a .brand TLD should never become the basis for application for an ex-post facto Trademark.

- Phase I should be designated for under-served categories from the 2012 Round.

Phase 2:

- Geographic TLDs should constitute a dedicated 'phase', not necessarily the highest priority in time, since there are many unresolved issues. However, there is no agreement about this in WT5. Furthermore, WT5 is also far from an agreement on 'clearly defined eligibility criteria', notably because of the persistent – but politically unsustainable – demand that non-geographical use should not be subject to prior authorisation. Also, future geographical use would be threatened by an 'open

round' and eventual FCFS.

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Phase 3:

- to subsume community TLDs with generic TLDs is just asking for trouble. Particularly if auctions are allowed for commercial 'generic' applicants to 'buy out' community applicants.
- the slide does however implicitly recognise – perhaps inadvertently - that .brands, .geographicals, and .communities are NOT 'generic'.

Phase N+1: An Open Round?

- As noted above, at present I would discount this possibility. I am sure, whatever happens meanwhile, that option will be revisited nearer the time-

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More generally, there is a problem with the method of this GNSO PDP. It is not just a matter of possible individual 'conflict of interest'. There are aspects of this process which defy generally accepted principles of due process, bearing in mind that the process is intended to assign potentially valuable assets to new DNS operators. For instance:

- It should not be possible for the incumbent operators to determine the terms and conditions for new entrants;
- conditions of fair competition in the public interest require that Registries are normally independent of Registrars and that Registrars treat Registries on a non-discriminatory basis.
- policy should prevent undue concentration in this industry.
- even within the narrow confines of an ICANN community bottom-up policy development process, it is quite extraordinary that Donna Austin's original piece, now be elevated into a 'Neustar' proposal and presented by the Co-Chair of the PDP.

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Regards to you all,

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