

## EXPRESSIONS OF INTEREST IN NEW gTLDs

Source: The full text of the comments may be found at <http://forum.icann.org/lists/eoi-new-gtlds/>.

### SUMMARY OF COMMENTS (11 November to 11 December 2009)

#### Process Concerns

EOI public comment timeframe for Board consideration during its December meeting is unreasonable. ICANN has called for public comments on a complex and novel issue in a way that strongly implies that comments will not be considered by the Board unless they are received within 16 days from the date of posting of the notice (November 27). ICANN should issue a clear statement that all comments received by the December 11 deadline will be fully considered and that the Board will take no action on the EOI topic until those comments have been considered. *COA (25 Nov. 2009)*. *COA (11 Dec. 2009)*. *Microsoft (11 Dec. 2009)*. *T. Lowenhaupt (28 Nov. 2009)*.

Extend the timeframe. Staff should extend the public comment period on the EOI process and analysis of all the public comments received should be provided to the Board following its December 9 meeting. INTA's Internet Committee also reiterates that ICANN should revamp its public comment process so it can begin meeting its obligations under the Affirmation of Commitments. *INTA (25 Nov. 2009)*.

Cross-community discussion. The staff should not design the EOI on its own without a sufficient cross-community discussion. Mere consultation of the community in the traditional ICANN manner is not sufficient and real community-wide interaction is necessary. There is a window of opportunity to bring all stakeholders back together on the topic of new TLDs (which has led to fruitless divisions among them in the last two years). The Board in its Dec. 9 session could ask the community, including the GNSO, ccNSO, GAC and ALAC, to work collaboratively and produce by a fixed date before the Nairobi meeting a formal consensus EOI proposal, hopefully to be endorsed by the various SOs and ACs in Nairobi. *B. de La Chapelle (27 Nov. 2009)*.

Timeframe. COA does not agree with the French (de la Chapelle) proposal to seek to achieve a formal consensus proposal on an EOI process within the next two months. It is premature to insert an EOI phase in the new gTLD process until more progress is made on the remaining major unresolved issues, and it would divert resources and be an unproductive distraction. *COA (11 Dec. 2009)*.

GNSO Role. The ICANN CEO and Board Chairman should send a request to the GNSO Council for a timely response regarding use of an EOI in the new gTLD process. Data collected from the EOI should be kept confidential on an individual basis and only aggregated results should be reported, and any EOI must be widely publicized in advance to allow for broad participation. *RySG (11 Dec. 2009)*. The EOIWG could usurp the ICANN bottom-up process and incur a critical and skeptical response from the community (as did the IRT). The GNSO should create a working group to address this

proposal in a way that is inclusive of the Internet community and that honors ICANN principles and process. *MarkMonitor (28 Nov. 2009)*.

Representation of prospective gTLD registry operators. Observer status is no longer adequate once gTLD applicants, through EOI, become declared and legitimate stakeholders. It is fair to expect that they have a voice in the last mile of the new gTLD policy development. *AFNIC (29 Nov. 2009)*.

Timeline for City TLDs. There should be a different round for city TLDs since they require a different process than open names. *H. Ohigashi (3 Dec. 2009)*.

Year 2000 applicants. Special consideration for year 2000 applicants should be extended to the EOI process. *EOIWG (18 Nov. 2009)*. *J. Sowder (8 Dec. 2009)*.

## **Opposition to EOI**

The EOI process should not distract ICANN from addressing the overarching issues raised by the new gTLD program. It would not serve the community to insert an EOI process into the program at this juncture. Data gained from the EOI would not be sufficiently demonstrative to use to address the overarching issues raised by the new gTLD program. An EOI should not take form prior to ICANN and the global Internet community finalizing the new gTLD criteria, including whether an unlimited number of new gTLDs is feasible and in the public's interest, rather than in the interest of any particular set of stakeholders. *INTA (25 Nov. 2009)*.

Knowing the number of applications in advance of the "real" window serves no purpose. The policies are not finally set yet and investors cannot be expected to invest given such uncertainty. It is not reasonable or sensible to preclude applications from those who did not "gamble" in the EOI. Why should applicants have to show their faces months before the application window opens? The EOI achieves nothing that opening the application window would not achieve. The application window should be opened before credibility is lost. *D. Schindler (27 Nov. 2009)*. *J. Nevett (28 Nov. 2009)*. There is not a workable way to do the EOI. The issue to be solved is resource planning. The process will adapt based on the number of applications, and ICANN's estimate of 500 applications may be at the high end. *R. Tindal (28 Nov. 2009)*.

The EOI can serve no useful quantitative purpose. The EOI proposal raises profound anti-competitive and institutional confidence issues from ICANN itself gaming the rules to benefit a group of participants that engage in ICANN's processes to a greater extent than Internet users generally. The right question to ask is: "How do we ensure that participation in the EOI indicates to the desired level of confidence that the number of applicants is less than, or more than, [the] limit" on the resource to be allocated? The other EOI questions 2, 3 and 4 are useless. A useful datum is how many and how large string contention sets will exist under the proposed rules and whether some of the proposed changes not yet adopted by staff substantially alter the complexity of string contention and frequency of auction as the final allocator. A useful datum is also whether the number of either the "standard" or "community-based" applications alone meets the resource limit. Knowing how many EOI respondents assert that they intend to trigger an RSTEP would be data useful to ICANN. Early identification of potential applications which could harm the interests of third parties is not data useful to ICANN. The outreach

and marketing plan to be conducted during or after the last editorial round of the DAG is not sensible if application cut-off is planned for some date prior to the general availability announcement of application acceptance. *E. Brunner-Williams (30 Nov. 2009).*

Proceeding with an EOI phase will only distract from and be a roadblock to the real task at hand—completion of the AG and launch of new gTLDs. A great deal of work and resources would be required to do the EOI, taking staff time away from resolving overarching issues and producing a final guidebook. Instead of facilitating introduction of new gTLDs, the EOI would have the opposite effect. The EOI regime will increase uncertainty for businesses, communities and investors, who will be asked to commit before knowing the final guidebook rules. There is also a high degree of business risk if \$50K or another significant sum is required to express interest in each string. The EOI could subject ICANN to waves of litigation from parties who missed the opportunity to participate in the EOI, as well as from participants who want a refund because the final rules changed the game and are adverse to their interests. The EOI is not necessary for ICANN to address root scaling concerns. As new gTLDs are absorbed into the root in a measured manner there will be ample opportunity to assess any issues of root scalability. *Demand Media (1 Dec. 2009).*

An EOI process should not be adopted. The EOI is destined to be counterproductive and will not achieve any of the informational, resolution, planning, or understanding goals set out in the ICANN Board resolution and discussed in the EOIWG. It will be impossible to ensure that EOI participation accurately represents the level of interest. *Microsoft (11 Dec. 2009). MarkMonitor (28 Nov. 2009).*

An EOI process is worth considering, but now is not the time to solicit EOIs, except perhaps in the most general fashion. There are too many unresolved issues related to the launch of the new gTLDs. Given the uncertainty, it would be unfair to require potential applicants to pay a substantial EOI fee, and it would be unfair to the community to restrict the ultimate pool of applicants to those who step forward now. *COA (11 Dec. 2009).*

## **Support for EOI**

We support the EOI concept as a pragmatic way to move forward the new gTLDs process. *Minds + Machines (11 Nov. 2009). EOIWG (18 Nov. 2009). J. Lenz-Hawliczek (27 Nov. 2009). R. Andruff, RNA Partners (13 Nov. 2009). C. Oliver (17 Nov. 2009). T. Traina (17 Nov. 2009). S. Ruskowski (17 Nov. 2009). M. Wills (17 Nov. 2009). D. Gleberman (20 Nov. 2009). J. Dufour (19 Nov. 2009). E. Clawson (19 Nov. 2009). L. Wasser (18 Nov. 2009). C. Jones (20 Nov. 2009). M. Boone (21 Nov. 2009). J. Borow (17 Nov. 2009). Wasserman (25 Nov. 2009). M. Neylon (25 Nov. 2009). T. Harris (26 Nov. 2009). dotEUS (26 Nov. 2009). PuntoGal (26 Nov. 2009). M. Terpin (27 Nov. 2009). Interlink (27 Nov. 2009). C. von Veltheim (27 Nov. 2009). L. Osborne (27 Nov. 2009). D. Larkin (27 Nov. 2009). J.P. Myers (27 Nov. 2009). BRS Media (27 Nov. 2009). A. Glynn (27 Nov. 2009). AFNIC (29 Nov. 2009). B. McDonald (29 Nov. 2009). M. Haot (30 Nov. 2009). M. Kumagai (30 Nov. 2009). H. Ohigashi (3 Dec. 2009). J. Sowder (8 Dec. 2009). Zodiac (10 Dec. 2009).*

Given how long potential applicants have been waiting, it is time now for ICANN to act and the EOI appears necessary to expedite resolution and get the application process

started. *D. Russell (17 Nov. 2009)*. *dotKoeln (26 Nov. 2009)*. *Sierra Club (23 Nov. 2009)*. *L. Jones, III (19 Nov. 2009)*. *F. Krueger (28 Nov. 2009)*. *eCOM-LAC (9 Dec. 2009)*. The “overarching issues” cannot be an excuse for continued delay; these issues have been thoroughly studied and are months away from resolution--EOIs and applications should be concluded by Q3 2010. *J. Manar (17 Nov. 2009)*. *C.G. Roussos (28 Nov. 2009)*. The EOI process must not result in an increase in the application fee. With predictability and certainty on the number of applications it will receive, ICANN can avoid over-building the infrastructure and potentially reduce the application fee. ICANN should open the EOI phase following issuance of the next version of the DAG to ensure that potential respondents are evaluating the most recent developments. *NeuStar (11 Dec. 2009)*.

## **EOI--Suggested Approaches**

The Board should combine the EOI with the principle of spreading the gTLD round over several windows by order of priority. There should be three EOI calls: Priority 1—March 2010—public interest, community-based TLD projects requiring approval of relevant public authorities; Priority 2—Sept. 2010—any standard and community-based TLDs other than single registrant TLDs (these respondents would commit to allowing third party registrations); Priority 3—March 2011—any eligible TLD applicant. If there are several EOI calls per round, an application window can start three months after the EOI call for those who are eligible. The RFP may evolve from one application window to the next. All three application windows would be regarded as a single round. The purpose of the EOI is to adapt the terms and conditions based on the data obtained. ICANN must be able to intervene and prevent undesirable trends or defer the receipt of applications that cannot yet be handled. *W. Staub (27 Nov. 2009)*.

The anticipated EOI is to be commended but should proceed with caution since the new gTLD is still in the development stage. ICANN should run the EOI as a non-commitment web-based EOI survey or EOI survey system to gather information about potential interests that are likely to apply for new gTLDs to simulate the big picture of what to expect when the new gTLD application opens. Results of the EOI should be kept to cross-check the case of new TLD-squatting when the new gTLDs officially commence. Many corporate, community and generic potential applicants are undecided. Equal opportunity is a fundamental obligation ICANN owes to the industry participants and eligible applicants. *The Syllabus, Onajobi (24 Nov. 2009)*.

Fairness of treatment and nondiscrimination (not biasing the system in favor of “ICANN insiders”) are two fundamental principles to be respected in this endeavor and the lessons of the last gTLD round show the potential danger of not abiding them enough. To support fairness of treatment, in the design process ICANN should keep in mind the GAC principles on new gTLDs (March 2007) which stated a clear distinction between three phases: (1) evaluation of the string; (2) delegation of the registry function to a specific operator; and (3) operation of the registry. *B. de La Chapelle (27 Nov. 2009)*.

“Dual call EOI” proposal. The EOI should be less about applicants and more about the strings; this would devote more attention to the likely scale and structure of demand (the most missing data) and allow identification of not only the number of applications but also their type (e.g. geographic, community, brand, etc.). All these criteria currently in the DAG could be documented in the EOI phase even before the delegation proper. The system could function as follows:

--During the EOI potential applicants would submit their intended string(s); after EOI closure the list of strings would be published and only those strings would be considered in the first round of new TLDs.

--Capacity to apply for the delegation of the management of each of these TLDs would remain open to other candidates during this first round (longer duration period)—this last point is critical to maintain fairness and represents the main difference from the presently proposed modalities for an EOI.

This system would naturally set the size of the first round; force “ready applicants” to come forward; avoid preemption of the most valuable strings by insiders by opening up a fair and longer window for candidatures to delegation; and foster transparent competition for high-value common names without eliminating the de facto advantage that very engaged applicants have accumulated through their preparatory contacts in the past years. *B. de La Chapelle (27 Nov. 2009)*. The “dual call” is likely to encourage applicants to concentrate on the strings they care most about. Also, if a diversity of applicants for a string is revealed by the application call, they are expected to combine forces and present better built proposals in the formal round in order to avoid auctions. This would be an improvement from the current DAG rules which make combining proposals difficult. *B. de la Chapelle (11 Dec. 2009)*.

The de la Chapelle (French) “dual call EOI” proposal (i.e., in the EOI potential applicants submit just the string and anyone can then apply for the string) will not work and is easily gamed. Also concerns de la Chapelle raises about “fairness” and “ICANN insiders” are misplaced. The only unfair advantage has been given to the ccTLDs (overarching issues were ignored in the fast track ccTLD IDN process). The “fairness” to be considered is to Internet users who will benefit from introduction of new gTLDs. Fairness to applicants will come from a predictable, timely and well-administered application process. *Minds + Machines (4 Dec. 2009)*. The “dual call EOI” intends to preserve some level playing field for actors without current knowledge of the new gTLD process to be able to take part in it. The “overarching issues” do not apply equally to the IDN ccTLDs fast track (e.g. only gTLDs raise potential root scaling issues). Fairness is also relevant to applicants and it should not be the case that only those with “insider” knowledge themselves will de facto have the opportunity to apply in the EOI. *B. de la Chapelle (11 Dec. 2009)*. It is worth considering an EOI phase based on the French proposal at some point later in the new gTLD process. Some modifications, not necessarily limited to the EOI phase itself, would be necessary (e.g., by revealing the full universe of proposed strings in play, the French proposal would likely increase the frequency of string contention; the means of choosing among various applications in a string contention set would have to be modified). *COA (11 Dec. 2009)*.

Letter of Intent period. As it first suggested in Dec. 2008, GoDaddy supports a mandatory “EOI period” or, in other words, a Letter of Intent (LOI) period. Potential applicants would first submit a LOI describing the gTLD, how it would be used, the target market and how it will be operated. Cost of this stage should be minimal and a set period of time would be provided (e.g., 30 days). All LOIs would be confidential until the period closes. After the period closed, LOIs would be available for public comment and objection (30-60 days), with an opportunity for potential applicants to post a public response thereafter (10 days). At completion of the LOI stage applicants would have to decide whether moving forward with an application is still desirable. At this point the application round opens allowing only those who submitted LOIs to complete full applications, and the process would continue from here as proposed in the AG.

GoDaddy believes this proposal would provide numerous benefits to the Internet community, applicants, and ICANN staff. *GoDaddy (30 Nov. 2009)*.

Noncommercial and commercial categories proposal. The demanded namespace and EOI applicant should be divided into two categories--noncommercial (e.g. .college, .green, .health, etc.) and commercial (.shop, .sales, etc.)--which should have separate rules and criteria.

--A noncommercial string should be published on the website and its usefulness analyzed through the public comment/survey process. Registry management of the noncommercial string would be a secondary part. If the noncommercial name's usefulness is ensured by the public comment/survey process, the name should become a "live" TLD even if the applicant (aka the "idea generator") is not going to host or manage the registry for it, in which case it can be offered to other registry operators, an ICANN subsidiary or operated through the ICANN L-root server. ICANN could allocate a minimum amount of the registration fee to be paid to the idea generator.

--A commercial string should not be made public, or made known even to other ICANN staff members not involved in the name script evaluation process; it should be kept confidential unless and until the actual application has been submitted by the idea originator, the application period has closed and the numbers of applied strings and applicants have been published. The name script (but not the applicant name) should be published online when the applicant qualifies other portions of the application and has submitted the evaluation fee. The applicant name should be published with the name scripts when they have qualified the third round. Only conflicting name scripts and applicant names should be published online earlier before the second round. ICANN should discourage the "bidding" option to resolve conflicts. New commercial TLDs may be maintained by ICANN itself when conflict arises (instead of using a bidding process; a winning bidder would ultimately shift costs to users). *I.A. Shah (11 Dec. 2009)*.

## **EOI Requirements**

### Deposits/mandatory EOI prerequisite to first round application eligibility.

A non-refundable \$50K deposit and making the EOI mandatory will help to ensure that only serious applicants apply. Only those EOI participants should be allowed to participate in the application round. *Dot Eco (12 Nov. 2009)*. *J. Borow (17 Nov. 2009)*.

The fee should be at least \$55K or the full proposed application fee amount of \$185K; there might be concessions for nonprofits or less financially privileged groups. The additional fee could be reduced if the string applied for is similar but in a different language (gTLD IDN of the Latin-based string) since the application is the same with only the language of the translated string changing. Nominal fees would promote front-running and speculation. *C.G. Roussos (28 Nov. 2009)*.

A fee should be set that assists in approximating the true proposed application round (range could be from full \$185K application fee to initial maximum refundable amount (\$130K) proposed in the DAGv3). The lower the EOI cost and shorter the timeline between a final EOI being issued and the deadline for submissions under the EOI, the more difficult it will be to link the EOI to a true picture of the applicant pool. Allowing an EOI round in advance of the AG being finalized would potentially constrain the applicant pool. *Big Room (27 Nov. 2009)*.

A non-refundable fee of up to \$100K counted towards the total cost would promote seriousness and expedite the process which has already fallen behind schedule. Only EOI participants should be eligible to apply in the first round. *M. Kumagai (30 Nov. 2009)*. *H. Ohigashi (3 Dec. 2009)*.

A \$25K deposit for nonprofits and applicants from less favored countries (deducted from the application fee later on) and making the EOI mandatory will help to ensure that only serious applicants apply. Only those EOI participants should be allowed to participate in the application round. *Dot Sport Registry (18 Nov. 2009)*. *M. Boone (21 Nov. 2009)*. A fee is needed, but for nonprofits it raises concern about how long this amount may be “blocked.” *dotEUS (26 Nov. 2009)*.

The EOI should be mandatory for those who wish to later apply and the fee should be \$55K and applied to the application fee. *R. Andruff, RNA Partners (13 Nov. 2009)*. *dot berlin (15 Nov. 2009)*. *dotHamburg e.V. (27 Nov. 2009)*. *dotKoeln (26 Nov. 2009)*. *A. Reichardt (17 Nov. 2009)*. *S. Ruskowski (17 Nov. 2009)*. The EOI should be mandatory for those who wish to later apply and the fee should be \$55K. The fee should be put in escrow and be applied to the eventual application fee. *A. Van Couvering (13 Nov. 2009)*. *EOIWG (18 Nov. 2009)*.

The EOI should be a mandatory prerequisite to filing an application and a deposit of 20% of the application fee (\$37K) should be required. *PuntoGal (26 Nov. 2009)*. EOI participants would be allowed to later apply only for the string(s) named in their communication. *EOIWG (18 Nov. 2009)*. The EOI should be mandatory and seen as a precursor to an actual application to be submitted as soon as ICANN resolves all outstanding TLDs issues and there should be an EOI fee. *C. Oliver (16 Nov. 2009)*. *AFNIC (29 Nov. 2009)*. *B. McDonald (29 Nov. 2009)*. *C. Jones (20 Nov. 2009)*. *C.G. Roussos (28 Nov. 2009)*. *J. Lenz-Hawliczek (27 Nov. 2009)*. *W. Staub (27 Nov. 2009)*. *NeuStar (11 Dec. 2009)*. A mandatory EOI and \$55K fee should be required provided that a timetable is established to keep applicants from having to pay a deposit on something that may not begin for years. *J. Sowder (8 Dec. 2009)*.

It is preferred that companies must participate in the EOI if they want to apply for the TLD, and that there be a penalty for not following through with applying in the form of a steep, nonrefundable fee per TLD applied-for; otherwise one applicant may file for multiple TLDs to “scare off” applicants. *A. Allemann (12 Nov. 2009)*. A substantial deposit must be paid when submitting the EOI, part of which is a non-refundable “fee” no matter what the outcome of the EOI and RFP. EOI participation should be prerequisite for filing a first round application. *Smartcall (27 Nov. 2009)*.

To weed out unserious applicants, ICANN should require a deposit amounting to a portion of the application fee (35% to 50%) and only participants in the EOI should be eligible to participate in the first round when the program officially launches. *J. Dufour (19 Nov. 2009)*. *C. von Veltheim (27 Nov. 2009)*. Deposits from prospective bidders should be collected (e.g., either a fixed amount (\$25K-\$50K) or a percentage (10-20%) of the bid amount. *D. Gleberman (20 Nov. 2009)*. A deposit of no less than \$55K will ensure that the EOI is not tainted with respondents unwilling or unable to withstand the scrutiny of the final gTLD evaluation and ensure an accurate measure from the EOI. Only EOI participants should be eligible to participate in the first round. *Sierra Club (23*

Nov. 2009). A deposit should be expected to show that applicants are serious. *M. Boone (21 Nov. 2009). Zodiac (10 Dec. 2009).*

The EOI submission fee proposal is a barrier to entry.

The EOI fee proposal is being promoted by self interested parties seeking to reserve a place at the front of the line while using it as a barrier to entry for prospective applicants that have not yet fully understood the potential risk/benefit analysis associated with new gTLDs. Until ICANN produces a final Applicant Guidebook some businesses are unlikely to commit substantial financial resources in the current economic climate to a speculative EOI investment. The high fee will exclude potential applicants from developing countries, and less well-resourced organizations and communities. The GAC has repeatedly made this point in its comments by calling for a restructuring of the gTLD application fee regime to reflect these different categories and limited financial resources of applicants. A deposit should not be required but ICANN should consider imposing a nominal fee such as \$100; if a higher fee is imposed it should be applied as a credit against any future application fee. ICANN would have to provide for a reduction or waiver in hardship situations. A nominal EOI fee can help to minimize gaming without imposing the unreasonable burden of prospective applicants paying tens of thousands of dollars to submit an EOI. *M. Palage (18 Nov. 2009).*

A high EOI fee may deter many potential applicants from applying, given the current economic climate. Any conclusions as to actual level of interest in the new gTLD process would be highly suspect. A high fee would also discriminate in favor of applicants with greater resources. *NCTA (22 Nov. 2009).* The EOI fee could be a significant barrier to entry for city TLDs. The consequences of an entity other than the city filing for the city's TLD and controlling the city's first round opportunity need to be considered. *T. Lowenhaupt (28 Nov. 2009).* A possible solution to the fee concern for cities is to have a lower deposit threshold for geographic names (e.g., \$5,000), which could be both affordable and substantial enough to avoid spurious EOI applications since an authoritative signature is required in a geographic instance. *E. Clawson (2 Dec. 2009).* A much reduced EOI deposit for legitimate brand owners would enable them to reserve their place in line without committing large budgets. *E. Clawson (2 Dec. 2009).*

Noncommercial and commercial fees. The fee for a noncommercial name space "idea generator" should be \$100. For the commercial name space, at the EOI stage, the fee could be 50% of the fee for the first round of the application with ability to obtain a rebate voucher (10-25%), or the 50% fee could be paid at time of submitting the application in the first round with the remaining 50% to be paid when the application is accepted for evaluation, without obtaining a rebate. *I.A. Shah (11 Dec. 2009).*

EOI Fee is not material for applicants given the total investment required. Contrary to the Palage article, \$50K is not material for serious applicants regardless of their background given that the total dollar commitment to undertake a TLD is closer to \$500K. *A. Taylor (20 Nov. 2009).*

Deposit requirement is not justified. The new gTLD program is not yet officially commenced and the policy framework is not yet final. ICANN should beware of the implications of calls made by industry players for a deposit fee/commitment. *The Syllabus, Onajobi (24 Nov. 2009).* No deposit should be required. If ICANN goes forward with the EOI and charges a fee it must be based on a cost-recovery method. *Microsoft (11 Dec. 2009).*



EOI should be voluntary with nominal to no costs. The proposal to make EOI participation mandatory for applicants deviates from ICANN's precedent regarding the voluntary and non-binding nature of EOIs and RFIs. This "front running" approach may increase ICANN's litigation risks by appearing to grant a license or privilege in a process which may ultimately deviate from present expectations, among other things. ICANN should do what it did in the past for the 2000 EOI and the 2008 RFI: engage in a non-binding EOI with nominal to no costs associated with any submissions; both of these past processes produced constructive data enabling ICANN to move forward. *M. Palage (18 Nov. 2009)*. *N. Freeman (1 Dec. 2009)*. The EOI should be voluntary. There may be merit to imposing a nominal fee to discourage "ballot box stuffing." It should not be so large as to disadvantage less well-funded applicants and it should apply toward future application fees. *RySG (11 Dec. 2009)*.

Global outreach campaign needed if first round applications are limited to EOI participants. ICANN should conduct global outreach before the EOI process begins, and the DAG should be in a much more final form before the global outreach begins. *RySG (11 Dec. 2009)*. No EOI process should lock in a list of applicants before the global communication campaign on the gTLD round is conducted. *B. de la Chapelle (11 Dec. 2009)*.

First round eligibility should not be restricted to EOI participants. This would be unfair to those without sufficient information and those deferring a decision until overarching issues have been addressed. It would reinforce the perception by many in the business community that ICANN is an "insider's game." *Microsoft (11 Dec. 2009)*. The noncommercial and commercial name space should not be limited to EOI participants. The noncommercial name space should be available until the start of the second round and its application period should be longer than that for the commercial name space. *I.A. Shah (11 Dec. 2009)*.

There is no "precedent" of "no cost" EOIs. A nominal fee of only \$100, suggested by Michael Palage, undermines the concept of EOIs and guarantees that the information garnered from the process is useless. *A. Taylor (20 Nov. 2009)*.

Ensuring accurate representation of the level of interest. To ensure the EOI accurately represents the level of interest, ICANN would have to conduct traditional market research and outreach various industries and interest groups. A small pool of EOI participants will create skewed results and only reflect the level of interest in gTLDs by parties following the work of ICANN in particular. *N. Freeman (1 Dec. 2009)*.

Rules against "front-running." ICANN should adopt rules against "front-running" schemes particularly regarding "pre-emptive trademarking." Speculative trademarks filed for non-awarded TLDs should bear no weight in the ICANN new TLD process. Perhaps a 60 day relinquishment/penalty concept previously raised should be explored. *C.G. Roussos (1 Dec. 2009)*.

Limiting the first round to EOI participants is unfair and unreasonable. It is unreasonable to put any potential applicants in the position of either having to decide whether to seek a new gTLD before all the details of the program are established or known or else run the risk that others will gain an advantage over them for a particular new gTLD. *NCTA (22 Nov. 2009)*.

EOI is not an “inside process”. There is no intent among EOI supporters to have an “inside process.” The EOI process, like the application process, should be widely advertised. *A. Taylor (20 Nov. 2009)*.

Level of interest: public awareness. By providing a date for the window for submissions, the EOI process will in itself provoke a great deal of press and awareness. *A. Van Couvering (13 Nov. 2009)*.

Level of interest: evidence gathered through EOI. It is impossible to ensure that the list of EOI participants will represent a specific level of interest, but we will get evidence of how many serious applicants are ready to go now. Getting this evidence provides the benefit of being further ahead as a result of this information than we are now, where staff has had to respond to questions about level of interest with the statement: “Anywhere from a hundred to a thousand.” *R. Andruff, RNA Partners (13 Nov. 2009)*. It is not clear that level of interest is really a question anymore given the number of announcements by parties seeking to apply for new TLDs. *C. Oliver (17 Nov. 2009)*. It is hard to believe given declarations by potential applicants and participation in ICANN new TLD forums that anyone can deny the significant level of interest in new TLDs. *M. Wills (17 Nov. 2009)*.

#### Refunds

To reflect the number of serious applicants, refunds should not be accepted under any circumstances. *M. Kumagai (30 Nov. 2009)*. Refunds must be at ICANN’s sole discretion, unless the entire application process is abandoned (e.g. by Dec. 31, 2010). *Dot Eco (12 Nov. 2009)*. *EOIWG (18 Nov. 2009)*. For a company to get a refund if the DAG changes, there must be some level of significant change to allow a company to back out and it must be clearly defined. Otherwise there will be a loophole that negates the entire benefit of the EOI. *A. Alleman (12 Nov. 2009)*. *Dot Sport Registry (18 Nov. 2009)*. Refunds should be given if the entire application process is abandoned by a certain date. There should be a refund in the case of 2-character IDNs if ICANN chooses not to go with them. *C.G. Roussos (28 Nov. 2009)*. Refunds should be as stated in the DAG because only the EOI participants are eligible for the first round. *Zodiac (10 Dec. 2009)*.

The fee portion of the deposit should not be refundable but the remainder of the deposit can be refundable if the applicant decides not to continue with the RFP process. *Smartcall (27 Nov. 2009)*. ICANN should have the right but not the obligation to refund the fee. *A. Van Couvering (13 Nov. 2009)*. Refund should be given only if the applicant withdraws the application before the EOI registration window closes. The fee is part of the total application fee; in keeping with the DAG refunds section, the \$55K is deemed the “fee” for the initial evaluation work. *R. Andruff, RNA Partners (13 Nov. 2009)*.

The EOI fee should be offset with the \$185K application fee. If the applicant does not file an application later on, the fee should not be refunded. If ICANN does not open the application window within 12 months of EOI filing then the fee should be fully refunded immediately to the applicant. *dot berlin (15 Nov. 2009)*. *dotHamburg e.V. (27 Nov. 2009)*. *dotKoeln (26 Nov. 2009)*. There should only be a refund if the application window does not open after a significant period of time. If the applicant pays the EOI fee but does not forward an application then there should be no refund. *C. von Veltheim (27 Nov. 2009)*. The refund scheme should correlate with time passed between date of the EOI and the

actual application (e.g. full refund if no application window within 12 months). *J. Lenz-Hawliczek (27 Nov. 2009)*.

If there are multiple applications for a TLD, a partial but not full refund (e.g. 50%) should be granted if the applicant withdraws prior to the formal application period. *C. Oliver (17 Nov. 2009)*. The EOI participation cost should be considered as part of the evaluation fee and be subject to the same rules. *J. Dufour (19 Nov. 2009)*. At least some portion of the deposit should be non-refundable. *J. Borow (17 Nov. 2009)*.

Refunds in full of the EOI deposit should be given when: (1) several applicants are running for the same TLD (choose to withdraw); (2) ICANN fails to open a window by the end of Q3 2010; and (3) ICANN fails to provide relevant opportunity to all parties to take their application forward within 10 months (includes major policy changes in the DAG preventing an applicant from proceeding). *AFNIC (29 Nov. 2009)*. *NeuStar (11 Dec. 2009)*. There should be a refund process (which might facilitate resolving some issues before the application process) but not in cases where an applicant entered into the EOI in "bad faith." *J. Sowder (8 Dec. 2009)*.

The deposit should be refundable if ICANN hasn't launched the program within 6 months of the EOI filing. It could also be refundable to certain applicants in the case of changes in the final AG (especially "evaluation criteria" or significant changes in fees) that are so relevant that their TLD applications would be left out. *PuntoGal (26 Nov. 2009)*. A refund should be possible if the applicant's string is disqualified prior to the formal opening of the round as a result of changes in the AG that occur after the EOI is completed. The burden of proof should be on the applicant. *Big Room (27 Nov. 2009)*. *W. Staub (27 Nov. 2009)*.

There should be a refund if the amount collected exceeds ICANN's actual cost and the application window for the first round of new gTLD applications does not open before 2011. *Microsoft (11 Dec. 2009)*.

If the fee is nominal (e.g., \$100) there is no need to consider refunds. *M. Palage (18 Nov. 2009)*. *N. Freeman (1 Dec. 2009)*. Running the EOI survey without a "deposit fee" resolves the refund policy issue. *The Syllabus, Onajobi (24 Nov. 2009)*.

The minimum fee for a noncommercial name space idea generator should be refunded only if the name is not considered for a public support/online survey and will be refused by any justifiable reason. For the commercial name space, fees should not be refunded if the operation of the specific round to which it corresponds to has started. *I.A. Shah (11 Dec. 2009)*.

The fee should be non-refundable if there is only one bidder and they are awarded the gTLD. If there are multiple bidders they should have an opportunity to withdraw prior to the formal application process and receive a partial refund. If a bidder is disqualified during the EOI process for any reason, ICANN should refund the bid deposit less a \$1,000-5,000 fee. *C. Jones (20 Nov. 2009)*.

The bid amount should be non-refundable if a bidder is ultimately awarded a gTLD. Bidders selected for a "best and final" round should have their deposits held. Ultimately the bid less an "application fee" (e.g., \$1,000) should be returned to bidders not selected by ICANN. *D. Gleberman (20 Nov. 2009)*. As a deposit, the EOI fee would not be subject

to refund unless ICANN failed to begin the gTLD evaluations within a reasonable time frame. *Sierra Club (23 Nov. 2009)*.

IDN gTLDs and ccTLDs. To promote the selection of fewer characters for IDN gTLDs (and ccTLDs), thereby reducing time and resource costs for Internet users, the first round application fee should be charged according to the number of characters (i.e., a basic fee for two letters; 50% additional for 3 letters; 100% additional for 4 letters; 150% for five letters; and 100% for every extra letter for longer scripts). *I.A. Shah (9 Dec. 2009)*.

Information collected and public disclosure.

Ideally the information collected should be limited to: string applied for, the name of the applying entity, and contact information. This should not be a shorter version of the DAG. Public disclosure of the information is necessary; it will identify potential trademark abuse, enable economic studies, allow for early conflict resolution, and identify possible public order and morality issues. *Dot Eco (12 Nov. 2009)*. *Zodiac (10 Dec. 2009)*. Name, contact details, technical infrastructure and applied-for string should be given by the EOI participant, all of which should be open to the public. *C. von Veltheim (27 Nov. 2009)*. It is necessary to ask about the idea of the name script and its utilization at the global level. *I.A. Shah (11 Dec. 2009)*.

Information should include the source of funds for the RFP and funds required to set up the gTLD going forward. Applied for strings would be included in priority order if the applicant has more than one application. This is an ideal time to inform applicants that there is string contention and they should have the opportunity to decide whether to proceed with auction or to submit a new alternative string application. All information should be public except financial and applied-for strings. *Smartcall (27 Nov. 2009)*.

Information submitted should be the name of applying entity, contact information and string(s) to be applied for. Potential applicants should also include a statement releasing ICANN from liability regarding the EOI process. At the close of the EOI window, ICANN should publish the name of the submitter and the string submitted. ICANN should publicize the EOI procedure in a way sufficient to ensure fairness to those who may as yet be unaware of the new gTLD program, but the EOI communications period should be as short as possible (suggestions include 4 months, or concurrent with the submission window). *EOIWG (18 Nov. 2009)*.

The following questions from the Applicant Guidebook should be answered: applicant's name, address, phone number, email, primary contact information, confirmation information that EOI fee has been paid for each string for which an EOI is submitted, and the string to be applied for (and for IDNs all string information). *EOIWG (18 Nov. 2009)*. Questions 1-16, 18 and 21 should be answered, but applicants should be able to update the information when they submit their complete applications. Applicants may choose to submit draft responses to additional questions if they believe that would help ICANN refine the DAG. *Big Room (27 Nov. 2009)*. Questions 1-7, 18, 20 and 21 should be answered. *W. Staub (27 Nov. 2009)*.

Applied-for strings should be included. The following information should be made public: Complete list of strings applied for with corresponding legal name, country where applicant based, total numbers of community, geographic and open applications; and

total number of uncontested strings as well as community and open contention sets. *Big Room* (27 Nov. 2009).

Inputs should simply be: name, contact information, and string(s) applied for; for each string, \$55K should be paid. The information should be made public to provide potential applicants and potential objectors with information about how to proceed, and to raise public awareness. *A. Van Couvering* (13 Nov. 2009). *Sierra Club* (23 Nov. 2009). In addition to name, string and mission/purpose of the TLD—all to be made public, other information that would help test the “good faith” process could be requested but kept private. *J. Sowder* (8 Dec. 2009).

Applying string name, description of the string and who is applying should be collected; who is applying should be made public to facilitate discussions and resolutions amongst applicants. *M. Kumagai* (30 Nov. 2009). Strings, company information, business plan and brief information of a participant’s registration policy should be collected. *H. Ohigashi* (3 Dec. 2009).

Review questions 1-9, 13, 14, 18 and 20 from the Applicant Guidebook. Posting the names of the applied-for strings, including their IDN-equivalents where and when applicable will provide all manner of information that can be acted on by ICANN and applicants. Information should be public; the only information that should be “xxx” is contact data as is done for public forum postings. *R. Andruff, RNA Partners* (13 Nov. 2009).

The information collected should be: applicant organization; contact data; string(s) to apply for (including IDN); expected number of domains per string(s) applied for; and special registry services planned for the string(s) applied for. The combination of the applicant’s organization and string(s) is required to make settlements between applicants possible. Information should be made public. *dot berlin* (15 Nov. 2009). *dotHamburg e.V.* (27 Nov. 2009). *J. Lenz-Hawliczek* (27 Nov. 2009). *dotKoeln* (26 Nov. 2009). *A. Reichardt* (17 Nov. 2009).

Little more than applicant name and proposed TLD should be required, including applied-for strings. Information should be made public. *C. Oliver* (17 Nov. 2009). Information collected should be applicant’s organization and contact data, and strings applied for (including IDN). Information should be public; especially regarding string contention, goal is to allow competing applications to settle ahead of the application process, thereby limiting the number of auctions. *Dot Sport Registry* (18 Nov. 2009). *M. Boone* (21 Nov. 2009). The applied for string should be indicated but beyond that little else. Information should be public; this will help weed out unprepared applicants. *J. Dufour* (19 Nov. 2009).

The EOI should request more information including whether the applicant is applying for a community-based or a standard TLD, and if community-based whether the applicant will request comparative evaluation. *dotEUS* (26 Nov. 2009). Information collected should be applicant’s organization and contact data, applied-for string, community-based or standard. The EOI should be made public if it is mandatory for all those willing to take part in the new gTLDs first round. Potential applicants will be able to know if there will be string contention and can try to get into an agreement with others before the application process starts. *PuntoGal* (26 Nov. 2009). *C.G. Roussos* (28 Nov. 2009).

In addition to basic information applicants should provide a detailed description of their project. DAG questions 1-6, 8, 10, 13-17, 18-21, 23, 35-36, and 46-50 should be answered. This level of detail should be provided to the overall input to be significant enough in relation to the goal of addressing the overarching issues. Applicants should demonstrate precise fact-based knowledge of the expected demand for their TLD in their business model. All of this information could also help ICANN clearly identify patterns of risk profiles in TLD projects which could eventually be given differentiated treatment down the application path. If the EOI is part of the application process its publication standards should be consistent with those provisions in the current DAG. *AFNIC (29 Nov. 2009)*.

To keep it simple, only questions 1, 6 and 13 from the DAG should be answered. *N. Freeman (1 Dec. 2009)*

Information collected should be: TLD string including variants; whether community-based TLD; whether the TLD requires approval of relevant public authorities; the government authorities if any whose approval is required based on the latest draft RFP; whether the applicant will accept unaffiliated third party registrants based on an objective process. All information must be made public, and failure to provide the required information must cause the EOI to be discarded. *W. Staub (27 Nov. 2009)*.

Information should be made public. A fully transparent process is in the best interest of ICANN and the public. *C. Jones (20 Nov. 2009)*. *N. Freeman (1 Dec. 2009)*.

Information collected should be: corporate brief of EOI participant; entities represented by EOI participants; strings applied-for by participants; and readiness level of applicant/represented entity. The EOI exercise should not be made public because this is primarily “intelligence gathering” for ICANN. ICANN can generalize the statistics and make it available without stating the details –e.g. total number of strings required—345; total applicants—150, etc. *The Syllabus, Onajobi (24 Nov. 2009)*.

Public disclosure will promote early conflict resolution and perhaps help some groups and individuals avoid more serious risk as they become aware of better-positioned, more experienced competition. *S. Ruskowski (17 Nov. 2009)*. *EOIWG (18 Nov. 2009)*.

Name and contact information of the applicant entity, the applied-for string and the type of application (IDN, community-based, single-entity, etc.) should be provided. *NeuStar (11 Dec. 2009)*.

Full name and contact information of the applicant entity, the applied-for string and whether the application is community or standard should be provided but not made public. If ICANN goes forward with the EOI, the information should not be made public as doing so has no bearing on a better understanding by ICANN of economic demand, the number of gTLDs likely to be applied for and relevant industry data. An EOI process with this information made public will not make any difference with respect to resolution of competitive or infringement issues. To give brand owners more time to prepare objections, a more suitable method would be to extend the period for filing objections to 30 days after the Initial Evaluation closes. *Microsoft (11 Dec. 2009)*.

Public disclosure of intended TLD strings—too broad and unfairly elevates and protects speculators’ interests. Applied-for strings should not be collected. ICANN should release

a summary of the data received in a format not unlike what is used by the Nominating Committee regarding the number and type of applications received for ICANN leadership positions. ICANN's credibility will be impacted if third parties began taking pre-reservations and holding auctions for second level domain names in a TLD that has not yet been entered into the root based solely on the fact that there was only one EOI for that string filed by a third party—before ICANN and the global community had even finalized the Draft Applicant Guidebook. Also, disclosure of strings relating to application-specific TLDs may inspire additional gamesmanship based on disclosure of future business plans. The ICANN community must ask itself if ICANN should create an EOI process that establishes preferential rights in the first round for applicants to recover sunk costs in their speculative investments in the ICANN process –i.e. should their specific interests be placed above the general welfare interest of all Internet stakeholders. *M. Palage (18 Nov. 2009)*. *RySG (11 Dec. 2009)*. The Palage approach's value is likely to be quite limited, but that value could be increased if the EOIs were all made public. *COA (11 Dec. 2009)*.

String confidentiality. There are multiple new TLD proposals where the string itself is not so valuable but the business plan behind it is great, but to publish the string would give away the business plan. *Minds + Machines (4 Dec. 2009)*. In such rare cases a specific request for confidentiality could be made, rather than tailoring the whole process to accommodate such exceptions. *B. de la Chapelle (11 Dec. 2009)*.

IDN gTLDs—two characters. Minimum two characters of (local/native language) for a new IDN gTLD should be allowed if they serve a meaningful purpose; this has many benefits such as saved time and resources. All potential applicants should also be encouraged to use minimum letters for proposed strings of IDN cc/gTLD. *I. A. Shah (9 Dec. 2009)*.

Proposed questions for EOI participants. Most of the questions in the Applicant Guidebook are non-responsive to the data points that ICANN must ascertain to make a fact-based decision. An “appropriate” set of questions can be found in the Appendix to a M. Palage article, “New gTLD Expressions of Interest: Proceed with Caution”, Progress on Point, The Progress and Freedom Foundation, vol. 16, issue 24. *M. Palage (18 Nov. 2009)*.

Go live commitment--No. *Microsoft (11 Dec. 2009)*. *NeuStar (11 Dec. 2009)*. Ventures in various zones will self-create organically and the market will weed and grow the crop. *N. Freeman (1 Dec. 2009)*. This is erroneous. Any such commitment would involve a contractual relationship and deepening of the EOI that is counterproductive. *Dot Eco (12 Nov. 2009)*. The responder should not have to commit to go live within a certain time of delegation; this is a policy matter that should be addressed by the DAG. *A. Van Couvering (13 Nov. 2009)*. This should be qualified in the RFP process. *Smartcall (27 Nov. 2009)*. *AFNIC (29 Nov. 2009)*. The policy framework is yet to be finalized, so commitment should be taken out of the EOI; the EOI is simply to simulate the interests for new gTLD applications. *The Syllabus, Onajobi (24 Nov. 2009)*. No for closed communities as they should have the right to decide to begin with, unless objections are filed. *M. Kumagai (30 Nov. 2009)*.

Go live commitment—Yes. *dot berlin (15 Nov. 2009)*. *J. Lenz-Hawliczek (27 Nov. 2009)*. *dotHamburg e.V. (27 Nov. 2009)*. *dotKoeln (26 Nov. 2009)*. *A. Reichardt (17 Nov. 2009)*. *C. Oliver (17 Nov. 2009)*. This should be part of the final RFP. *Dot Sport Registry (18*

*Nov. 2009*). *J. Sowder (8 Dec. 2009)*. A reasonable amount of time should be given (e.g., 6-12 months). *R. Andruff, RNA Partners (13 Nov. 2009)*. A timeframe should be stated. *C. von Veltheim (27 Nov. 2009)*. EOI participants are not merely expressing interest; they are expressing intent and as such should agree to have their TLD applications ready within a reasonable period of time after getting the green light from ICANN. *J. Dufour (19 Nov. 2009)*. *Sierra Club (23 Nov. 2009)*. Applicants should be required to agree that the applicant entity listed in the EOI must be the same entity that takes the application live. Applicants that specify a preference for community priority should agree to operate that string for a set period (e.g., 5 years). *Big Room (27 Nov. 2009)*. Yes for gTLDs but not mandated by a tight time frame. *M. Kumagai (30 Nov. 2009)*.

Go live commitment—no determination made. The EOIWG made no determination on this point but noted that brands in particular may wish to wait until convenient to go live. *EOIWG (18 Nov. 2009)*. This is a case by case issue, especially for brand name gTLDs. If the extension is generic and of general public interest then a commitment to launch must be made. *C.G. Roussos (28 Nov. 2009)*.

Go live commitment—non-issue. This is a non-issue; the base registry agreement has a provision that requires the registry operator to pass pre-delegation requirements and be in the root within 12 months of signing the agreement with ICANN. *M. Palage (18 Nov. 2009)*. This is not necessary at the EOI stage, but by the time application is submitted, ICANN will define this requirement in line with Implementation Guideline I of the GNSO PDP Report. *W. Staub (27 Nov. 2009)*.

## **Potential Changes to the DAG**

The only change would be that the EOI would be a required prerequisite to an application, and the full application fee would be reduced by the EOI fee. *Dot Eco (12 Nov. 2009)*. Potential changes would include acknowledging participation to EOI as a mandatory step and deducting the EOI fee from the overall application fee. *M. Kumagai (30 Nov. 2009)*.

Depending on the number of EOIs received, it may impact estimated timelines for evaluation, communication and delegation, and will impact the fee schedule. The information received by ICANN should introduce clarity, brevity and certainty into the DAG. *A. Van Couvering (13 Nov. 2009)*.

Changes could include modification to the application fee based on more accurate application numbers derived from the EOI process as well as possible changes to how two competing strings may resolve themselves other than the widely opposed auction. *J. Sowder (8 Dec. 2009)*. Changes could involve criteria for commercial and noncommercial name scripts in both the EOI and application processes. *I.A. Shah (11 Dec. 2009)*.

The objective of the EOI is to allow changes to the RFP while changes to TLD properties stated in the EOI are not allowed; this is necessary because allowing both sides to change the process will result in new imbalances and the process will never stabilize. *W. Staub (27 Nov. 2009)*.



Solving the missing components of the DAG, the overarching issues, will have no bearing on the level of interest from applicants since those issues are beyond the control of any applicant. Any argument that future applicants cannot measure whether to apply to the EOI now because the DAG is not final essentially states that such prospective applicants are not TLD competent. *C.G. Roussos (28 Nov. 2009)*.

Each EOI participant must understand that they are taking their place to participate in the new TLD rollout, and before they pay their EOI fee they need to check the box that says they understand they are signing up to whatever the final Applicant Guidebook turns out to be. *R. Andruff, RNA Partners (13 Nov. 2009)*. Applicants must assume the risk of possible changes to the AG and the uncertain timelines associated with any regulatory process; this risk should not be transferred to ICANN. *Big Room (27 Nov. 2009)*. *W. Staub (27 Nov. 2009)*. *AFNIC (29 Nov. 2009)*.

An EOI process must have no implications for potential changes to the AG and any changes to the AG must be independent of any EOI process. The possibility that EOI participants could seek to prevent potential changes to the AG based on their EOI participation is another reason why ICANN should not have an EOI process. *Microsoft (11 Dec. 2009)*.

Registrar interests: lack of final DAG. The EOI Working Group report did not address the impact a potential change in DAG requirements may have on the eligibility of applicants to participate in the EOI process—e.g., the “vertical separation” issue remains undecided by ICANN. If section 2.9 of the registry agreement remains unchanged at the opening of the EOI submission window, then registrars would be eligible and also required to participate in the EOI process in order to get their gTLDs. If after the EOI window opens ICANN later changes section 2.9 and restricts registrars from selling their own names, registrars will be disqualified from the EOI process, they will lose their fee, and will have exposed their potential new gTLD to a grab by other applicants who are eligible. Without a finalized DAG, registrars cannot evaluate how to proceed. If ICANN can be pressed to resolve this particular issue then the EOI process will make better sense. *S. Hammock (20 Nov. 2009)*.

Due to the range of potential changes, at the time of filing EOI there should be a version of the DAG containing agreed-upon sections that should not be changed after the EOI. *dot berlin (15 Nov. 2009)*. *dotHamburg e.V. (27 Nov. 2009)*. *dotKoeln (26 Nov. 2009)*. *A. Reichardt (17 Nov. 2009)*. *J. Lenz-Hawliczek (27 Nov. 2009)*.

The major effect to the Guidebook is that with the EOI information ICANN will be able to make firmer plans which will translate into firmer commitments in the Guidebook regarding timing and costs. *EOIWG (18 Nov. 2009)*.

There should be only a very limited set of changes to the AG after the EOI participation closes. This is especially critical for community-based applications. *Dot Sport Registry (18 Nov. 2009)*. *Sierra Club (23 Nov. 2009)*. Any future changes to the AG should be minimal given how many iterations it has gone through already; changes should be allowed without any recourse from applicants involved in the EOI. *Smartcall (27 Nov. 2009)*. The EOI model should be used to ascertain levels of interest for the gTLD program as it is now. If enough interest is not shown in the current application process, only then should ICANN consider potential changes to the Applicant Guidebook. *J. Dufour (19 Nov. 2009)*.

There is little to no exposure for ICANN and little to no impact on prospective applicants if the EOI is not mandatory or binding and if there is no fee or it is nominal. ICANN would have to address numerous legal/operational complexities if however it imposes non-refundable deposits of a substantial size, thus slowing down the very rollout that the EOI is designed to expedite. *M. Palage (18 Nov. 2009)*.

The issue of potential changes to the AG after the EOI period closes highlights why the EOI should be without obligation except in the circumstance where the final AG is released and the policy is ready for execution (in which case there can be an EOI with deposit commitment). But given the current status, any change in policy can discourage a potential applicant. *The Syllabus, Onajobi (24 Nov. 2009)*.

It may be useful to review the intended purpose of the EOI—is it to discover the level of interest or is it intended to hone the AG? It may be a mistake to anticipate AG changes; it may lead to mission creep and a subtext that the AG should be further revised, as if this was an original purpose of the EOI proposal. *N. Freeman (1 Dec. 2009)*

## **EOI Benefits**

The primary benefit of the EOI is to reduce risks regarding areas including inaccurate economic studies, uncertain timelines, root scaling risk, trademark violation risk, geographic nation interests, public order, and risk of the unknown. *Dot Eco (12 Nov. 2009)*. *EOIWG (18 Nov. 2009)*. The EOI process would provide valuable information to brand owners now and in the future with less risk and use of their resources than the application process. *McGrady (11 Dec. 2009)*. The EOI will be more effective in bringing qualified applicants to the new TLD process. For brandholders especially the EOI provides the ability to get a “place in line” without committing to millions of dollars they would spend in completing an actual application; then at a comfortable pace the brandholder can decide whether it actually wishes to proceed. *A. Van Couvering (13 Nov. 2009)*.

A properly implemented EOI could provide ICANN and the Internet community with a number of important metrics to assist in successful new gTLD implementation, including potentially:

- The likely number of actual applicants in the first round; ratio of ASCII versus IDN new gTLDs;
- Size of the potential zones (i.e. how many domain names) in these new gTLDs; type of gTLD applications (i.e. brand, cultural, regional/geographic, etc.)
- Insight into potential geographic/regional distribution of new registry operators;
- Insight into evolution of registration authority marketplace;
- Analysis of prospective applicants from developed v. developing countries;
- Whether currently proposed fees and timelines are a barrier to entry for certain prospective applicants; and
- Meaningful data necessary to produce the “fact based” economic analysis required by ICANN’s Affirmation of Commitments. *M. Palage (18 Nov. 2009)*. *RySG (11 Dec. 2009)*.

## EOI Potential Risks

The EOI might cause further delays in the process. Dot Eco is prepared to accept that risk in order to maintain the integrity of the Internet, ICANN and the process. *Dot Eco (12 Nov. 2009)*. Further delay and harm to ICANN (reputational (“insiders” bias) and financial (e.g. litigation)) are the two principal risks. *Microsoft (11 Dec. 2009)*.

There is risk in not having an understanding of what a successful EOI is—we need stated goals. Beginning with the EOI, it is the job of the application process to determine only that entities have the capacity to securely and positively contribute to the Internet. The EOI needs to be the first step in actualization of the reason ICANN was formed, and then steps two and beyond need to proceed –i.e. so that new TLDs are introduced and allow the metamorphosis of the Internet (the ultimate expression of the free market), making it more intuitive, secure and user friendly over time. *J. Sowder (8 Dec. 2009)*. *RySG (11 Dec. 2009)*. The EOI, if supported by ICANN, must be properly designed to ensure that it gives ICANN an accurate reflection of interest in new gTLDs. *Zodiac (10 Dec. 2009)*.

Delay is a risk, especially for geographic designations, but ICANN can mitigate that risk by committing to a shortened application timeline following the EOI. *J. Dufour (19 Nov. 2009)*.

There is a risk of speculative EOI responses which can be managed because of the possibility of changing the RFP to exclude undesirable trends. The Board should combine the EOI with the principle of spreading the gTLD round over several windows by order of priority. The risk of exclusions of a large number of applications due to RFP changes can be managed through stating clear terms and refunding EOI fees where an RFP change made the application impossible. By comparison, the risks associated with further delays are not manageable. *W. Staub (27 Nov. 2009)*. *F. Krueger (28 Nov. 2009)*.

ICANN can mitigate the risk that the EOI will not provide a true picture of the applicant pool by closely approximating or matching the fees and prior advertising timelines expressed in public documentation to date. *Big Room (27 Nov. 2009)*.

The main risk is when there are a number of applicants all wanting the same strings. The EOI should be used as the platform to minimize this impact and allow potential RFP applicants an opportunity to change their string or to back out of the process before committing large sums of money. *Smartcall (27 Nov. 2009)*.

If ICANN addresses substantive policy issues in the EOI process there is a risk of delay. ICANN must limit objections to any eventual applications to the procedures outlined in the DAG and not allow attempts to disqualify applications at the EOI stage. *A. Van Couvering (13 Nov. 2009)*. *M. Kumagai (30 Nov. 2009)*. The EOI takes away most of the risks. The only risk is changes to policies in the DAG under which applicants apply. The next version of the DAG should be the final one. *C. von Veltheim (27 Nov. 2009)*.

The greatest risk of EOI is that it delays the new gTLD launch and becomes another layer of bureaucracy in an already complex process. The risk to applicants is that the current proposal requires companies and organizations to commit to a process that has not yet been finalized. *NeuStar (11 Dec. 2009)*.

To manage the risk of out-of-process political interference with certain strings, objections to new gTLD applications should be channeled exclusively through the identified ICANN objection processes. *EOIWG (18 Nov. 2009).*

Taking the interim step of the EOI far outweighs the negative. *R. Andruff, RNA Partners (13 Nov. 2009). dot berlin (15 Nov. 2009). dotHamburg e.V. (27 Nov. 2009). J. Lenz-Hawliczek (27 Nov. 2009). A. Reichardt (17 Nov. 2009). EOIWG (18 Nov. 2009). Dot Sport Registry (18 Nov. 2009). No risk seen in the EOI. dotKoeln (26 Nov. 2009). C.G. Roussos (28 Nov. 2009). AFNIC (29 Nov. 2009).*

ICANN could increase its litigation risk if it deviates in this EOI from the approach used in the 2000 EOI and 2008 RFI. *M. Palage (18 Nov. 2009).* If ICANN offers first round application opportunities exclusively to EOI participants, it is very likely that a variety of major players would bring litigation against ICANN for unfair practices. There is also the risk of further delay to market as a result of the EOI. *N. Freeman (1 Dec. 2009).*

There is no risk if the EOI is undertaken by ICANN without an obligatory commitment deposit. If the AG and new gTLD policy framework are not finalized then a number of crises will arise if the AG is altered and influences an EOI participant to discontinue from the process and provides grounds for a case with ICANN. *The Syllabus, Onajobi (24 Nov. 2009).*

If a noncommercial name script is displayed to the public before the commercial EOI or application period closes, the commercial market may obtain the idea and try to grab it with the help of major resources available to it. Conflicts among commercial entities are a risk if not taken care of and the name strings are mentioned. *I.A. Shah (11 Dec. 2009).*

Risks are not with the EOI but rather with further delays due to corporate lobbyists and fear mongers. Many nonprofits will benefit from community-specific TLDs. ICANN must adopt new TLDs that reflect how people are using the Internet every day. *Sierra Club (23 Nov. 2009). AFNIC (29 Nov. 2009).* We have a serious problem. We have stopped serving people who can use the DNS and who need to use the DNS and have rat holed into a series of monetization schemes based on scarcity. There is a need to deliver on the promise of the net and on the utility of the DNS to the other side of the digital divide. Without “fairness” the public-private partnership model fails. *E. Brunner-Williams (11 Dec. 2009).*

## **Economic demand**

Further resources should not be expended on “whitewash” economic reports about the demand for new TLDs—based on previous new TLD rounds it is relatively low. It is important to note that the level of applications under EOI does not indicate economic demand for new TLDs from registrants; it only indicates a level of demand from entrepreneurs wishing to release new TLDs. *A. Alleman (12 Nov. 2009).*

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