

EXPRESSIONS OF INTEREST (EOI) IN NEW gTLDs

Public Comments Summary and Analysis

(11 Nov. to 11 Dec. 2009 and 18 Dec. 2009 to 27 Jan. 2010)

INTRODUCTION

Approximately 370 comments were received covering two public comment periods; 1) 11 Nov 2009 to 11 Dec 2009 for solicitations on EOI models and 2) 18 Dec 2009 to 27 Jan 2010 for the draft EOI model.

The comments and analysis have been segregated into the following areas:

A) General Comments - EOI Support / Opposition

B) EOI Model

1. Mandatory participation
2. Deposit
3. Refunds
4. Collection of data and public posting
5. Communication plan
6. Go live commitment

C) Process for Developing the EOI Model

1. Purpose and Objectives
2. Timeline
3. Alignment with Affirmation of Commitments and By-Laws and Transparency

D) EOI Impact on Open Issues

1. Vertical Integration and Three-Character IDNs
2. Root Zone Scaling
3. Economic Study
4. Trademark
5. Changes to the Applicant Guidebook

E) Other Topics

1. Transferability

2. Additional EOI Risks
3. Other

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

A. GENERAL COMMENTS: EOI SUPPORT / OPPOSITION

Key Points:

- The solicitations for EOI models and proposed EOI model have generated support and opposition from stakeholder groups. Many responses expressing opposition actually state the EOI is acceptable if conducted in a certain way.
- In general there was broad support for the “information-gathering” aspect of the proposal.
- It is agreed that certain issues must be resolved prior to launching the EOI. This will minimize the risk of Guidebook changes after the EOI is launched and provide certainty for potential applicants. These issues include: trademark protections, mitigation of malicious conduct, relaxing the 3-character requirement, and vertical integration.

Comment Summary:

Support

The EOI plan will provide benefits. The model framework, including that EOIs are mandatory to be eligible to submit an application in the first round, is coherent and balanced. EOIs will provide concrete data on the number and type of TLD applications, which will help regarding the risk of root scaling. Root scalability alone justifies quick introduction of EOIs with significant fees. Advance notice of malicious behavior by bad actors might also be provided (e.g. potential IP infringement) through the publication of all strings and the identity of the applying parties. A mandatory fee-based plan is essential for getting reliable information and to avoid gaming. *Minds + Machines (29 Dec. 2009). Minds + Machines (19 Jan. 2010). Sierra Club (13 Jan. 2010). S. Ruskowski (4 Jan. 2010). C. Rheuban (14 Jan. 2010). B. Holbrook (8 Jan. 2010). J. Raines (18 Jan. 2010). P. Gould (19 Jan. 2010). L. Ferencz (17 Jan. 2010). R. Carl (17 Jan. 2010). R. Culver (18 Jan. 2010). K. Jablonski (18 Jan. 2010). L. Vitovich (17 Jan. 2010). J. Covington (18 Jan. 2010). J. Elkeshen (18 Jan. 2010). K. Lewis (18 Jan. 2010). M. Kochnover (17 Jan. 2010). C. Nagel (19 Jan. 2010). H. Veenstra (17 Jan. 2010). D. Salas (17 Jan. 2010). J. Mahtani (17 Jan. 2010). F. Guillemaut (18 Jan. 2010). S. Barkan (17 Jan. 2010). V. Sitruk (17 Jan. 2010). J. Johnson (17 Jan. 2010). K. Storey (13 Jan. 2010). S. Rakowski (14 Jan. 2010). E. Riflin (16 Jan. 2010). B. Read (16 Jan. 2010). M. Wills (14 Jan. 2010). B.A. Rich (16 Jan. 2010). A. Harlin (16 Jan. 2010). D. Russell (16 Jan. 2010). A. Wills (16 Jan. 2010). P. Larsen (16 Jan. 2010). M. Mendelson (11 Jan. 2010). J. Blackwell (15 Jan. 2010). World Carbon Database (11 Jan. 2010). O. von Wedekind (13 Jan. 2010). A. Wolffersdorff (18 Jan. 2010). Neue Bioskop Film (19 Jan. 2010). Conren Services (19 Jan. 2010). Contemporism (19 Jan. 2010). Olga Design (19 Jan. 2010). S. Bodenbender (19 Jan. 2010).*

D. Brooks (19 Jan. 2010). T. Demko (19 Jan. 2010). P. Keith (19 Jan. 2010). D. Maric (19 Jan. 2010). B. Ross (19 Jan. 2010). P. Dao (19 Jan. 2010). M. Griffin (19 Jan. 2010). A. Taylor (19 Jan. 2010). M. Nygren (20 Jan. 2010). Janina Mazur (20 Jan. 2010). F. Lorenz (20 Jan. 2010). G. Roach (20 Jan. 2010). S. Alfano (20 Jan. 2010). R. Chweidan (20 Jan. 2010). A. Panjabi (20 Jan. 2010). L. Rockas (20 Jan. 2010). J. Tarin (20 Jan. 2010). M. Hack (20 Jan. 2010). Dot Gay Alliance (20 Jan. 2010). C. Plettenberg (21 Jan. 2010). T. Walters (21 Jan. 2010). D. Adkins (21 Jan. 2010). T. Baker (21 Jan. 2010). M. Ralli (21 Jan. 2010). TLD Consulting (23 Jan. 2010). Simply Teeth (24 Jan. 2010). N. Nemes (24 Jan. 2010). S. Bazzi (24 Jan. 2010). P. Croy (25 Jan. 2010). Smartcall (25 Jan. 2010). D. Margolis (25 Jan. 2010). R. Khan (27 Jan. 2010). EuroDNS (27 Jan. 2010). Unite Berlin (27 Jan. 2010). ALAC (27 Jan. 2010). eco (27 Jan. 2010). M. Neylon (27 Jan. 2010). P. Farkas (27 Jan. 2010). E. Pruis (28 Jan. 2010). J. Frakes (28 Jan. 2010). Afilias (30 Jan. 2010).

EOIs will generate very useful data, they accommodate the global community, and should move forward. *J. DuFour (14 Jan. 2010). H. Haggerty (17 Jan. 2010). A. Schwertner (19 Jan. 2010). T. Durbin (20 Jan. 2010). C. Castell (25 Jan. 2010). Armira Partners (25 Jan. 2010). BRS Media (26 Jan. 2010). dotFAM (25 Jan. 2010). L. von Schintling-Horny (26 Jan. 2010). A. Morrison (26 Jan. 2010). Bayern Connect (26 Jan. 2010). H.R.H. Prinz Leopold von Bayern (26 Jan. 2010). P. Frakes (27 Jan. 2010). T. Gilles (27 Jan. 2010). GMO Registry (27 Jan. 2010). NIC Mexico (27 Jan. 2010).*

It is refreshing to see the consensus among the majority of stakeholders; it is a positive reflection on ICANN and ICANN's new CEO and his leadership. *R. Becker (26 Jan. 2010).*

The model appears to be a fair, thought out plan for applicants who have a developed plan and are ready to start the application process. *T. Yokoyama (7 Jan. 2010). J. Borow (8 Jan. 2010). Y. Zyabkin (13 Jan. 2010).*

If the EOI is going to go forward, then the staff-recommended model is the best implementation and should be adopted. *J. Nevett (27 Jan. 2010).* If an EOI goes forward, the staff's recommended model is the only practical approach. The principal information the EOI will provide is good data to assist in root scale planning. It is doubtful that the EOI will affect current planning for strings that generate morality, trademark or geographic concerns at the top level. *R. Tindal (29 Jan. 2010).*

The EOI supports businesses' interests by advancing the new window of opportunity that new gTLDs will open for businesses. *Fortis (15 Jan. 2010). S. von Wrede (17 Jan. 2010). Minds + Machines (19 Jan. 2010). D. de Jongh Weill (21 Jan. 2010). Harden berg-Wilthen (22 Jan. 2010). Oelber Event (22 Jan. 2010). dotHotel (27 Jan. 2010).* It would be in the best interests of the dental profession to have a home such as .dentistry. *Simply Teeth (24 Jan. 2010).*

New geographical TLDs have the power to support local economies. *C. Fehling (17 Jan. 2010). F. von Schilcher (18 Jan. 2010). L. Phelps (18 Jan. 2010). S. Hiremath (20 Jan. 2010).*

The EOI is in the best interests of ICANN and also the charities and other organizations that wish to submit EOIs regarding new TLDs and should be adopted. Making further material changes to accommodate "special interests" and prolonging consultation sets a dangerous precedent by creating the risk of significant additional delay and an unfair process. *Kerman (19 Jan. 2010).*

EOI should be approved by the Board so that the real alternatives presented by the new gTLD process are not further delayed. *B. Lampcov (8 Jan. 2010). L. Wasser (12 Jan. 2010). D. Landry (15 Jan. 2010). T. Traina (16 Jan. 2010). J. Ziegler (16 Jan. 2010). J. Mazur (16 Jan. 2010). dotHAMBURG (27 Jan. 2010). dotGAL (27 Jan. 2010). E. Pruis (28 Jan. 2010). Sincere Management (28 Jan. 2010). Armenian Society (28 Jan. 2010). M. Paul (19 Jan. 2010).*

ICANN should move ahead with EOIs and new TLDs so that end users gain benefits, such as the ability not allowed by the current system to “personalize” a web address. *P. Eytan (11 Jan. 2010). Filmaka (15 Jan. 2010). J. Lonsdale-Hands (15 Jan. 2010). M. Papp (17 Jan. 2010). M. Sahafi (18 Jan. 2010). DotAlliance (27 Jan. 2010).*

With a published opening and closing date for the EOI period for new gTLDs, the EOI concept could move the new gTLD process forward by allowing for more transparent and relevant discussion for completing the DAG. *DotGreen (27 Jan. 2010).*

The process needs to account for small nonprofit and community-based TLD projects and that even with the EOI, they face financial risk and burden waiting for when they would be able to sell their first domain name. Without special consideration for these types of applicants, the current ICANN process will de facto exclude many initiatives which would broaden cultural and linguistic diversity on the Internet. *M. Credou (21 Jan. 2010).*

Few brands have actually expressed their opposition to EOI; trademark lawyers, who have a vested interest in delaying the process to increase their billings, are leading the charge against EOIs and for further delay. *J. Willenborg (14 Jan. 2010).* It is unfair for trademark interests to be trying to block EOIs when ICANN has been working so hard and spending major resources on resolving trademark protection issues. *C. Oliver (16 Jan. 2010). J. Linneman (19 Jan. 2010). A. Taylor (19 Jan. 2010). C. Roussos (20 Jan. 2010).* The trademark industry should come up with solutions for conflicts and provide an instrument for challenge (e.g., a DNS site set up by a trademark association where trademarks are uploaded). *TLD Consulting (27 Jan. 2010).* Once trademark holders and other new gTLD opponents realize new gTLDs are coming, they may be more inclined to participate in creating helpful policy and submit their own new gTLDs for the first or second round. Some of the new gTLDs may prove beneficial to trademark owners. *DotGreen (27 Jan. 2010).*

The EOI and new gTLDs (a public good), which will provide alternatives to the current egregious monopoly control of the DNS, should be advanced without further delay. Entrenched interests trying to block new gTLDs do not speak for the billions of Internet users. *R. Gati (16 Jan. 2010). C. Park (12 Jan. 2010). T. Hwang (17 Jan. 2010). F. von Schilcher (18 Jan. 2010). R. Culver (18 Jan. 2010). S. Bodenbender (19 Jan. 2010). C. Plettenberg (21 Jan. 2010). T. Gilles (27 Jan. 2010).*

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). W. 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).*

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 Covering (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).*

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)*.

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)*.

Opposition / Concerns

Opposition to EOI. *S. Blasco (11 Jan. 2010)*. *C. Susman (11 Jan. 2010)*. *J. Henricks (11 Jan. 2010)*. *L. Andersen (12 Jan. 2010)*. *K. Grabienski (13 Jan. 2010)*. *P. Perysinakis (12 Jan. 2010)*. *J. Macaluso (20 Jan. 2010)*. *Sunkist (28 Jan. 2010)*.

With overarching issues still unresolved it is premature to accept pre-registration. *Sun Microsystems (13 Jan. 2010)*. *NCTA (27 Jan. 2010)*. *ICC ITIS (27 Jan. 2010)*. *IKEA (27 Jan. 2010)*. *Philip Morris (27 Jan. 2010)*. *C. Speed (21 Jan. 2010)*. *MARQUES/ECTA (27 Jan. 2010)*. *Adobe (23 Jan. 2010)*. *FICPI (26 Jan. 2010)*. *Coca-Cola (26 Jan. 2010)*. *ICC ITIS (27 Jan. 2010)*. *LEGO et al. (27 Jan. 2010)*. *ASIPI (27 Jan. 2010)*. *Microsoft (27 Jan. 2010)*. *IPC (28 Jan. 2010)*. *ABA (28 Jan. 2010)*. *CAPS (6 Feb. 2010)*.

Frustration by some with the delays in acquiring a new gTLD should not shortcut ICANN's thorough consideration and resolution of the remaining unresolved issues with the new gTLD program. Failure to properly address outstanding issues could lead to significant public harm, including jeopardizing the security and stability of the Internet DNS. *INTA (28 Jan. 2010)*.

Trademark owners will be harmed if the current proposed EOI is adopted. *D. Duhaime (11 Jan. 2010)*. *D. Greaves (21 Jan. 2010)*. *JIDNC-SC (27 Jan. 2010)*. *W. Borchard (12 Jan. 2010)*. *MARQUES/ECTA (27 Jan. 2010)*. *A. Wyld (11 Jan. 2010)*. *Philip Morris (27 Jan. 2010)*. *C. Cho (13 Jan. 2010)*. *K. Jonas (14 Jan. 2010)*. *H. Held (14 Jan. 2010)*. *Adobe (23 Jan. 2010)*. *Aluko & Oyebode (26 Jan. 2010)*. *Coca-Cola (26 Jan. 2010)*. *LEGO et al. (27 Jan. 2010)*. *AAMC (27 Jan. 2010)*. *ASIPI (27 Jan. 2010)*. *Lovells (28 Jan. 2010)*. *IPC (28 Jan. 2010)*.

ICANN should not open the first round of new gTLDs through use of an EOI application. The new gTLD program should only open after a complete evaluation and response to all concerns. ICANN should instead focus on the fourth DAG, accumulation of comments and an ICANN response to them, and ultimate development of a final DAG. Submission of any public comment is a demonstration of interest in the new gTLD program. The content of the comments will help ICANN acquire the proverbial "temperature" of the public on the new gTLD program and facilitate an address of any public concerns. *IBM (6 Feb. 2010)*.

ICANN should not move forward with the EOI. ICANN should refrain from taking any further action on the EOI and trademark related issues at the upcoming Nairobi meeting when so few stakeholders will attend due to safety and security concerns.

The mandatory aspects of the EOI create a false sense of urgency and may compel some entities to apply for new gTLDs to avoid allowing others to be granted “most favored nation” status by ICANN. Acceptance of an EOI by ICANN may lead some applicants to view it as a promise that ICANN will approve their application and give them priority. This action, and the acceptance of a significant deposit by ICANN, undermines the rigorous scrutiny that ICANN has committed to give each new gTLD application.

Without proper protections, the EOI process will likely be gamed by a small group of stakeholders. As a not-for-profit entity, ICANN must be careful to avoid even the appearance of impropriety when issues, like the EOI, are directly tied to policy decisions that favor its own financial self-interest. *Verizon (26 Jan. 2010). Ford et al. (27 Jan. 2010).*

The EOI should not be a cost generator and any deposit or participation in an EOI should not be viewed by the applicant as a promise that they will be awarded a new gTLD nor a basis to engage in raising capital and investors in the new gTLD. *USCIB (27 Jan. 2010).*

The EOI process is entirely premature. A foundation of the best possible empirical data on which ICANN could responsibly open an EOI phase is entirely lacking.

Many issues remain unresolved (e.g., it remains an open issue whether the new gTLD launch should be restricted to IDN character strings so as to focus on the goal of serving populations that have historically been excluded from full participation in the Internet in their native tongues). Pre-registration could affect how those issues get resolved as pre-registrants’ goal will be to prevent outcomes on those issues that might disqualify or disadvantage their pre-registered applications.

Without a demonstrated empirical basis subjected to analysis, there is no justification for allowing any new gTLD applicant to reserve irrevocably a place at the starting line merely by sending in a check for \$55K along with skeletal information about the applicant and the new gTLD character string it proposes to establish.

An EOI phase at a much later phase after all the major open issues are resolved might make sense to help provide ICANN with the data it needs to forecast actual demand and to plan its resources allocation efficiently. Further consideration of the EOI should be deferred until after ICANN has provided an answer to the question (buttressed by a comprehensive economic analysis of the domain name marketplace) of how to structure a new gTLDs rollout that addresses consumer needs without exposing those consumers to further harm. *Time Warner (27 Jan. 2010). ICC ITIS (27 Jan. 2010). COA (27 Jan. 2010). USCIB (27 Jan. 2010).*

The proposed EOI model presents numerous risks that have not been adequately addressed by staff. *COA (27 Jan. 2010). Lovells (28 Jan. 2010).* To run the EOI before outstanding issues are resolved introduces the risk of influencing the final implementation of new gTLDs and not reaching the best solution. *P. Tattersfield (27 Jan. 2010).* The risks of introducing an EOI process into the new gTLD program outweigh any benefits of the draft EOI Model. The EOI Model has

already become a large distraction to the community and to ICANN completing the next version of the DAG in as timely a manner as possible. *INTA (28 Jan. 2010)*.

The proposed EOI model will be harmful to nonprofit organizations. ICANN's Board should delay its decision to implement an EOI until: (1) the outstanding overarching issues related to new gTLDs are resolved; (2) the final Applicant Guidebook is published; and (3) ICANN completes a comprehensive and robust communications campaign especially in developing countries about the new gTLD program, the application process and the proposed EOI process. *Concerned Nonprofit Organizations (27 Jan. 2010)*.

Negative impact on nonprofit organizations. Introduction of the proposed EOI process is not prudent and will be harmful to nonprofit organizations. There are unresolved issues about the new gTLD program (e.g. ensuring security and stability), all details are not available because the DAG is not final yet, and having to allocate US \$55K for the fee and having to participate defensively is burdensome for nonprofits which are often working with limited resources. *FPSB (22 Jan. 2010)*. *USOC (25 Jan. 2010)*. *AAMC (27 Jan. 2010)*. *American Red Cross (27 Jan. 2010)*.

The EOI process is inadequate to fulfill the intent of the EOI process for gathering effective assessment information about new gTLDs (demand, technical, objections, etc.). Many brand owners may feel compelled to apply for defensive purposes only and/or to "test the waters"; therefore the conclusions that could be drawn from the application data would likely be of limited utility. The risks and unresolved issues associated with introducing an unlimited number of new gTLDs is too high to justify implementing the EOI process at this time. Work on unresolved issues will likely be delayed with the result that the process could move forward without adequate safeguards in place. *FICPI (26 Jan. 2010)*. *CADNA (27 Jan. 2010)*. *Microsoft (27 Jan. 2010)*. *IPC (28 Jan. 2010)*. *CAPS (6 Feb. 2010)*.

Defensive submissions. There are strong concerns that ICANN's new gTLD program is compelling stakeholders to apply for a new gTLD for purely defensive purposes. ICANN should consider the TLD defensive registration issue as part of the overarching issue of economic demand and impact. INTA looks forward to evaluating the economic demand and impact studies that ICANN has committed to publishing as part of the new gTLD program. *INTA (28 Jan. 2010)*.

EOI step should be eliminated. The proposed EOI phase will only create delay and additional, unnecessary overhead. Since ICANN's chief concern is that its staff will not be able to handle the number of applicants, then having the EOI only exacerbates this problem by giving more time for more companies to prepare to participate in this process. *M. Iqbal (27 Jan. 2010)*. The EOI step could be skipped and instead ICANN could set priorities, such as limiting the next application window to public-interest community-based TLD projects that require the agreement of the relevant government authorities. *W. Staub (27 Jan. 2010)*.

There may be a benefit or two to the EOI, but it achieves nothing that opening the application window itself wouldn't achieve and it is giving the anti-TLD faction further opportunity to disrupt and ICANN further opportunity to procrastinate. ICANN should drop the EOI and move swiftly to finalizing the Applicant Guidebook and opening the application window. *D. Schindler (29 Jan. 2010)*. *R. Tindal (29 Jan. 2010)*.

Negative impact on brand owners. Brand owners would be required to prematurely make public their intentions and certain information in their EOI applications that they otherwise would not be required to do so early in the process, without knowing the requirements of the rest of the process. They could be compelled to take defensive steps to protect confidential or sensitive information from disclosure through the EOI process. *FICPI (26 Jan. 2010). INTA (28 Jan. 2010).*

Brand owners—competitive pressure and defensive filings. Brand owners will be forced to make a decision on committing substantial resources to one or more potential new gTLDs and to identify those gTLDs prior to resolution of many important issues on how the new gTLDs will work. If a brand owner decides to wait for the resolution of these issues, it will be foreclosed from participating in round one, and possibly lose the competitive edge in obtaining a desired gTLD. The proposed EOI model will likely open the process to speculators. With the lower \$55k fee, it will be easier for speculators to raise the funds for the EOI fee, particularly since their spot in the first round apparently later can be traded or sold. This means that the EOI process will not lead to a better assessment of real interest in new TLDs, but will create a secondary market trading positions for slots in the first round. Brand owners may be compelled to file as a defensive measure against infringers and speculators. Such types of filings by brand owners will not provide ICANN with any valid data as to true brand owner interest in new gTLDs. *Coca-Cola (26 Jan. 2010). Philip Morris (27 Jan. 2010). LEGO et al. (27 Jan. 2010). Microsoft (27 Jan. 2010). Lovells (28 Jan. 2010). IPC (28 Jan. 2010). ABA (28 Jan. 2010).*

The EOI process has to be equitable for and provide equal opportunity for all of its global stakeholders—those with voice and money and those without them (e.g., IDN Netizens). Until that is demonstrated as per the AOC requirements, I do not support the EOI. The process is currently stuck in the old way of doing things at ICANN. ICANN needs to demonstrate that it is genuinely trying to alleviate the continued dissatisfaction or distrust in the way it is handling special interests versus global interests where IDNs and gTLDs are given their due merit. These are the true measurements that will determine if ICANN fails or succeeds on its AOC mandates and in bringing the next multi-billion non-English-speaking users to the Internet. Failure to ensure fairness, equality, accountability, transparency and the interests of all global Internet users will render the EOI becoming the “Expression of Special Interest”. This result would damage ICANN’s own credibility, and that of the U.S. government that granted ICANN the AOC, not to mention the good faith of some of the sincere EOI supporters. *K. Fattal (26 Jan. 2010).*

The EOI is unnecessary and will cause expense and burdens. This whole unnecessary attempt to expand gTLDs without any realistic limits should be abandoned. *Lockheed Martin (11 Jan. 2010). Siemens Water Technologies (12 Jan. 2010). A. Aktekin (14 Jan. 2010). H.J. Heinz Company (12 Jan. 2010).* Instead of the EOI, which is costly in this economic downturn for potential community and special interest applicants (e.g., cities), a more fair way to proceed would be for ICANN to tell the world exactly what it will expect of a gTLD applicant so that applicants can make an informed decision prior to filing an application and a fee. *COSTCO (13 Jan. 2010).*

The EOI pre-registration process distracts from addressing the unresolved overarching issues, suggests that it is a process not reversible regardless of these unresolved issues, is inconsistent with past ICANN practice, ignores market dynamics, may encourage speculation and forces applicants to invest blind. *AIM (21 Jan. 2010). British Brands (21 Jan. 2010). G. Kirikos (24 Jan. 2010). IACC (26 Jan. 2010). FICPI (26 Jan. 2010). COA (27 Jan. 2010). Microsoft (27 Jan. 2010).*

Pushed new gTLD application date. The EOI as proposed will push the general gTLD application date earlier and thereby favor ICANN insiders and enable massive gaming. *dotBERLIN (24 Jan. 2010)*. *A. Schreiner (27 Jan. 2010)*. *DOTZON (27 Jan. 2010)*. *dotbayern (25 Jan. 2010)*. *dotHotel (27 Jan. 2010)*. *CADNA (27 Jan. 2010)*. The EOI process will amount to a pre-registration period for new gTLDs, contrary to how previous rollouts of new gTLDs and IDN ccTLDs took place. *FICPI (26 Jan. 2010)*.

Domain hijacking risk. A system that maintains domain names for a period of time before the definitive registration takes place could increase domain name hijacking. *ASIPI (27 Jan. 2010)*.

Malicious behavior risks. New gTLDs are the wrong thing to do and will confuse users and make it easier for phishing scams. Everything but .net and country code TLDs should be phased out. *A. Batie (17 Jan. 2010)*.

ICANN priorities. Instead of new gTLDs (whose purpose seems to be to gain more money for ICANN and which among other problems will create the need for companies to file defensive registrations for protection of trademarks), ICANN should be focusing on infrastructure issues (e.g., IPv6), governance issues, reduction of ICANN's bloat, and the move to a virtual environment and reduction of the need for physical meetings, reducing the carbon footprint by less travel, etc. *G. McHerron (18 Jan. 2010)*.

Instead of new gTLDs, a precise control at the registrar level about assigning existing TLDs would be more helpful, as well as perhaps more stringent qualifications or enforcement for registrants (e.g., you actually need to be in business to get a .com or you actually need to be an ISP or provide network services to secure a .net). *M. Clemens (23 Jan. 2010)*.

ICANN revenue. New gTLDs should not be used as a revenue raising tool for ICANN. There needs to be a cap on fees and on the total staff of ICANN. *Unidentified (16 Jan. 2010)*.

There have been no appropriate economic studies performed that address new gTLDs and those need to be completed before deciding whether new gTLDs should be added to the root. The Affirmation of Commitments is very clear on this point. Also, the process of assessing whether decisions are supported and accepted by the public must be continuous. There is support for IDN ccTLDs, IPv6, DNSSEC and aliased (DNAME) gTLDs, but scant support for a wild-west introduction of tens of thousands of new gTLDs. Now that the AOC is in place, the DOC should finally reign in ICANN and work toward policies that the public supports (e.g., stability and security). If new gTLDs are to go forward, they should be allocated in a method that maximizes the public interest (via regular tenders as per government contracts to the registry operator that will operate the service at the lowest cost per domain per year, for a fixed length (5 year) contract term. ICANN is not doing this because its only goal is to maximize the amount of cash flowing towards ICANN. *G. Kirikos (24 Jan. 2010)*. EOI is just a form of domain tasting, albeit at the TLD level, and a game for insiders at the expense of the public. DOC should reject the proposed EOI and give ICANN greater direction to act responsibly. *G. Kirikos (25 Jan. 2010)*.

Developing countries concerns. The EOI model ignores the risk that applicants from developing regions or less developed economic sectors will be further discouraged from participation in the

new gTLD process. The effect of the model on these entities is neither discussed nor reviewed. Requiring such entities to pay a high fee for the privilege of standing in line to apply is cynical and not in the public interest of those from the developing world who are waiting to finally be allowed entrance into the world of gTLDs. *A. Doria (3 Jan. 2010). A. Doria (14 Jan. 2010).*

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)*.

Decision on new TLDs. ICANN needs to either move forward with new TLDs now or shelve the entire process. The way that ICANN announces a lot of these processes has not helped. *M. Neylon (27 Jan. 2010)*. Launch of new gTLDs should be postponed until after successful launch of several new IDNs. This would allow ICANN to incorporate lessons learned for a smoother new gTLD launch and continued operation. *AMAC (27 Jan. 2010)*.

EOI pressure on overarching issues resolution. Once entities submit a deposit and are invested in the EOI process, ICANN may be pressured to launch the new gTLD program prior to resolving the overarching issues or to implement inadequate “quick fix” resolutions so as not to prejudice those who have invested in the EOI process. Making the EOI deposit refundable if ICANN does not launch within a certain period of time will only add to that pressure. Although ICANN noted these risks in the draft EOI Model, the potential impact of these pressures would be inevitable and much more significant than ICANN has anticipated. *INTA (28 Jan. 2010)*.

Diversion of resources. 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)*.

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)*.

Analysis:

The solicitations for EOI models and proposed EOI model have generated support and opposition from stakeholder groups. A number of the comments received were form responses from particular groups expressing competing positions. Many responses expressing opposition actually state the EOI is acceptable if conducted in a certain way. In general there was broad support for the “information-gathering” aspect of the proposal. Several comments urged ICANN to move forward quickly to address the monopoly in the gTLD space and the scarcity of meaningful domain names available.

A number of responses in support of the EOI are in general agreement that useful data can be collected to help resolve certain overarching issues while providing valuable input to become operationally ready. There also appeared to be a general consensus that certain other overarching issues should be addressed prior to the launch of the EOI or gTLD program while other comments suggest that the EOI is a way to expeditiously move the gTLD program without regard to proper resolution of such issues. In addition, the EOI may force an early commitment of substantial resources without understanding the impact of the final guidebook to their registry business model and divert resources from progressing the gTLD program.

It is agreed that certain issues must be resolved prior to launching the EOI. As such the EOI would not launch until a 4th version of the Applicant Guidebook is published which would include further work on the overarching issues including the resolution of vertical integration. Resolution of the vertical integration issue is critical, as it would, in some cases, determine who could or could not apply for a gTLD and thus put money at risk by participating in the EOI.

Additionally, as specifically highlighted in the objectives of the EOI, the outcome of the EOI is expected to assist with, not completely address, the resolution of the Root Zone Scaling and Economic concerns. Root zone analysis would have some context as to the total number of unique strings that could be delegated in the first round of the program and the economic analysis would be provided some sense of the expected demand for domains.

There is merit to the comments about how changes to the Applicant Guidebook could impact applicants, especially those that may later become ineligible to participate. To address this concern a refund policy is included in the EOI aimed at reducing the risk in participating in the program and later becoming ineligible. For those organizations unwilling to accept the risk of entering the EOI without knowing the final outcome of the Applicant Guidebook (even if the material issues are resolved), there will be subsequent gTLD rounds and the launch of round 2 will be announced sometime during the launch of round 1.

The re-organizing of resources to focus on the EOI versus other initiatives is generally a valid point. Certainly the gTLD program could be delayed further by focusing time and effort on an

EOI at the expense of other issues, however, there is also the possibility that the EOI helps to resolve open issues in a more efficient manner. In addition, the EOI effort will leverage operational readiness activities currently being developed for the gTLD program. The impact on progressing the gTLD program is expected to be minimal.

There have been concerns expressed that many brand owners may feel compelled to participate in the EOI for defensive purposes and this participation could potentially skew the EOI data. These are also concerns and while the EOI may eventually facilitate the launch of the gTLD program it does not guarantee that it will move forward nor does it circumvent any processes in the Applicant Guidebook. Trademark concerns continue to remain a top priority with new models, based on IRT and STI work, being published prior to Nairobi. Brand owners will have the ability to file formal objections to any application on the grounds of existing legal rights. The objection process is expected to minimize the risk of defensive registrations and limit the skewing of EOI data.

Some comments suggest that accepting the EOI introduces the risk of influencing the resolution of overarching issues such that EOI applicants are not disqualified or disadvantaged and participating in the EOI could be viewed as a promise that ICANN will approve applications thus undermining the rigorous scrutiny that ICANN has committed to give each new gTLD application.

While it is likely that the EOI could assist with the resolution of overarching issues the process for resolving open issues has been and continues to be transparent and subject to public input and comments. The publication of a final Applicant Guidebook, which specifically addresses a number of open issues, will continue to require input from the Internet community including various constituencies such as the GNSO and GAC as well as final Board approval. ICANN's role is not expected to change with the introduction of the EOI. Furthermore, participation in the EOI does not guarantee the approval of an application. As clearly stated in the Applicant Guidebook, independent Evaluation Panelists are being hired to thoroughly review each application and provide a score based on their expertise. These processes have been developed to provide a fair and consistent gTLD program and to minimize any actual or potential appearance of conflict or undue influence of the process by ICANN.

Some have argued that the EOI will only benefit a small group of applicants such as special interest groups and "ICANN Insiders" or that ICANN could be subject to waves of litigation from those who were unable to participate. This clearly is a perception of the EOI program and one that is being taken very seriously. Should the Board approve an EOI program in Nairobi, ICANN will execute a widespread, intensive 4-month communication campaign to ensure awareness across as many organizations, countries/regions, and Internet users as possible. Participation in the EOI will be open to any organization as highlighted in the Application Guidebook. For those that are unable to participate in round 1, ICANN expects to have subsequent rounds and will announce the start of round 2 sometime during the launch of round 1.

Others believe that the program is self-serving and will only serve to generate additional revenue for ICANN by collecting a large deposit. The deposit, as discussed below, represents the non-refundable portion of the \$185k application fee discussed in the Applicant Guidebook. The funds collected from EOI participants will be deposited in a 3rd party escrow account which, except for direct EOI expenses, will not be accessed by ICANN until a decision is made on whether or not to move forward with the gTLD program. If the gTLD program proceeds the funds will be applied against the \$185k fee leaving \$130k due from each applicant to submit their application. If the program does not move forward the \$55k deposit, less costs to manage the EOI, will be refunded to each applicant.

In summary, ICANN believes that an EOI will provide substantial benefits to progressing the gTLD program. It is expected to help resolve open issues and provide an indication of the total number of applications and unique strings. This information will aid with operational readiness activities such as the implementation of final application processing program and hiring of resources including Evaluation Panelists. Proper planning of the program will help to minimize risks, increase efficiencies, and minimize overall operating costs, which can be passed on to future gTLD applicants.

B) EOI MODEL

1) Mandatory Participation

Key Points:

The preference for a mandatory model was widespread, although a subset of comments argued that a voluntary model would be more appropriate due to the uncertainty of the program's development.

- Of three options: a "mandatory" EOI is preferred, not conducting the EOI is the second choice and a "voluntary" EOI is a distant third. That is because a voluntary EOI will incur time and expense (more than a mandatory EOI) and not achieve any of the program objectives.

Comment Summary:

Support

Process should be mandatory. EOI should be mandatory as long as it is called Stage One of the application process and if it is not launched until the outstanding issues around such crucial policy matters as rights protection and the objection process etc. have been resolved. *Com Laude* (26 Jan. 2010). ICANN should consider merging any mandatory EOI process with the start of the new gTLD round. If the processes remain separate the EOI should have firm timelines for

the transition between the EOI and the new TLD round (2-3 months in between should be sufficient). *VeriSign (27 Jan. 2010)*. If mandatory, the EOI should be considered the first step of the new gTLD process. There should be no important changes between the last DAG before the EOI opens and the final RFP. *dotGAL (27 Jan. 2010)*. The round should have finality. If there is an additional round of submissions, strings designated in the first round should be unavailable to those in the second round, which should be final also. First round EOIs should receive preferential processing order, so that there is still a perceived benefit to EOI participation. *J. Frakes (28 Jan. 2010)*. A non-mandatory EOI will not produce the information we need, which is the whole purpose of the EOI. The only incentive that works is to make the EOI mandatory. *P. Stahura (29 Jan. 2010)*. The EOI must be mandatory to be effective. Knowing exactly how many applications there are going to be and for how many different strings is the main reason for an EOI stage. *D. Schindler (29 Jan. 2010)*. Only EOI participants should be eligible to participate in the first round. *Sierra Club (23 Nov. 2009)*. The proposed mandatory nature of the EOI provides certainty and a hedge against skewed data with regard to the ultimate number of applicants in the new TLD round. A “voluntary” EOI could provide an incentive to refrain from responding to the EOI in order to gain knowledge about actual demand for specific strings and knowledge about strings for which no EOI occurred. *Afilias (30 Jan. 2010)*.

Opposition / Concerns

Do not mandate filing an EOI. EOI should not be compulsory for the first round of new gTLDs. Benefits (i.e., customer service) should be provided to those who provide EOIs, rather than using the EOIs solely as a cut-off to the process (such benefits might include update application sessions by staff; commitment to answer questions directly; advance notice of papers/meetings; exclusive access to application software and algorithms, etc.). A public comment period asking potential applicants what potential benefits would be most useful to them would be a constructive step. The staff has not adequately explained the rationale behind the choice of a compulsory model. A non-compulsory, “soft” approach might overcome the reticence of applicants to make their plans known as well as avoid the problems inherent in a compulsory model. *K. McCarthy (28 Dec. 2009)*. There should be a reward for taking part in the first round. *F. Guillemaut (18 Jan. 2010)*.

The EOI should not be compulsory. Benefits for EOI applicants could include regular applicant-only briefings, one-to-ones with ICANN staff and other services that would benefit applicants and ICANN. *dotBERLIN (24 Jan. 2010)*. *dotbayern (25 Jan. 2010)*. *dotKoeln (27 Jan. 2010)*. *DOTZON (27 Jan. 2010)*. *A. Schreiner (27 Jan. 2010)*. *eco (27 Jan. 2010)*. The EOI should not be treated as a pre-registration process, and incentives for participating should be provided. *dotHotel (27 Jan. 2010)*. *Microsoft (27 Jan. 2010)*.

An EOI application should not create any rights or entitlements for EOI applicants. Non-EOI participants should be able to file applications in the first round as well as any subsequent rounds. This will ensure that any string goes to the best possible applicant. *IPC (28 Jan. 2010)*.

The compulsory element in the staff’s model cannot be explained by applications for which the uniqueness and prior authorization are facially evident. It is therefore only explained as

accommodation for applications which either lack uniqueness, or prior authorization, or both, at the expense of applications lacking neither. *E. Brunner-Williams (29 Dec. 2009)*.

EOIs should not be mandatory; the full details about the application process are still unresolved. The EOI is a marketing gimmick for insiders. *A. Doria (14 Jan. 2010)*.

Some governments may not yet be ready to apply, and the EOI should not foreclose their applications. *JIDNC-SC (27 Jan. 2010)*.

It would only be fair to make the EOI mandatory if the new gTLD program is very nearly finalized, which is not the case. *Lovells (28 Jan. 2010)*.

There are alternatives to a mandatory EOI. A robust survey taken after a communications campaign would achieve a similar result without committing ICANN and potential applicants to unreasonable timelines and expense, and would negate the need for a fee. *AAMC (27 Jan. 2010)*. ICANN should consider alternatives to a mandatory EOI with less adverse impact on nonprofit organizations such as a voluntary EOI or a survey after a robust communications campaign. *Concerned Nonprofit Organizations (27 Jan. 2010)*. Information needed by ICANN for assessment of the new gTLD program, such as the kinds of strings to be requested, should be obtainable without having to pay a \$55k fee. *ASIFI (27 Jan. 2010)*.

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)*.

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)*.

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)*.

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)*.

Analysis:

The preference for a mandatory model was widespread, although a subset of comments argued that a voluntary model would be more appropriate due to the uncertainty of the program's development. There were concerns that a "firm" EOI approach would be too sudden, with a mandatory EOI coming at very short notice for a change with such big impact. Proponents of the voluntary model argue that a "lightweight" approach would reap the benefits of acquiring useful data while avoiding the problems of a mandatory, deposit-based approach.

A voluntary model with a robust communication plan and survey certainly has some merit. However, the result would be that the data is of little value and the effort will take considerable time and expense. Arguments from those who support the EOI agree that a voluntary model would provide little to no incentive for certain organizations to participate. A number of organizations will simply "wait and see" what will be applied for and by whom. This could provide the "wait and see" organizations with extra time to develop their strategy and perhaps gain an unfair advantage over those who have willingly participated in the EOI. A voluntary EOI increases the risk of less than full participation by those intending to apply in round 1, which in turn would skew the data that might assist with resolving open issues and operational readiness planning.

The timing aspect and the stakes of a mandatory approach are well understood. We agree with the concerns in this area: the risk that only those who are currently aware of the new gTLD round will be able to participate. This is the reason that so much emphasis is placed on executing a widespread, intensive 4-month communication plan.

There is concern that the results of an EOI will be further skewed by speculation and defensive activity and should not be taken as an indicator of economic demand. This consideration has been factored into the EOI analysis: it has never been the intention to rely only on EOI data to resolve the still-open economic questions. Furthermore, as highlighted above, there should be little incentive for organizations to file protective registrations given the formal objection process that will be implemented as part of the gTLD program. In fact, there is a valid argument that knowing the results of the EOI in advance of the launch of the gTLD program will provide concerned organizations with additional time to prepare objections against infringing applications/strings.

Comments suggested that ICANN could offer incentives for voluntary EOI participation, such as special briefings or early access to information, although this approach would further perpetuate the "ICANN Insider" perspective. Providing dedicated, EOI applicant only services on the basis of a voluntary program would be providing more favorable treatment to one particular group and is considered problematic.

In summary, analysis demonstrates that a mandatory EOI model will provide benefit. With the objective of obtaining meaningful data, a mandatory approach is required. Moving forward on the gTLD program implementation without an EOI is preferred if a mandatory approach is not adopted. A voluntary model will consume valuable resources that will not be offset with benefits to operational readiness or issue resolution.

2) Deposit

Key Points:

- The \$55k deposit is a good compromise as it aligns with the non-refundable portion of the \$185k application fee that would be required if the gTLD program launched and is not out of line with other TLD operating expenses and the new gTLD application fee.
- A non-refundable deposit and making the EOI mandatory will help to ensure that only serious applicants apply.
- A portion of the fee may be retained in any event to offset EOI program costs (see refund section below).

Comment Summary:

Support / Recommendations

Fee level. The \$55K fee is a good compromise choice and given the overall true costs of applying for a TLD taking into account registry services (i.e., \$500K), the fee will not discourage the vast majority of bona fide applications. Those who really have disadvantaged community interests at heart should appeal to ICANN for some sort of rebate or fee forgiveness on a case-by-case basis. *Minds + Machines (28 Dec. 2009).*

Rather than lowering the fee, it makes more sense to have a special circumstances checkbox in the EOI where an applicant can identify that they request a lowered fee and provide reasonable justification. Concrete dates will be beneficial to these applicants so they can raise funding once the TLD process is again perceived as real within their stakeholder groups, communities and organizations. *J. Frakes (28 Jan. 2010).*

Applicants with limited resources. If an applicant cannot meet the \$55k fee, they do not have any chance of meeting ICANN's financial and operational requirements for registry operation. Those who cannot afford the EOI fee are likely to fail. The EOI is actually beneficial to small nonprofits and developing country applicants. It places less burden on them than the previous DAG model which required them to pay \$185 up-front (and offered them a \$130K refund if they withdrew). Small nonprofits and developing country applicants are not the only entities with limited resources. To manage a subsidization program fairly ICANN would have to audit the resources of all applicants and provide subsidized funds to all who fell below a certain net asset level, and it is unclear where that subsidization money would come from. ICANN would have to

charge more than \$185K to applicants above the asset level. All of this raises fairness and gaming issues, and it is not within ICANN's charter to fund some entities to the detriment of others. *R. Tindal (29 Jan. 2010)*.

The \$55K fee is appropriate. *S. Ruskowski (4 Jan. 2010)*. *T. Yokoyama (7 Jan. 2010)*. *World Carbon Database (11 Jan. 2010)*. *Sierra Club (13 Jan. 2010)*. *J. DuFour (15 Jan. 2010)*. *T. Traina (16 Jan. 2010)*. *B. Egan (18 Jan. 2010)*. *D. Russell (16 Jan. 2010)*. *A. Wills (16 Jan. 2010)*. *A. Wolffersdorff (18 Jan. 2010)*. *A. Schwertner (19 Jan. 2010)*. *P. Keith (19 Jan. 2010)*. *S. Hiremath (20 Jan. 2010)*. *P. Croy (25 Jan. 2010)*. *Demand Media (25 Jan. 2010)*. *Bayern Connect (26 Jan. 2010)*. *T. Gilles (27 Jan. 2010)*. *EuroDNS (27 Jan. 2010)*. *Unite Berlin (27 Jan. 2010)*. *E. Pruis (28 Jan. 2010)*. *J. Frakes (28 Jan. 2010)*.

The fee should not exceed \$55K. *dotBERLIN (24 Jan. 2010)*. *dotbayern (25 Jan. 2010)*. *dotKoeln (27 Jan. 2010)*. *A. Schreiner (27 Jan. 2010)*. The fee should be reasonable. *dotHotel (27 Jan. 2010)*. *dotHAMBURG (27 Jan. 2010)*. *eco (27 Jan. 2010)*. The fee should not exceed 20-25% of the total application fee (no more than \$37K-\$46K USD). *dotGAL (27 Jan. 2010)*.

There should be a fee requirement so that only serious applicants apply. *K. Lewis (18 Jan. 2010)*. *M. Hack (20 Jan. 2010)*. *D. de Jongh Weill (21 Jan. 2010)*.

A \$55K fee should be accompanied by additional criteria acting as proof of serious intent rather than simply or only writing a check. *DotGreen (27 Jan. 2010)*.

A high fee is required to discourage gaming. *C. Rheuban (14 Jan. 2010)*. *V. Sitruk (17 Jan. 2010)*. *J. Mahtani (17 Jan. 2010)*. *K. Storey (13 Jan. 2010)*. *S. Rakowski (14 Jan. 2010)*. *E. Riflin (16 Jan. 2010)*. *P. Larsen (16 Jan. 2010)*. *S. Barkan (17 Jan. 2010)*. *J. Johnson (17 Jan. 2010)*. *H. Haggerty (17 Jan. 2010)*. *L. Ferencz (17 Jan. 2010)*. *R. Carl (17 Jan. 2010)*. *L. Vitovich (17 Jan. 2010)*. *M. Kochnover (17 Jan. 2010)*. *H. Veenstra (17 Jan. 2010)*. *D. Salas (17 Jan. 2010)*. *J. Covington (18 Jan. 2010)*. *J. Elkeshen (18 Jan. 2010)*. *T. Oettingen (18 Jan. 2010)*. *F. Guillemaut (18 Jan. 2010)*. *K. Jablonski (18 Jan. 2010)*. *P. Gould (19 Jan. 2010)*. *C. Nagel (19 Jan. 2010)*. *Conren Services (19 Jan. 2010)*. *D. Brooks (19 Jan. 2010)*. *E. Wender (19 Jan. 2010)*. *P. Dao (19 Jan. 2010)*. *M. Griffin (19 Jan. 2010)*. *M. Nygren (20 Jan. 2010)*. *S. Alfano (20 Jan. 2010)*. *R. Chweidan (20 Jan. 2010)*. *A. Panjabi (20 Jan. 2010)*. *L. Rockas (20 Jan. 2010)*. *J. Tarin (20 Jan. 2010)*. *M. Ralli (21 Jan. 2010)*. *Simply Teeth (24 Jan. 2010)*. *D. Margolis (25 Jan. 2010)*. *P. Frakes (27 Jan. 2010)*. *R. Khan (27 Jan. 2010)*. *Armenian Society (28 Jan. 2010)*.

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

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)*.

Funding proposal. How about that every party which wants to register a sTLD (sponsored) must also fund a uTLD (unsponsored)? *TLD Consulting (23 Jan. 2010)*.

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 / Concerns

Fees and covering EOI costs. The \$55k fee may not cover the actual costs associated with developing the EOI process. The EOI process was not contemplated at the time that ICANN set the evaluation fee, which was intended to be based on a cost-recovery model. The evaluation fee may have to be raised to cover these additional, unanticipated costs. *FICPI (26 Jan. 2010)*.

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)*.

EOI applications should not be designed to support financially ICANN’s operational readying. *AFNIC (27 Jan. 2010)*.

If new gTLDs move forward, the EOI process is flawed and the key motivation is generating money and empire building for insiders. The \$55k fee is inappropriate. ICANN should use some of its own funds, which it holds on behalf of all stakeholders, for this exercise and should find a more equitable way to determine rights to new gTLDs that does not favor those who have sufficient upfront funds to be able to participate in the proposed EOI and new gTLD process as currently structured. *J. Davies (19 Jan. 2010)*.

The first stage of the EOI should be free. This gives parties opportunities to debate and discuss their concepts and collect funds together. *TLD Consulting (23 Jan. 2010)*.

Reduce the application fee. The fee should be reduced to a figure that will not trigger formal approval processes within organizations (e.g., \$10K to \$25K). *K. McCarthy (28 Dec. 2009)*. The application fee should be lower; there is no reason people should have to pay for ICANN's ever-delayed process. *A. Doria (14 Jan. 2010)*. *B. Ross (19 Jan. 2010)*. A lower fee is fairer, allows more parties to apply and prevents monopolization by deep-pocketed applicants. *S. Bazzi (24 Jan. 2010)*. A lower fee of \$25K is more reasonable; it is important to encourage many new players. *DotAlliance (27 Jan. 2010)*. *M. Neylon (27 Jan. 2010)*.

Stepped range of fees. The application fee should be lower for some streams of applicants (e.g., a trademark owner applying for an exact match of a brand in which they have a trademark at least 3 years old). If the EOI is launched at short notice, it is possible many trademark owners will miss the deadline because of difficulties in finding a capital sum as high as \$55,000. The fee should be higher for others such as entrepreneurs applying for a generic/dictionary term. *Com Laude (26 Jan. 2010)*. The EOI deposit should be reasonable and depend on the category of the application. *DOTZON (27 Jan. 2010)*. There should be a stepped range of fees starting at \$25K for those applying for an identical match to a trade mark term that has been registered for at least 3 years and for cities or geographical communities that can demonstrate a letter of support from the appropriate authority, rising to \$50K for those applying for a generic term. *MARQUES/ECTA (27 Jan. 2010)*. *AFNIC (27 Jan. 2010)*. There could be a fixed, reduced fee for nonprofit and small community applications (not above \$25K); some applicants could be exempt from any fee under the EOI based on certain criteria. The system would need to be transparent. Fees would be put into escrow and later released to ICANN when Phase 1 of the application process starts. *ALAC (27 Jan. 2010)*.

Non-refundable fee is extreme for smaller entities. Requiring a primarily "non-refundable" fee for expressing interest is extreme and disproportionate to small interested and deserving entities that do not have financial means. In lieu of a cash deposit that could be forfeited, there should be a totally refundable deposit or something similar to guarantees accepted by state agencies such as a letter of credit. Is it ICANN's desire to profit from the EOI process or simply to determine potential demand for gTLDs? ICANN's concern that without a "penalty" EOI participants may speculate or provide false or misleading information should be outweighed by the wealth of information and measure of potential interest an EOI can provide. Many potential applicants would prefer to use the EOI as a fact finding tool to determine if they are able and willing to move forward in the process. *NASPL (26 Jan. 2010)*.

Lower application fee for communities and smaller nonprofits. Communities should be subject to lower application fees. It is unreasonable to charge \$185K in order for geographic communities or ethnic communities to have access to their own top level domain. *P. Fellingner (10 Jan. 2010)*. The fee may be a barrier to entry for some local municipalities, smaller nonprofits and cultural entities. *JIDNC-SC (27 Jan. 2010)*. *M. Neylon (27 Jan. 2010)*. The deposit fee should be waived for proven non-profit associations; fees would become due for them at the time of the official application submission. *AAMC (27 Jan. 2010)*. ICANN should waive the EOI fees for proven nonprofit organizations and consider a special pricing structure for applications from nonprofit organizations. *Concerned Nonprofit Organizations (27 Jan. 2010)*.

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)*.

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)*.

Form of Payment. The deposit should be accepted in the form of a Letter of Credit or cash. Letters of credit would not require applicants to tie up capital in an uncertain process while they await the eventual launch of new gTLDs. *Demand Media (25 Jan. 2010)*

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)*.

Analysis:

Feedback on the proposed deposit amount of US \$55,000 included the views that the amount is fair, that it is too high, and that it is too low. The majority of those favoring an EOI agreed that \$55,000 was a good compromise amount and was reasonable considering the existing fee structure and the goals of the process.

Those arguing for a lower deposit amount suggested that ICANN had not taken into account the difficulty of the economy at the present time. Some continued (as for the new gTLD process overall) to advocate that communities, non-profits, and entities from developing areas should be subject to a lower deposit amount. Along with this, there were continuing suggestions to institute gTLD categories too more easily enable fee differentiation.

Establishing a separate deposit structure for communities, non-profits, and entities from developing areas adds complexity and costs to the EOI program. As has been pointed out by those supporting the recommended fee, other entities besides those in the categories highlighted above, also have limited resources. Providing benefit to one set of applicants over another does not promote a fair and impartial process. In addition, to minimize the risk of gaming, any tiered deposit structure would require the implementation of additional procedures to validate that applicants belong in specific categories allowing for lower deposits.

There was a comment that Year 2000 applicants be provided special consideration. We agree that special consideration should be given and, as described in the Applicant Guidebook, the \$185k application fee will be adjusted accordingly. There will be no adjustment made to the EOI deposit for reasons described above. Even those receiving a discount on the \$185K fee will have the same \$55K non-refundable portion.

There were also issues with ICANN collecting payment while there is still a significant degree of uncertainty about how and when particular issues will be resolved. We agree with this concern. To minimize exposure to participating EOI applicants, significant open issues would need to be resolved prior to launching the EOI and a refund process will be put in place that addresses situations qualifying for refunds.

Others have commented that since the deposit amount is a small percentage of the true cost of introducing a new gTLD, it should not be a problem for serious applicants. There was some support for raising the deposit amount as additional protection against creating a dominant secondary market process. Amongst the recognition that the deposit would help provide a more solid basis for relying on the information received, there were suggestions that this could be achieved by other means than a deposit: for example, a bond, letter of credit, or other form of guarantee. These options were also considered in developing the EOI model. However, as

with implementing a tiered deposit structure, introducing other forms of payment would result in added costs and additional complexity to the process.

There was comment that ICANN was proposing the \$55,000 deposit out of financial self-interest. As noted above, the deposits are to be held separately and not create revenue for ICANN.

In summary, comment indicates that the \$55k deposit is reasonable. It is based on the non-refundable portion of the \$185k application fee, it will be applied against the \$185k application fee once the gTLD program is launched, and provides some assurance against gaming/speculative applications. In addition, refunds will be provided in certain situations such as an extended delay in launching the gTLD program or for applications that may be rendered ineligible for reasons not currently known. Finally, the deposit will be held in a separate escrow account pending launch of the gTLD program.

3) Refunds

Key Points:

- Refunds will be given if the new gTLD program is not launched within a time certain after the close of the EOI process, say 18 months.
- The goal is that refunds need not be issued if there are material, subsequent changes to the Guidebook because important issues such as trademark protections, the three-character restriction, and vertical integration should be settled before the EOI is launched.
- In the event that refunds are issued, a nominal percentage (between 5% to 10%) may be retained to offset program costs.

Comment Summary:

Refunds. The refund criteria need to be expanded and very specific. Losing 5-10% of one's deposit due to changes in the applicant guidebook that render an application invalid should be backed by a full refund. Will a refund process exist if an application is dropped due to similar or identical strings? *T. Yokoyama (7 Jan. 2010)*. There should be a refund in case of agreements between two applicants in order to avoid future competition. *DotFAM (25 Jan. 2010)*. Refund rules need to be clearer. *ALAC (27 Jan. 2010)*. *ASIFI (27 Jan. 2010)*.

ICANN should elaborate on the contractual issues that will arise if the Applicant Guidebook conflicts with the EOI process. *ISPCP (27 Jan. 2010)*.

ICANN should consider additional grounds for refund of the deposit considering the likely close timing between the launch of the revised Applicant Guidebook and the launch of the proposed EOI process. Applicants such as nonprofit organizations need to know the rules before investing

significant financial resources in non-refundable application fees. *Concerned Nonprofit Organizations* (27 Jan. 2010). *Lovells* (28 Jan. 2010).

There should be a refund if final applications for TLDs are not accepted within 18 months after an EOI has been filed (refund mandatory) or if the rules in the applicant guidebook have changed in a way that now prohibits an application or a string (refund on ICANN's discretion). *A. Schwertner* (19 Jan. 2010). There should be a refund of the deposit with interest if the application window for new gTLDs is not opened within 6 months after the closing of the EOI period. *dotKoeln* (27 Jan. 2010). *DOTZON* (27 Jan. 2010). *dotHotel* (27 Jan. 2010). *dotHAMBURG* (27 Jan. 2010). There should be a refund if ICANN itself stops the process or does not commit to a reasonable timeframe. *EuroDNS* (27 Jan. 2010). *Unite Berlin* (27 Jan. 2010). *ISPCP* (27 Jan. 2010). There should be a refund if ICANN does not open the new gTLD process within 6-9 months after launch of the EOI; there are any essential changes in the final guidebook that could leave out some participants in the EOI; or there is more than one application for the same string and one or more of the applicants drop out. *dotGAL* (27 Jan. 2010).

Refunds should be allowed in limited circumstances. *K. Storey* (13 Jan. 2010). *J. Mahtani* (16 Jan. 2010). *P. Larsen* (16 Jan. 2010). *S. Rakowski* (14 Jan. 2010). *S. Barkan* (16 Jan. 2010). *V. Sitruk* (16 Jan. 2010). *C. Rheuban* (14 Jan. 2010). *E. Riflin* (16 Jan. 2010). *J. Johnson* (17 Jan. 2010). *H. Haggerty* (17 Jan. 2010). *L. Ferencz* (17 Jan. 2010). *R. Carl* (17 Jan. 2010). *L. Vitovich* (17 Jan. 2010). *M. Kochnover* (17 Jan. 2010). *H. Veenstra* (17 Jan. 2010). *D. Salas* (17 Jan. 2010). *J. Covington* (18 Jan. 2010). *J. Elkeshen* (18 Jan. 2010). *T. Oettingen* (18 Jan. 2010). *K. Jablonski* (18 Jan. 2010). *P. Gould* (19 Jan. 2010). *D. Brooks* (19 Jan. 2010). *B. Ross* (19 Jan. 2010). *M. Griffin* (19 Jan. 2010). *M. Nygren* (20 Jan. 2010). *S. Alfano* (20 Jan. 2010). *R. Chweidan* (20 Jan. 2010). *A. Panjabi* (20 Jan. 2010). *L. Rockas* (20 Jan. 2010). *M. Ralli* (21 Jan. 2010). *P. Frakes* (27 Jan. 2010). *T. Gilles* (27 Jan. 2010). *R. Khan* (27 Jan. 2010). *E. Pruis* (28 Jan. 2010).

Refunds will make the EOI less reliable. *Bayern Connect* (26 Jan. 2010).

Applicants allowed to withdraw should recover their deposit in full and interest earned should be returned to applicants. *AFNIC* (27 Jan. 2010).

If ICANN does not move forward, one should get the fee back; otherwise if you withdraw from the round you could get your money back once the TLDs are launched. *F. Guillemaut* (18 Jan. 2010). Funds should be repaid only if ICANN does not go forward with the EOI. *Conren Services* (19 Jan. 2010). Refunds should not be permitted unless ICANN fails to produce new TLDs by 2011. *S. Hiremath* (20 Jan. 2010). *J. Tarin* (20 Jan. 2010).

Refunds should be granted on demand. ICANN should not be allowed to pocket the fees if circumstances change and make an application less feasible or later open it to objection. A full refund (minus processing fees) is fair—it allows everyone to apply, including reluctant parties. *A. Doria* (14 Jan. 2010). *S. Bazzi* (24 Jan. 2010). *M. Neylon* (27 Jan. 2010). If there is a refund, ICANN should not be able to retain a portion of the deposit to cover administrative costs of the EOI. *Lovells* (28 Jan. 2010).

Any EOI applicant should be allowed to withdraw their application without financial penalty less an administration fee of \$5K if they decide it is in their best interest to discontinue before the

Opening of Applications (Stage 2). The entire fee should be refundable if the Opening of Applications (Stage 2) does not take place within six months of the EOI/Stage 1. *Com Laude (26 Jan. 2010)*. Applicant should be able to withdraw their EOI/Stage One submission without penalty less an administrative fee of \$1K at most, and should get a refund if the Opening of Applications (Stage 2) does not take place within 4 months of Stage 1. *MARQUES/ECTA (27 Jan. 2010)*. ICANN should have a well-defined process that allows local governments to withdraw an application and get a refund when they later determine that applying poses too much risk for them. *JIDNC-SC (27 Jan. 2010)*.

If as a result of an EOI an auction situation arises the applicant should be allowed either a full refund or the ability to submit an application for another gTLD at no additional charge. *DotAlliance (27 Jan. 2010)*.

Rules regarding refund of deposits must be clear. The refund proposal that would be triggered based on changes to the Applicant Guidebook is not acceptable; there must be no changes to the AG subsequent to the launch of the pre-registration phase. Clear criteria must be set regarding what changes to the AG, if absolutely necessary, will justify the refund of deposits. Another reason the AG must be decided and adopted is to avoid undue pressure from stakeholders to influence the resolution of any remaining outstanding issues. *IKEA (27 Jan. 2010)*. What are all the types of changes that can be made to the Applicant Guidebook due to the fact that it is not currently finalized? *ASIFI (27 Jan. 2010)*. If ICANN makes any material changes to the DAG after the EOI process closes, ICANN should refund the EOI fee to any applicant participant that requests a refund. *Microsoft (27 Jan. 2010)*.

Refunds before or at time of final Application Guidebook and Good Faith Milestones. Such refunds should fall under two scenarios: (1) If there are multiple applicants for the same string, an applicant should be able to drop out and receive a maximum refund. If a merge is possible ICANN should keep payment from only one to process the now merged applicant for the string; however, if both applicants opt to stay in separately and compete, they forfeit their right to that refund. (2) If there is not an identical string submitted, applicant can still drop out and receive a maximum refund (minimizes penalty for an applicant in a process with unknown criteria and requirements which could later prove applicant's business model to no longer be viable). These applicants may even choose to come back in round 2 with a new business plan, opting for a full credit instead of maximum refund. Where there are multiple applicants for the same string, ICANN should ask applicants to submit more proof of serious interest (non-monetary) at specific milestones within ICANN not for comparative evaluation but as a demonstration of continued seriousness. This is especially important if full or maximum refunds are to be available to those who are not prepared and ready to contract with ICANN for delegation. Missing a deadline to submit good faith measures could prevent an applicant from receiving any refund. *DotGreen (27 Jan. 2010)*.

Refunds. Cash deposits should go in interest bearing accounts and interest earned should be applied to the full gTLD application fee or returned to the applicant along with the deposit if full applications for new gTLDs are not accepted. Deposits should not be viewed as a way to offset the costs to ICANN to run a process. Deposits should be kept no longer than six months. *Demand Media (25 Jan. 2010)*.

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)*.

Multiple strings. Applicants should be allowed to submit an application for up to 10 strings in order of preference. If there is contention they should be offered a choice of: (1) withdrawing with a portion of the deposit refunded; (2) keeping their choice and moving forward with the process with the understanding that they may end up in an auction; (3) dropping first choice and moving to second choice, removing contention; (4) if the second choice also results in contention, then the process continues until all 10 choices have been considered. Also, the EOI does not cover the situation where one organization wants to apply for two strings. Under the current rules such an organization would have to submit two applications with two deposits, etc. This option needs to be fully clarified. *Smartcall (25 Jan. 2010)*.

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).*

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).*

Analysis:

There is broad agreement from comments that refunds should be allowed. We agree that refunds be made only under limited circumstance, and that the criteria under which refunds will be made should be clearly defined.

Some comments suggest that participants should be allowed to withdraw and recover their deposit in full and with interest earned. Others have stated that allowing full refunds on request, regardless of interest or administrative fees, would increase the likelihood of abuse, allowing less than serious parties and speculators to participate, knowing they can simply recover their money by requesting a refund, even if less a minor administrative fee. The fee is in place to prevent abuse and an open refund policy would render ineffective the intent of the fee.

The criteria should include a full refund if the application round is not opened within a defined period of time. An 18-month allowance is proposed although every effort will be made to resolve outstanding overarching issues and proceed. The fact that the EOI is intended to inform one or more issues should help to accelerate the opening of the application window.

Many comments also suggest a refund in circumstances where the guidebook undergoes significant changes after the opening of the EOI. We agree. Refunds should be given should significant changes to the guidebook be made. However, it is also important that there be bright line rules around refunds and the definition of "significant" will be vague. That is why the model calls for identifying and settling important issues before launch (as is suggested by many comments).

Worth noting specifically is that guidebook version 4 is planned for release prior to the start of the EOI as well as the resolution of both the vertical integration and 3-character issues. This is intended to mitigate, the potential for significant change to the guidebook that may impact the EOI. Regardless, all issues will not be resolved and constructive comment on the EOI going forward is identifying which additional issues, if any, must be resolved before launch.

Some comments are in favor of refunds where multiple participants express interest in the same string, allowing one of the participants a full refund. This suggestion has merit but adds complexity to the process while increasing the risk of gaming, allowing large speculators to reserve more slots than they might otherwise, with the expectation that they can obtain refunds where string contention exists.

The EOI fee was determined in large part due to its specific tie back to the Guidebook as the nonrefundable portion of the application fee. Were there no EOI, participants would bear this fee at a minimum, regardless of identical strings. Given the planned nature of the EOI, the risk of requesting a string in the EOI would bear the same weight as defined in the guidebook. The EOI will not result in auctions, or any other string contention processes already defined by the guidebook. Those processes will only begin once the application round is open and full applications are submitted and published per the guidebook. Identical strings will follow the processes defined by the string contention rules in the guidebook including auctions.

Categorizing participants by type, e.g., commercial, noncommercial or government, and handling each according to different refund policies was also suggested. While there are benefits to this approach, creating categories with multiple treatment policies will create undue complexity and is arguably unfair. Refund policies should not be used to create preferential treatment of one participant over another.

With respect to administrative costs being deducted from the full refund amount, there are multiple opinions. Some incremental efforts to support the EOI will be incurred beyond the application process, sans EOI. The deposits will be held in a separate account and a portion of the deposits will be used to offset the incremental costs of implementing the EOI. Both the EOI and the gTLD program are intended to be cost neutral and refund amounts will account for cost neutrality.

To conclude, the deposit is intended to be non-refundable except in limited circumstances, i.e., in cases where the new gTLD program does not launch. Outstanding issues requiring resolution before launch have been identified but public comment identifying other issues requiring resolution are welcome. Participants in the EOI should not be advantaged beyond the current guidebook requirements. A less restrictive refund policy, whereby applicants can request refunds at will, would increase the probability of inaccurate information being obtained.

4) Collection of Data and Public Posting

Key Points:

- The majority of comment supported the importance of making the participant and string information public. This is beneficial in enabling prospective applicants to collaborate and discuss conflicts with potential competitors prior to the application process. In addition, the public discussion would be based on actual rather than theoretical scenarios or word-of-mouth information. In any event, transparency commitments point ICANN toward publishing data received.
- Disclosure of applicants and strings will not occur until all responses are received.
- While some comments recommended that more data be collected and others less, it seems that asking potential applicants to answer questions 1-14 in the Guidebook provided the information most in line with the objectives of the EOI.

Comment Summary:

Public disclosure of EOI information. EOI data should be made public; transparency, part of ICANN's charter, is the best way to stimulate debate and expose problems with the process or with certain participants. *Minds + Machines (28 Dec. 2009)*. *Minds + Machines (19 Jan. 2010)*. *Sierra Club (13 Jan. 2010)*. *S. Ruskowski (4 Jan. 2010)*. *World Carbon Database (11 Jan. 2010)*. *D. Russell (16 Jan. 2010)*. *A. Wills (16 Jan. 2010)*. *P. Dao (19 Jan. 2010)*. *P. Larsen (16 Jan. 2010)*. *J. Covington (18 Jan. 2010)*. *J. Tarin (20 Jan. 2010)*. *J. Elkeshen (18 Jan. 2010)*. *P. Keith (19 Jan. 2010)*. *D. Brooks (19 Jan. 2010)*. *S. Barkan (17 Jan. 2010)*. *T. Oettingen (18 Jan. 2010)*. *V. Sitruk (17 Jan. 2010)*. *R. Chweidan (20 Jan. 2010)*. *E. Riflin (16 Jan. 2010)*. *K. Jablonski (18 Jan. 2010)*. *K. Storey (13 Jan. 2010)*. *H. Haggerty (17 Jan. 2010)*. *A. Wolffersdorff (18 Jan. 2010)*. *A. Panjabi (20 Jan. 2010)*. *L. Ferencz (17 Jan. 2010)*. *R. Carl (17 Jan. 2010)*. *L. Vitovich (17 Jan. 2010)*. *M. Kochnover (17 Jan. 2010)*. *H. Veenstra (17 Jan. 2010)*. *P. Gould (19 Jan. 2010)*. *B. Ross (19 Jan. 2010)*. *J. Johnson (17 Jan. 2010)*. *S. Alfano (20 Jan. 2010)*. *M. Nygren (20 Jan. 2010)*. *S. Rakowski (14 Jan. 2010)*. *C. Rheuban (14 Jan. 2010)*. *J. Mahtani (17 Jan. 2010)*. *A. Doria (14 Jan. 2010)*. *D. Salas (17 Jan. 2010)*. *S. Hiremath (20 Jan. 2010)*. *Conren Services (19 Jan. 2010)*. *S. Bazzi (24 Jan. 2010)*. *Smartcall (25 Jan. 2010)*. *P. Frakes (27 Jan. 2010)*. *T. Gilles (27 Jan. 2010)*. *DotAlliance (27 Jan. 2010)*. *Unite Berlin (27 Jan. 2010)*. *MARQUES/ECTA (27 Jan. 2010)*. *M. Neylon (27 Jan. 2010)*. *AMAC (27 Jan. 2010)*. *CADNA (27 Jan. 2010)*. *E. Pruis (28 Jan. 2010)*. *J. Frakes (28 Jan. 2010)*.

A minimal set of information needs to be published to allow prospective applicants to settle agreements with potential competitors ahead of the application process if needed, and to allow ICANN and the community to identify different categories of applications pursuant to criteria (commercial, not for profit, community, open, geographical-based, single owner/corporate or brand TLD). The applicant name and proposed string should be included in the EOI submission. *ALAC (27 Jan. 2010)*.

Disclosure of applicants and strings should occur, but after the EOI submitting window has concluded (to avoid adverse effects that might occur if the information is made public during the filing window—e.g. bringing more competing EOIs onto the scene, or enticing parties to file their EOIs in the very last minute to not disclose their plans too early). The detail of when exactly the information is made public is not yet included in the draft and should be clarified. *A. Schwertner (19 Jan. 2010)*.

IPC does not object to publication of a list setting out the character strings for which EOI applications are received. An EOI application should not create any rights or entitlements for EOI applicants. *IPC (28 Jan. 2010)*.

The criteria and procedure for evaluation of string contention must be set before any pre-registration process is commenced; this is especially important if the identity of applicants and their strings are made public during the pre-registration phase. *IKEA (27 Jan. 2010)*.

For the process to continue efficiently, as much information as possible should be disclosed regarding EOI applicants and their strings. *Simply Teeth (24 Jan. 2010)*. The identity of applicants should be made public and they should not hide behind special purpose vehicles, consulting companies or other firms. *TLD Consulting (27 Jan. 2010)*.

ICANN should publish all except for some applicants who may have special circumstances. Corporations should be allowed not to publish the string they want to apply for. In case of a similar string, ICANN should in a confidential way settle the matter between the parties. *F. Guillemaut (18 Jan. 2010)*. ICANN should publish all except for some applicants who may have special circumstances. *L. Rockas (20 Jan. 2010)*. *M. Ralli (21 Jan. 2010)*. *R. Khan (27 Jan. 2010)*.

Information collected should be minimal and publication should be voluntary. *dotHotel (27 Jan. 2010)*. *dotHAMBURG (27 Jan. 2010)*. *eco (27 Jan. 2010)*.

Fields 1-14 should be collected. There should be one string per EOI and one fee per EOI. IDN variant strings should count as an individual EOI per variant. The ASCII TLD that the string is a variant of should be identified if it is being requested in a group. *J. Frakes (28 Jan. 2010)*.

If the EOI process moves forward, applicants should answer questions 1-14 in the Applicant Guidebook. *AMAC (27 Jan. 2010)*. ICANN needs to carefully consider what information about the applicant is necessary for collection if an EOI process takes place. *Concerned Nonprofit Organizations (27 Jan. 2010)*.

ICANN has the option of: (1) allowing applicants to withhold specific strings from EOI submissions, whereby general information can be submitted while the applicant is not exposed to predatory practices in the lead-up to the gTLD round. This option is preferable because it allows for full transparency; or (2) if specific strings are deemed a necessary element of an effective EOI, allowing applicants to withhold specific strings from public disclosure until the start of the new gTLD round. ICANN staff could aggregate data about applicants and strings and provide that information to stakeholders. *VeriSign (27 Jan. 2010)*.

Information submitted in the EOI should be published. This will allow the applicants to see if there is another party applying for the same string and allow them to work out a compromise before the start of the application round, thereby enabling a lot of problems to be resolved before the application round kicks off. *Bayern Connect (26 Jan. 2010)*.

There are already over 100 potential strings that the respective applicants would voluntarily contribute information about. Trust in the crowd sourcing power of our community. Questions 1-14 are sufficient for information collection, but applicants may provide additional information. Publication of all EOIs should be mandatory. *dotBERLIN (24 Jan. 2010)*. *dotbayern (25 Jan. 2010)*. *dotKoeln (27 Jan. 2010)*. *A. Schreiner (27 Jan. 2010)*.

Applicants should disclose whether they are submitting as a community or not—this will discourage gaming and help ICANN plan its resource allocation better regarding string contention and community determination issues. *J. Borow (8 Jan. 2010)*. Whether the application is community-based and knowing the geographic region of a particular string might be helpful. *EuroDNS (27 Jan. 2010)*. The category of application should be collected (standard, community) as well as whether the application is for an IDN. Another category of “private brand registry” should be added for trade mark owners applying whose registries will not be open to the general public. This data will help ICANN in its evaluation resources planning. *MARQUES/ECTA (27 Jan. 2010)*. *dotGAL (27 Jan. 2010)*.

Confidentiality. Data should not be made public. *M. Griffin (19 Jan. 2010)*. Publication of the EOI applications should be anonymized by categories and without the entities' name. *DOTZON (27 Jan. 2010)*. *dotHotel (27 Jan. 2010)*. *dotHAMBURG (27 Jan. 2010)*. *eco (27 Jan. 2010)*. If an EOI goes forward, it is critical that the proposed TLD names should be kept confidential. Participant and string information must remain confidential; ICANN should not ask for this information at all. If this information is made public, companies should be protected so that no other company can come in after the fact and apply for the same TLD. *M. Iqbal (27 Jan. 2010)*. Applicants should have the option to keep some information confidential. *EuroDNS (27 Jan. 2010)*. Are there any procedures in place to allow a participant to shield or mask their participation and string information from public view during the pre-registration period? *ASIPI (27 Jan. 2010)*.

Useful data can be obtained about new gTLDs without disclosing the strings themselves, which could compromise business plans and cause gaming of the system. *RySG (27 Jan. 2010)*. *D. Schindler (29 Jan. 2010)*. ICANN needs to carefully weigh whether public release of the participant and string information is necessary. *Concerned Nonprofit Organizations (27 Jan. 2010)*.

An applicant should be granted confidentiality for the string and/or its identity if it so requests. Public information should be restricted to what is necessary for the community to address in an efficient way the overarching issues. The EOI objectives are to clarify the impacts of the RFP related to the overarching issues. In this respect, we do not see the value of making public the participant and string information without explicit consent of the requestor. Knowing the character string and requestor's identity will not help in evaluating the impacts for those issues, and disclosure could result in disputes and legal action. *ISPCP (27 Jan. 2010)*. *Lovells (28 Jan. 2010)*.

There is precedent within ICANN for maintaining confidentiality of information. Operating in an open and transparent manner consistent with the Affirmation of Commitments does not mean releasing all confidential information. Publishing information prematurely announces business models, prematurely begins the gTLD objection and dispute resolution process, and will lead to calls for "beauty contests"—i.e. renewed calls for string selection based on their "worthiness". The markets and consumers should decide what TLD extensions and business innovations they want to support; they should not be chosen arbitrarily in advance. *Demand Media (25 Jan. 2010)*. Data security raises serious competitive issues; ignoring data security would force companies unnecessarily to spend additional funds in order to protect anonymity, business plans and other confidential or sensitive information. *INTA (28 Jan. 2010)*.

If anonymity is permitted allowing some to conceal their business concept or idea, others with identical strings should have the party disclosed to them which they might be in contention with. This would help preserve the benefit of addressing contention proactively, and would also benefit brands and trademark rights by providing the opportunity to not have a potential infringement at the top level shielded by the veil of anonymity. If the round is mandatory and final (where another party cannot later join in on interest in a string), any concerns of exposure are purely timing. It is better to let people respond and address this. *J. Frakes (28 Jan. 2010)*.

Third party auditing firm. A solution for addressing concerns if information is not made public, including that ICANN cannot hold “classified” information and that there is an issue of “possession of insider information” by ICANN staff, is: ICANN should use a third party auditing firm to store this information and provide information to ICANN that is necessary to facilitate informed EOI decisions, and anything beyond that will be kept confidential by the third party auditing firm. *Demand Media (25 Jan. 2010)*. *Microsoft (27 Jan. 2010)*. *Lovells (28 Jan. 2010)*. It has been suggested that a third party be used to collect EOI data from applicants to maintain security of the data and ensure that only the information that ICANN needs to assess the issues is actually used and/or made public. *FICPI (26 Jan. 2010)*.

Data gathering opportunity. The model misses an opportunity to gather useful data that could be made anonymous and analyzed and published to provide a better overall perspective of the new gTLD process and the nascent market for new gTLDs (e.g., applicants’ expected number of registrations for first 3 years; how much they will spend on systems, marketing, etc.; the market targeted (e.g. mass market, niche, community, etc.) process concerns). *K. McCarthy (28 Dec. 2009)*. *T. Yokoyama (7 Jan. 2010)*.

EOIs could include more information than just string name and contact name once the application window has closed. Perhaps sensitive data could be collected and published anonymously for public analysis and inspection. *DotGreen (27 Jan. 2010)*. *dotKoeln (27 Jan. 2010)*. Much more information than strings and the applicant identity should be collected in the EOI. *AFNIC (27 Jan. 2010)*.

Information collected. The information collected from EOI participants should be: (1) character string applied for; (2) name of applicant organization, key funder and key staff to be running the registry; (3) contact information including where the registry will be based; (4) type of application (IDN, community-based, Private Brand); (5) declaration of no infringement of any existing intellectual property right; (6) community-based applicants should supply the name of the government authority that is endorsing them/provide the Letter of Support. *Com Laude (26 Jan. 2010)*.

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)*.

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)*.

Geographic TLDs. Applicants for geographic TLDs should be required to provide written proof of support or non-objection by the relevant authorities in the geographic area(s) in question. *J. Borow (8 Jan. 2010)*. Providing the name of the government authority endorsing the applicant and providing a letter of support would prevent later objections by central government regarding a lack of transparency about who/which body in local/federal government provided the support for the community-based application. *MARQUES/ECTA (27 Jan. 2010)*. Requirements for consent or non-objection from governments in the EOI process need to be clarified. *JIDNC-SC (27 Jan. 2010)*.

Analysis:

There was a general consensus that at a minimum, the applicant name, contact information and applied-for string should be collected. As such, the EOI process involves the collection of information only with no evaluation, dispute resolution, or other processing actions occurring based on this information.

Some comments suggested that in addition to questions 1-14 of the current Applicant Form, questions 18, 20, and 21 should be included. These questions address the following respectively:

- Is the application for a community-based TLD?
- What is the mission and purpose of the TLD?
- Is the application for a geographic name?

While this additional information may be useful, it is not necessary to accomplish the EOI objectives, which are to gauge the level of interest in the gTLD program, determine the likely strings to be requested, assist with the resolution of open issues and inform operational readiness.

While there is a general consensus that the applicant name and applied-for string should be collected by ICANN, there is a difference in opinion of making this information public. Three general options were presented and are discussed below.

Make collected information public – The majority of comment supported the importance of making the participant and string information public. This is beneficial in enabling prospective applicants to collaborate and discuss conflicts with potential competitors prior to the application process. In addition, the public debate would be based on actual rather than theoretical scenarios.

There were comments that highlighted the importance of the timing of the release of information to the public. Many agreed that information should be presented at the close of the EOI submission period in order to protect applicants. For example, if information were available during the EOI submission period, another entity, who believes may have a better business model, could simply apply for the same gTLD. It is recommended that information be released at

the close of the EOI submission period to mitigate the risk of predatory practices and decrease opportunities to game the system.

Do not make collected information public – There were comments that contested that ICANN does not need to publically post applicant information in order to accomplish the EOI objectives. There is the perception that the EOI should only be “intelligence gathering” for the gTLD process. While it is plausible that the EOI objectives could be accomplished without making applicant information public, ICANN would not be upholding its commitment to full transparency. Furthermore, by not publishing, there is greater security risk by withholding information from the public. ICANN can mitigate this risk by publically presenting applicant information.

Some comments addressed concerns around the security of information by using a third party auditing firm to receive and store applicant information. While this option may initially provide greater security for the storing of information, it also increases costs, may skew data, and adds complexity to the process. Aggregate information may not necessarily provide an accurate forecast of unique strings – although processes could be implemented to minimize this risk. We would also have to develop additional steps transfer information from the applicant to the third party and then from the third party to ICANN.

Make collected information public an optional decision – Alternatively between these two approaches is a suggestion that the applicant should possess the option to present their information publicly. ICANN would then assume the responsibility to identify similar strings and develop a method of confidentially informing the appropriate parties of the conflict. Understanding the differing desires of participants, this option is not ideal in that it introduces further complexity to the process by prematurely initiating a string similarity review, which would, per the AGB, necessitate the hiring of expert panelists. This would also lead to greater costs to perform a string review and communicate with applicants in contention sets.

In summary, ICANN is able to accomplish its objectives through questions 1-14 of the current Application Form which cover the areas of participant contact information, proof of legal establishment, proof of good standing, background, requested TLD string, and associated IDN string information, if applicable.

Furthermore, each of the three aforementioned options illustrates the importance of ICANN protecting the applicant while still upholding its commitment to full transparency. As such, the proposed solution to publish the participant and string information at the close of the string submission period best accomplishes these objectives.

5) Communication Plan

Key Points:

- There is a concern that the EOI will not serve those who do not participate in the ICANN process. We agree – that concern must be addressed. The communications plan for the EOI must be as robust as and equivalent in scope to the communications campaign planned for the new gTLD process.

- The goal of the communication is to ensure an even playing field: that no party comes forward after the EOI and says “I wasn’t aware.”
- Assuming the EOI is “mandatory,” a full communications campaign will be initiated well in advance of the EOI launch to create global awareness of the EOI. This will enable the communications for the actual gTLD program launch to be scaled back significantly as first round gTLD applicants will be EOI participants.
- Creating proper awareness is crucial to promoting competition, informing trademark owners, and avoiding a process that favors “insiders.”
- The communication plan should start soon after a decision to proceed with the EOI is made. Efforts to finalize outstanding issues would continue simultaneously.

Comment Summary:

EOI communications campaign. Greater attention needs to be paid to the communications campaign, including metrics to measure its effectiveness. *K. McCarthy (28 Dec. 2009)*. The communications period should be moved forward. Once EOIs have been widely announced, no further mass outreach will be necessary, as all potential first round applicants will be, by design, EOI applicants. *Minds + Machines (28 Dec. 2009)*.

The communications campaign is needed to create global awareness of the EOI, but it should happen within a limited time frame to allow the participants to allocate their resources. *Bayern Connect (26 Jan. 2010)*. Without appropriate awareness, the opening of new gTLDs may become the main source of conflicts between trademark owners around the world and the Internet, bringing fragility to the IP system worldwide. *ASIPI (27 Jan. 2010)*. Regarding claims that the EOI process will favor “insiders”, if the communications period is well executed, an EOI will provide no more or less advantage to insiders. *R. Tindal (29 Jan. 2010)*.

The communications period to proceed to any EOI window must present a clear vision which people have to be persuaded to buy into; if this vision has to change between communications and implementation it runs the risk of introducing confusion, costs and damage to the public perception of ICANN. *P. Tattersfield (27 Jan. 2010)*.

The communications campaign is crucial and will promote competition. *World Carbon Database (11 Jan. 2010)*. *A. Wills (16 Jan. 2010)*. *IPC (28 Jan. 2010)*. *K. Lewis (18 Jan. 2010)*. *P. Keith (19 Jan. 2010)*. *Unite Berlin (27 Jan. 2010)*. *IKEA (27 Jan. 2010)*. *ALAC (27 Jan. 2010)*.

Additional communications should be made to provide information to countries and communities not yet reached. *DotGreen (27 Jan. 2010)*. If despite objections the EOI goes forward, then there must first be full outreach in all UN languages explaining the EOI plan and making clear that there are no guarantees that conditions will not have changed when the real application process opens. *A. Doria (14 Jan. 2010)*.

The communications campaign should start immediately once the decision to have an EOI is made. *A. Schwertner (19 Jan. 2010)*. *J. Nevett (27 Jan. 2010)*. *Eco (27 Jan. 2010)*. If there is an

affirmative vote on the EOI, the communications period should start immediately. The next four months should also be used to finalize the DAG which is now 98% complete. *R. Tindal (29 Jan. 2010)*. The communications campaign should start immediately and regularly provide updates on processes and decisions. *dotKoeln (27 Jan. 2010)*. ICANN needs to get the ball rolling on the communications period which can easily run simultaneously with the finalizing of outstanding rules. *D. Schindler (29 Jan. 2010)*.

ICANN should allocate and provide resources to ensure that all types of nonprofit organizations located throughout the world will have opportunities to comment and engage with ICANN staff about the new gTLD program and EOI process, since many such organizations do not have the funding to attend ICANN's public meetings. *Concerned Nonprofit Organizations (27 Jan. 2010)*.

The communications period should not begin until all major issues are very close to final resolution, including the four overarching issues, the issue of vertical integration of registries and registrars, and the registry base agreement. If the EOI is mandatory it must not start until after the communications period; otherwise non-ICANN insiders would be at a disadvantage and this would go against the GNSO recommendation for the communications period. *RySG (27 Jan. 2010)*.

The EOI communications campaign should substitute any further communications campaigns. *DOTZON (27 Jan. 2010)*. *dotHotel (27 Jan. 2010)*. *dotHAMBURG (27 Jan. 2010)*. *Eco (27 Jan. 2010)*. The EOI communications period would replace the application communications period. The EOI should be identified as a component phase of the overall process of the new TLD program, along with dates of completion for the Applicant Guidebook-Finalized and the launch dates for applications. *J. Frakes (28 Jan. 2010)*.

The communications period has a potentially unlimited time frame. This should be limited, corrected, and made clear so that applicants can plan. *Dot Gay Alliance (20 Jan. 2010)*.

Four months is a reasonable period for the communications campaign. *S. Barkan (17 Jan. 2010)*. *A. Doria (14 Jan. 2010)*. *H. Haggerty (17 Jan. 2010)*. *L. Ferencz (17 Jan. 2010)*. *T. Oettingen (18 Jan. 2010)*. *M. Griffin (19 Jan. 2010)*. *M. Nygren (20 Jan. 2010)*. *J. Tarin (20 Jan. 2010)*. *M. Ralli (21 Jan. 2010)*. *S. Bazzi (24 Jan. 2010)*. *P. Frakes (27 Jan. 2010)*. *R. Khan (27 Jan. 2010)*. *E. Pruis (28 Jan. 2010)*. *IPC (28 Jan. 2010)*. *Afilias (30 Jan. 2010)*.

The campaign should be at least 4 months and how the campaign ties in with the business cycle of financial years and budget planning should be considered. *MARQUES/ECTA (27 Jan. 2010)*.

Four months is too long for the communications campaign. *C. Rheuban (14 Jan. 2010)*. *J. Johnson (17 Jan. 2010)*. *V. Sitruk (17 Jan. 2010)*. *P. Larsen (16 Jan. 2010)*. *E. Riflin (16 Jan. 2010)*. *R. Carl (17 Jan. 2010)*. *L. Vitovich (17 Jan. 2010)*. *M. Kochnover (17 Jan. 2010)*. *H. Veenstra (17 Jan. 2010)*. *D. Salas (17 Jan. 2010)*. *J. Covington (18 Jan. 2010)*. *J. Elkeshen (18 Jan. 2010)*. *A. Wolffersdorff (18 Jan. 2010)*. *K. Jablonski (18 Jan. 2010)*. *P. Gould (19 Jan. 2010)*. *D. Brooks (19 Jan. 2010)*. *B. Ross (19 Jan. 2010)*. *P. Dao (19 Jan. 2010)*. *R. Chweidan (20 Jan. 2010)*. *A. Panjabi (20 Jan. 2010)*. *L. Rockas (20 Jan. 2010)*. *S. Hiremath (20 Jan. 2010)*. *Simply Teeth (24 Jan. 2010)*. *P. Croy (25 Jan. 2010)*. *D. Margolis (25 Jan. 2010)*. *T. Gilles (27 Jan. 2010)*. *DotAlliance (27 Jan. 2010)*. *M. Neylon (27 Jan. 2010)*.

ICANN should take as long as necessary to inform everyone about EOIs. *K. Storey (13 Jan. 2010)*. *S. Rakowski (14 Jan. 2010)*. ICANN should allocate sufficient time for outreach so that serious parties have enough time and understanding to prepare. *JIDNC-SC (27 Jan. 2010)*. *AMAC (27 Jan. 2010)*.

The timeline (4 months v. 2 months) for the outreach campaign is less important than the nature of the outreach. Big Room would welcome an opportunity to comment on an elaborated outreach strategy. Press coverage in the past years shows that one of the best ways to raise global awareness about the potential of new gTLDs is through outreach done by the prospective applicants. *Big Room (27 Jan. 2010)*.

There is no need for a communications plan—everyone interested already knows. ICANN should complete this process as soon as possible. *J. Mahtani (17 Jan. 2010)*. *F. Guillemaut (18 Jan. 2010)*. *EuroDNS (27 Jan. 2010)*.

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)*.

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)*.

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)*.

Rename the process. Abandon the term EOI and call it “Stage One of the Application Process”. This conveys the appropriate sense of urgency to those still considering an application. Clear communication at this stage of the process is vital. *Com Laude (26 Jan. 2010)*. *MARQUES/ECTA (27 Jan. 2010)*.

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)*.

Analysis:

There is general agreement that a well executed and globally diverse communication plan is crucial to ensuring that the rules and implications of the EOI process are properly evangelized. We agree, in particular, if EOI participation is mandatory, broad outreach is essential to establishing a fair and competitive process. While some comments suggest that a communication plan is unnecessary since all interested parties are already engaged, the general consensus is that *all* parties are not informed and the communication plan is a prerequisite to EOI launch. The goal of the communication plan is to ensure an even playing field: that no party comes forward after the EOI and says “I wasn’t aware.” Two secondary goals of the communication campaign are to illustrate the new gTLD program’s alignment with the Affirmation of Commitments and to ensure substantial contact with potential participants in every region. Communication channels are expected to include print and online media, blogs and other social media, newswires, newsletters, and a targeted email campaign. In addition, presentations, podcasts, webinars, and other informational materials will be made available leading up to EOI launch. Publishing explanatory memoranda and other documentation in all six United Nations languages (Arabic, Chinese, English, French, Russian, and Spanish) is also a priority. Beyond the communication campaign efforts of ICANN, some have pointed out that prospective participants / applicants could help promote the program and that significant momentum may be garnered by the act of establishing a date for EOI process launch.

Where opinions generally diverge is in the timing of the communication plan. The first point of contention is when to initiate the communication campaign. Some advocate an immediate start to communications if the EOI process is approved, while others feel that resolving outstanding major issues prior to communications launch is crucial to avoid confusion. A measured approach is likely the right balance. ICANN has already undertaken significant efforts to increase awareness of the new gTLD program overall. However, as the EOI process for the new gTLD program is a relatively new concept, it is sensible to begin communications immediately upon approval. Initially, the focus will be on global outreach, transitioning to a heavier emphasis on education as the EOI process opening approaches.

The second point of contention in regards to timing is the length of the communications period. A nearly equal number of comments believe a four-month period is reasonable, as opposed to the period being too long. As mentioned above, given the relative newness of the EOI process concept and the importance of participation, regardless if the process is mandatory or not, ample time should be given to properly evangelize the EOI process. In addition, the four-month period is also consistent with the recommendation from the GNSO New gTLD Final Report. In a related note, some comments pointed out that if the EOI process is mandatory, the communications period for the actual new gTLD program launch could be reduced in both scope and time as all applicants will necessarily be EOI participants. This has some merit, though a communications period will still be required at that time to ensure the general public, including potential objectors, are made aware of the program launch.

In summary, ICANN fully understands the importance of a global communications campaign in advance of the EOI process opening. Provided the EOI process is approved, communications will commence immediately in order to ensure understanding of the EOI concepts and implications. The campaign will last for four months, as recommended by the GNSO, will be delivered in a number of different mediums, and will seek to reach all regions of the world to promote a fair and competitive process. The communications campaign will be carried out simultaneously with

efforts to resolve outstanding issues, but the EOI process opening itself will not commence without certain dependencies being met, such as resolution of vertical integration, IDN 3-character requirement, and the publication of Draft Applicant Guidebook v4, as these may impact participant eligibility.

6) Go Live Commitment

Key Points:

- We agree that a requirement to Go Live is necessary but should not be a part of the EOI model itself. It is not really enforceable at that stage in any event. Go live requirements will be addressed in the final Applicant Guidebook and base registry agreement.

Comment Summary:

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).* Asking the responder to commit to go live within 12-18 months of delegation is reasonable. *Com Laude (26 Jan. 2010).*

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)*.

Analysis:

There was general support for a Go Live commitment although to whom it applied and when was not consistent. Few argued that a Go Live commitment should be included in the EOI while a majority were opposed to this idea indicating that it was premature to require a commitment without having a final Applicant Guidebook and it was a moot point since it would be covered under the base registry agreement. Other comments indicated that it did not provide any relevance to the intent of the EOI, which is to gather data to assist with resolving open issues and operational readiness, thus should not be a requirement of the EOI.

We agree that a requirement to Go Live is necessary but should not be a part of the EOI model itself. Go live requirements will be addressed in the final Applicant Guidebook and base registry agreement.

C) PROCESS FOR DEVELOPING THE EOI

1) Purpose and Objectives

Key Points:

- Comments relating to the objectives or goals believed that the purpose for the EOI process had not been fully articulated or was unclear. This is being corrected in this version of the model.
- The Expressions of Interest and Pre-Registration process will serve the public interest by facilitating the launch of the New gTLD Program in a secure, stable, well-organised and efficient manner.
- Specific benefits to be realized by the EOI exercise include:
 - Determining with certainty the number of first round applications to:
 - Ensure timely, and economical implementation of operational readiness efforts
 - Add certainty to the root zone escalation discussion in the near term.
 - Identifying instances of possible string contention.
 - Identifying areas of potential objection and dispute resolution.
 - Informing the economic benefits / risks discussion.

- Identifying unanticipated issues, providing flexibility to change course based on the results.
- In the end, hastening the launch of the new gTLD program by answering or raising issues before the decision to launch is made.

Comment Summary:

Staff/ICANN objectives for the EOI. A successful EOI model would: gauge the level of interest in the gTLD program; determine the likely strings to be requested; assist with the resolution of open issues; and assist in operational readiness planning. *Demand Media (25 Jan. 2010).*

The EOI will be most successful if it: provides useful, meaningful, accurate data to ICANN on applicants and strings; collects data which can aid in the resolution of overarching issues; is recognized as functionally equivalent to the opening of the application round; and does not impede or distract from continued work on over-arching issues which are not dependent on the EOI process. *Big Room (27 Jan. 2010).*

The goals achieved through the EOI round should be: solving the overarching issues through public discussion; and then validating ICANN plans and operational readiness. Evaluation by ICANN is not expected at this stage. Information provided beyond applicant identity and the TLD string will serve the community debate. *AFNIC (27 Jan. 2010).*

EOI purpose. Whether the EOI is for mere data gathering or mandatory pre-registration is still ambiguous. If it is for mandatory pre-registration then the EOI could have a significant impact on the new gTLD program and it should not prejudice the treatment of some outstanding policy issues. *GAC (26 Jan. 2010)*

ICANN has not clearly indicated the purpose behind introducing the proposed EOI Model or why it feels a mandatory, fee-based EOI process is in the public's interest. ICANN should make this information available to the community as soon as possible. A mandatory pre-registration process deviates from prior ICANN practice (i.e., the 2000 proof of concept new gTLD round and the 2008 IDN ccTLD Fast Track Request for Information process). *INTA (28 Jan. 2010).*

The EOI data collected will help clarify and address economic demand and impacts, and root scaling issues, and will provide to ISPs and network operators useful information that could assist in preparing for this fundamental change. More clarity and consideration of concerns raised by the community are required prior to the EOI launch. *ISPCP (27 Jan. 2010).*

The purpose of the EOI is so that the community can know (a) the strings (e.g., in order to help detect undiscovered issues in the proposed DAG objection processes); (b) the total number of applications (e.g., to know if ICANN's application process personnel resources are sized correctly); and (c) the number of unique strings, so that we can determine issues surrounding root server scaling. If this information cannot be obtained from the EOI process in a timely manner then the EOI process should not be done and we should stick with the original application process outlined in the current version of the DAG. This means that there needs to be a decision on the EOI very soon. *P. Stahura (29 Jan. 2010).*

Unclear goals. 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).*

Analysis:

Comments relating to the objectives or goals believed that the purpose for the EOI process had not been fully articulated or was unclear. We agree. The objectives for the potential EOI process being discussed were stated in the Board’s first resolution on the EOI topic in October 2009: “Whereas, such a call for “expressions of interest” could give ICANN and potential applicants important information about the level of interest in the program and likely strings to be applied for, which could assist the resolution of the remaining issues and assist ICANN in planning for the coming new gTLD round ...” (See <http://www.icann.org/en/minutes/resolutions-30oct09-en.htm#5>.) These objectives were also discussed in relation to the draft model posted in December, and are still in place.

The current Explanatory Memo seeks to make the purpose more clear.

...the Expressions of Interest and Pre-Registration process will serve the public interest by facilitating the launch of the New gTLD Program in a secure, stable, well-organised and efficient manner.

- *Specific benefits to be realized by the EOI exercise include:*
 - *Determining with certainty the number of first round applications to:*
 - *Ensure timely, and economical implementation of operational readiness efforts*
 - *Add certainty to the root zone escalation discussion in the near term.*
 - *Identifying instances of possible string contention.*
 - *Identifying areas of potential objection and dispute resolution.*
 - *Informing the economic benefits / risks discussion.*
 - *Identifying unanticipated issues, providing flexibility to change course based on the results.*
 - *In the end, hastening the launch of the new gTLD program by answering or raising issues before the decision to launch is made.*

Other comments in this area generally supported the data-gathering aspects of the proposed EOI model, and agreed that the exercise would be useful if it yielded meaningful data. This

point of view was also expressed in the negative: that the EOI process would serve no purpose if it could not produce this result.

There was also comment about the “pre-registration” aspect of the process. As used in the context of the proposed model, “Pre-Registration” is essentially synonymous with “Expression of Interest.” As the model proposes a required set of information and deposit from participants, and as EOI participation is a requirement for submitting a gTLD application, the same step can be described either as an “Expression of Interest” or “Pre-Registration.” In other words, the application will be submitted by the applicant once the submission period opens; the EOI phase serves as a limited-time phase during which interested parties complete the first step in the process. There was generally less support among comments for the “pre-registration” aspect due to concerns about the mandatory nature of the model and the impact of remaining policy issues, which are discussed elsewhere in this analysis. These comments must be taken with the understanding that, in any event, a mandatory EOI with a fee and publication of strings is a pre-registration, regardless of what you call it.

Other “purposes” for the EOI model were mentioned in comment, such as community benefit from the knowledge of gTLD applications to be received. In line with this comment, the model proposed, which is mandatory and fee-based, serves the public interest by contributing to resolving issues, creating greater certainty in the environment, and moving the program forward while providing an opportunity to change course based on unanticipated risks that come to light before taking additional steps.

One comment mentioned that the proposed EOI model was a deviation from past practice. This was considered in the development of the model and, as mentioned previously, the “voluntary EOI” procedures used for the 2000 proof-of-concept process and for the IDN ccTLD Fast Track worked well. These exercises took place in different circumstances as the 2000 process was prior to the community experience gained in the last nine years, and the IDN ccTLD Fast Track process was limited to countries and territories, a smaller group of participants with a less commercially-focused space. Because the objectives of the EOI process depend on collection of accurate data, the type of procedure that has been used for other scenarios in the past is not well-suited to achieve the stated goals in today’s environment.

2) Timeline

Key Points:

- ICANN is mindful of the interest and expectation from potential applicants, and is continuing to address concurrently the ongoing implementation work, the overarching issues, and process considerations such as the EOI, so that the program can come to fruition, while ensuring due consideration of the issues and the feedback of all affected stakeholders.
- As a pre-requisite to launch: it is expected that most significant issues will be resolved for draft version 4 of the Applicant Guidebook, and that there will be few if any substantial changes after the EOI process takes place.

Comment Summary:

EOI Impact. Will the EOI, as it appears, ensure that new gTLD applications are not accepted until approximately the first quarter of 2012? Is 2013 the date for the earliest actual delegations under EOI? The evaluation process, IRT, root scaling, and registry-registrar separation have dependencies, in theory, on the outcome of any particular EOI. *E. Brunner-Williams (23 Dec. 2009).*

Timing and purpose of the EOI. The EOI's sole purpose is to collect information for ICANN's new gTLD process resource planning, not to become a separate gTLD pre-registration process. Running the EOI as soon as possible should be a top priority and must not delay resolving open issues such as trademark protection. In doubt the EOI should be cancelled. *dotBERLIN (24 Jan. 2010).* *Dotbayern (25 Jan. 2010).* *A. Schreiner (27 Jan. 2010).*

What is the likelihood that the EOI program will move forward as it seems uncertain at this point based on contrasting views of its effectiveness? *ASIFI (27 Jan. 2010).*

EOI should move the new gTLD process forward. The City of Paris is concerned about all the mounting delays in the new gTLD process. If an EOI is adopted it must be part of the solution and not create further problems or lead to further delays. *City of Paris (27 Jan. 2010).* *EuroDNS (27 Jan. 2010).* *dotGAL (27 Jan. 2010).* The EOI can be a process that happens in tandem with addressing the important overarching issues without disruption to any progress in those areas. *J. Frakes (28 Jan. 2010).* The overarching issues should be carried out in parallel with the EOI communication/outreach process and be finalized before the EOI begins. This way by the time the EOI starts, most overarching issues should be addressed and there would be movement towards the right direction. *C. Roussos (29 Jan. 2010).*

Fixed dates. The EOI can help if when it is launched ICANN also commits to: a definitive timeline for the new gTLD program; a release date for the final Applicant Guidebook; and a launch date for the first round of applications. *City of Paris (27 Jan. 2010).* *dotKoeln (27 Jan. 2010).* ICANN should announce a target date for the opening of the second round of applications when it announces the EOI/Stage 1 launch date; this will enhance planning and give assurance to brand owners and others who choose not to participate in Stage 1. *MARQUES/ECTA (27 Jan. 2010).* Identifying concrete dates as part of the communications process for the overall new TLD program will be powerful; conversely communicating without dates may undermine the outreach effort. *J. Frakes (28 Jan. 2010).*

Decision on EOI. ICANN should make a timely decision on EOIs one way or another. ICANN will never achieve consensus among all stakeholders on certain issues related to the EOI/new gTLD process and further delays serve no reasonable purpose. *C. Landry (27 Jan. 2010).* *R. Tindal (29 Jan. 2010).* If the ICANN Board defers a decision on EOI to the Nairobi meeting to address process concerns (a short one month delay), then the Board should make a definitive decision on the EOI in Nairobi. Any additional delay would push the EOI closer in time to the intended launch date of the new TLD round in fourth quarter 2010; would put off collection of useful data by ICANN; and would call into question the very utility of the EOI. This scenario would risk further delay that could unnecessarily degrade confidence in ICANN. *Afilias (30 Jan. 2010).*

Application timing. Any timeframe exceeding 12 months for starting the application round after the EOI concludes may discourage participation by becoming financially burdensome to applicants. ICANN should reconsider and shorten this timeframe. *B. Holbrook (8 Jan. 2010)*. ICANN should set a date this summer to begin accepting EOI applications. *L. Wasser (12 Jan. 2010)*. An EOI applications date should be set. *F. Lorenz (20 Jan. 2010)*. Applications should be accepted as soon as possible. *C. Nagel (19 Jan. 2010)*. Timetable is perhaps the most important issue so ICANN should have the DAG version 4 ready as soon as possible, not delaying the pre-registration process too much. *DotFAM (25 Jan. 2010)*.

ICANN should quickly move forward with EOIs and new gTLDs; the 18 month cutoff for new gTLD implementation (to August 2011) in order to resolve “threshold issues” is too long. *W. McDonald (14 Jan. 2010)*. The proposed commitment to open the application period within 18 months is an unjustified delay imposed on the process. There should be a 3 month timeline if the EOI is used by ICANN to validate its plans, or a 9 month timeline if the EOI is aimed at addressing the remaining overarching issues through disclosure of more information to the community. *AFNIC (27 Jan. 2010)*.

With the EOI ICANN has effectively abandoned its decision to get it right and not set a stated timetable for the new gTLD process. The EOI model would bind ICANN to open the application window 18 months from the closing the date of the EOI submission period or face having to pay millions of dollars in refunds to pre-registrants. *Time Warner (27 Jan. 2010)*.

Resolving the overarching issues associated with the new gTLD program should be ICANN’s primary concern. Providing sufficient time to do that (and avoiding setting hard launch deadlines) may increase prospective applicants’ confidence which may result in more first round applications than currently anticipated EOI application levels. *AAMC (27 Jan. 2010)*. *Concerned Nonprofit Organizations (27 Jan. 2010)*.

Reduction of new gTLD process delays. A well-defined EOI timeline will put the process back on track. *Minds + Machines (28 Dec. 2009)*. *A. Schwertner (19 Jan. 2010)*. *A. Schwertner (27 Jan. 2010)*. *W. Staub (27 Jan. 2010)*. Doubts exist about when and if a second round of applications may come about. Moving forward with the EOI may assist in making a second round more realistic and in the near future. *T. Yokoyama (7 Jan. 2010)*. EOIs need to move ahead; if this process stalls then it will damage ICANN’s reputation. *E. Wender (19 Jan. 2010)*. *Minds + Machines (28 Jan. 2010)*.

“Pioneer gTLD” first EOI round followed by second round. ICANN should start a first round now with a manageable number of possible new gTLDs and also continue with promotion and outreach for its second round immediately after closing the application window and publishing the applied for strings of the first round. The second round promotion can occur while running the first round. The experience in the first “pioneer gTLD” round would serve as valuable information for those interested in the second round, and the second round may not take as long. A firm date is necessary for the first round. *DotGreen (27 Jan. 2010)*.

Second round —assurance for governments. Some assurance from ICANN that another round of TLD introductions will be held within a specified time frame after the first round may alleviate concerns of governments that they will miss out if they do not launch a TLD in the first round.

With this assurance governments could potentially benefit from learning if location TLDs such as .nyc are viable, and the cost of applying will likely be cheaper (no ICANN cost recovery). A. Allemann (12 Jan. 2010).

EOI applications and final new gTLD applications. Given the small number of issues to be resolved with EOI data, the final gTLD application should follow a few months after accepting the EOI applications. Demand Media (25 Jan. 2010). There should be less than a year between the EOI and the full application period. EuroDNS (27 Jan. 2010). The time gap between EOI/Stage 1 and the Opening of Applications should be a minimum of 3 months and a maximum of 6 months. IPC (28 Jan. 2010). MARQUES/ECTA (27 Jan. 2010). Between these two stages ICANN should hold workshops limited to applicants to assist them in managing their applications and covering issues such as objections, effective RPMs, and the impact of the URS and UDRP. MARQUES/ECTA (27 Jan. 2010).

Without a deadline we will continue to talk about the process with no end in sight. Rules do not have to be finalized before the announcement of a pre-application window. ICANN should announce that pre-applications will be taken in July and final rules for such pre-applications will be announced no fewer than 30 days prior to the application deadline. After July the community would have 6 months to discuss, finalize and implement any changes based on the few outstanding issues. The DAG version 4 should be ready for Board approval at the Brussels meeting and then EOI applications would be accepted 30 days or so thereafter. There is no reason for further delays which damage ICANN credibility and no reason to wait until after the December meeting to issue the Final Applicant Guidebook. J. Nevett (27 Jan. 2010).

The EOI should open only after all significant remaining issues have been resolved including publication of DAG version 4 and the final version of the Registry Operating Agreement. Com Laude (26 Jan. 2010). MARQUES/ECTA (27 Jan. 2010). The EOI should start after publication of DAG version 4. JIDNC-SC (27 Jan. 2010). The EOI should not start until after publication of the Final Applicant Guidebook. AAMC (27 Jan. 2010). Before anyone can be expected to commit substantial funds in the EOI stage (and they should be substantial) the rules really need to be largely determined and the communications program complete. Otherwise ICANN is inviting bad press and inevitable litigation. D. Schindler (29 Jan. 2010).

Limiting changes to the process subsequent to the EOI to only minor/procedural issues rather than substantive/material issues is key to maximizing participation from all stakeholders. If the only first round applicants are ICANN insiders and entrepreneurs, the process cannot be called a success. Ideally ICANN will limit the time gap between the EOI and the opening of full applications to four months, which should allow ICANN and its evaluators sufficient time to ramp up. Risks of the EOI include that organizations not close to ICANN will misunderstand the EOI (therefore to be clear rename it to Stage 1 of the application process) and that the EOI is opened too soon before remaining issues are resolved (this would result in a lower take-up rate from brand owners and ICANN outsiders). Com Laude (26 Jan. 2010).

Communications to the Internet community. The speed at which the new gTLD process is moving while important issues remain unaddressed causes concern as well as the short timelines remaining to communicate to the general members of the Internet populace about the gTLD expansion. INTA reiterates its concern that communication from ICANN, focused on

the EOI or otherwise, is not getting to the people it intends to inform. These community members will not be the likely beneficiaries of an EOI process, which will instead favor those regular ICANN participants with a first bite at the apple. *INTA (28 Jan. 2010)*.

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)*.

EOIs and ICANN credibility. EOIs, minor in themselves, stand for a much larger question: will ICANN proceed with new TLDs or will it not? If ICANN approves the EOI process it will signal that it is going ahead with new gTLDs, respects the voice of the Internet community and that a decision once reached has meaning and is to be respected. If ICANN delays making a decision or vacillates, ICANN will have just as clearly indicated that it is beholden to incumbent interests and fearful of criticism from the powerful that it is willing to throw overboard decisions of the ICANN community to placate those interests and that it considers its mission not as extending the Internet to those who need it but as hobbling it on behalf of the economic interests of incumbent insiders. ICANN's inability to manage its processes is about to kill the very thing it claimed to create—choice and competition among gTLDs. The Board should clearly identify what is legitimately a matter of community comment (e.g. registry-registrar separation, 2 letter IDN TLDs) from what has already been decided by the ICANN community (the fact that we are doing gTLDs). This would establish the primacy of the community in developing policy and remove the corrosive effects of endless second-guessing. If the Board kills the EOI proposal it will announce to the world that it has become an expert in unearthing rules and points of order designed to avoid the actions it was created to undertake. If the Board approves the EOI process, it can fulfill its historic mandate to create new gTLDs, to respect its own processes, to fulfill the clear wishes of its stakeholders, and to become a venue for where real decisions are made about the Internet, by the people who use it. Applicants will wait and watch, as they have done for so long, but many applicants cannot afford to do that much longer. *Minds + Machines (28 Jan. 2010)*. Parties who have geared up for new TLDs have waited long enough. The ICANN Board should ensure finalization of the Guidebook, begin the Communications Period and open the EOI window or better still the application window proper, as a matter of urgency and before all credibility is lost. *D. Schindler (29 Jan. 2010)*.

Analysis:

A number of comments urged quick action and follow-up on the EOI proposal, noting concerns about delays and uncertainty regarding the timeline for introduction of new gTLDs. Comments expressed that resolution of open issues should be a top priority for ICANN, to enable moving forward with the EOI and/or application process as quickly as possible. These comments advocated completing implementation work on the remaining areas in parallel with the EOI process, to maximize efficiency. Comments urged ICANN to make a timely decision on the EOI and announce concrete dates for moving forward. Many of these comments mentioned the financial burden on potential applicants caused by uncertainty and extended timeframes. These comments also expressed the broader view that postponement of key decisions was ultimately harmful to the credibility of the ICANN process and model.

ICANN is mindful of the interest and expectation from potential applicants, and is continuing to address concurrently the ongoing implementation work, the overarching issues, and process considerations such as the EOI, so that the program can come to fruition, while ensuring due consideration of the issues and the feedback of all affected stakeholders. Some comments speculated about possible application submission dates and delegation dates based on the EOI model; however, given that the model has not been approved, ICANN is not yet in a position to make such projections.

There appeared to be some misunderstanding concerning timing and of the refund aspect of the model, which stated that refunds would be available if the application process was not launched within a certain time frame after the EOI process (with 18 months being given as an example). Commenters interpreted this to mean that the model included a built-in 18 months between the EOI process and the application submission period. Many saw this as an unjustified delay, and too long an amount of time for ICANN to hold deposits from participants. Given that the EOI is slated to take place after draft version 4 of the Applicant Guidebook is completed, and that only non-material changes are expected between v4 and the final version, it is not expected that there will need to be an extended time frame between the EOI process and the application submission period. However, it is possible that unforeseen issues will arise, and 18 months was noted as the maximum possible time that ICANN should hold deposits under the terms of the EOI.

A few comments saw this commitment as compelling ICANN to launch the program within 18 months, noting a financial incentive to ICANN to avoid refunding the deposit amounts collected. It should be noted that deposits are not revenue to ICANN, but are kept in a dedicated account that is not available to be used for other purposes. While opening the application process in due course could be seen as a self-interested act for ICANN to help offset costs incurred, ICANN's public interest commitments and bottom-up process are a check on this outcome. The remaining implementation steps for the New gTLD Program will continue in the same manner that has occurred to date, with stakeholder consultation and discussion.

A few comments suggested that ICANN execute small, phased application rounds instead of the EOI / Pre-Registration process. While this has been proposed before and considered in other contexts, it is not a substitute for obtaining data to solve long-term issues, and would present new challenges of definition, allocation methodology, and fairness.

A comment suggested that the model would generate more support if assurance and dates were provided on a second application round, since this would offer flexibility to applicants with varying funding circumstances or business plans. Depending on how the EOI model moves forward, determining timeframes for subsequent stages may be feasible and if so, this information will certainly be made available to the public.

Some comments urged ICANN to do an EOI process only after all issues are resolved, or after the final Applicant Guidebook has been issued, with no possibility of changes. . It is expected that most significant issues will be resolved for draft version 4 of the Applicant Guidebook, and that there will be few if any substantial changes after the EOI process takes place. Conducting an EOI process only after all issues have reached community consensus was an approach that was considered, but this was balanced against the need to move the process forward safely and

expeditiously, as some activities can occur in parallel. Establishing finality as a pre-requisite to the EOI process would also eliminate flexibility to accommodate any modifications based on information gained in the EOI.

Finally, a comment noted that communications about the new gTLD process to date had not been successful in reaching audiences other than regular ICANN participants. A communications campaign is critical to the success of the EOI process, and a description of planned activities has been included for comment along with the model. ICANN welcomes and encourages suggestions of groups or areas where awareness is low, or where targeted communications could be beneficial, as well as suggestions of available channels for reaching segments of the broader community.

3) Alignment with Affirmation of Commitments and By-Laws and Transparency

Key Points:

- Board discussions on the EOI process have centered on the risks and benefits of various options, and the public interest impact of various proposals.
- ICANN is committed to operating in accordance with its core values and its express commitments to openness and transparency, fairness, and consultation with affected stakeholders.
- The upcoming decision on the EOI process is an important one, and ICANN is addressing the concerns expressed about the timing and procedures by dedicating significant time to the discussion of the EOI model at the Nairobi meeting, during which advice from the GAC is anticipated.

Comment Summary:

Public forum limitations. The quantity of comments logged on ICANN's public forums may result in inaccurate representation of what the community wants and needs regarding EOIs and new gTLDs. By using only a public forum, a percentage of views and comments may be excluded (e.g., some potential new gTLD applicants are in stealth mode and may not feel able to post comment on the EOI in the public forum). Suggested ways to address this are to consider all unique comments and refrain from allocating too much importance to repetitive commentary, and to run a "guinea pig" (pioneer gTLD) round for new gTLDs. *DotGreen (27 Jan. 2010).*

If ICANN uses a public comments procedure, then comments from all stakeholders should be more adequately analyzed and reported. The comments should not be reduced to misrepresented binary majorities and minorities. *AFNIC (27 Jan. 2010).* *INTA (28 Jan. 2010).* The timeframe allowed for comments on the EOI proposal was very short under the circumstances, making it extraordinarily difficult for cross-sector organizations to develop in-depth comments and build internal consensus on new issues. *USCIB (27 Jan. 2010).*

A poorly conceived and ill-timed EOI process may lead to significant public harm. ICANN should fully consult with the community so it can be informed of the potential benefits and harms that may result from any particular EOI process. The draft EOI model represents a radical change to

the established new gTLD program process. To date, there has been insufficient public consultation on it, which became clearly visible when the comment period on the conceptual EOI questions was open for only 16 days before the ICANN Board considered the EOI and next steps. In the staff analysis of the public comments it appears that some important community concerns were not reflected at all. ICANN should reform these processes so it can begin meeting its obligations to the public under the Affirmation of Commitments. It is essential for ICANN to evaluate policy considerations and their potential impact from the perspective of the public, rather than from ICANN's own viewpoint. ICANN should publish that analysis so the public's interest can be properly taken into account. *INTA (28 Jan. 2010). IPC (28 Jan. 2010).*

As currently structured the EOI is flawed and premature. Its procedure is out of step with ICANN's bottom-up process, and it circumvents ICANN's normal policymaking process on the critical question of whether and how to rollout new gTLDs.

ICANN has not sought the input of the GAC on the many potential unintended consequences of the EOI as required by the AOC. The EOI is a mechanism to move the new gTLD process forward even before ICANN has performed an independent economic study or addressed the four overarching issues tied to the introduction of new gTLDs. *Verizon (26 Jan. 2010). Ford et al. (27 Jan. 2010).*

Adoption of the EOI would violate fundamental commitments made by the U.S. Department of Commerce and ICANN in the Affirmation of Commitments. *Ford et al. (27 Jan. 2010).*

GAC perspective: flaws in EOI developmental process. The first call for comments in Nov. and Dec. 2009 had very limited visibility and duration; objections raised in those comments were not sufficiently examined in the summary of comments prepared by staff; and no request has been made for GAC's opinion despite the EOI proposal's clear public policy implications (Article III, sec 6 1 c. of the bylaws). If the Board makes a decision in Feb. 2010 on the EOI proposal, there will have been no opportunity for face-to-face community interaction, contrary to Article III, sec. 6 2 of the bylaws and requirements of the AOC. GAC intends to make further comments on the EOI proposal before or at the Nairobi meeting. *GAC (26 Jan. 2010).*

Timing of GAC Participation. NetChoice encourages the GAC to assume that its opinion is always welcome like the opinion of any stakeholder in the ICANN process. To be an effective participant during the critical early stages of policy development, the GAC needs to engage without a formal invitation. *NetChoice (27 Jan. 2010).*

From a procedural standpoint, it would have been more advisable for the GAC to provide input earlier, if it had reason to do so. The letter from GAC comes almost three months since the original concept was voted—at the board level. *F. Krueger (27 Jan. 2010).*

The GAC waited until the day before the second comment round closed to ask for a delay. By doing so they are introducing delay for delay's sake. *E. Pruis (28 Jan. 2010).*

It is disappointing that GAC has chosen not to participate in the EOI comment period. It seems unacceptable that one day before the second EOI comments period closed the GAC put in a comment that they need to comment at a later date, i.e., the Nairobi ICANN meeting. GAC is missing in action and then complains to ICANN for not participating. GAC should take a more

active approach towards its obligations to the Internet community and put in its comments in a timely manner. It is also inconsistent that GAC applauds new IDN ccTLDs, 4 of which are already accepted, without addressing any of the overarching issues plaguing the gTLD process. Where in the bylaws does it say that GAC is mandated to provide feedback on everything related to ICANN, and where in the Affirmation of Commitments is there a clause that states that every ICANN affair needs to have formal “face-to-face” discussions with GAC? *C. Roussos (29 Jan. 2010)*.

The Affirmation of Commitments or ICANN Bylaws do not require detailed GAC endorsement of every operational and administrative matter before ICANN. The EOI, as proposed by ICANN staff, is a purely operational mechanism that does not fundamentally change the policies developed in the DAG over the past two years. *R. Tindal (29 Jan. 2010)*.

GAC perspective: potential risks. Risks of the current EOI proposal must be evaluated more thoroughly. The EOI proposal may: give an unfair advantage to some ICANN participants who could preempt the most valuable strings before the rest of the world is fully aware of the gTLD program; allow a speculative market for EOI application “slots”; and penalize developing country applicants and small nonprofit TLD projects that nonetheless operate in the public interest. *GAC (26 Jan. 2010)*.

GAC recommendations. GAC advises the Board to: (1) avoid taking a decision on the EOI at its Feb. meeting and defer it until the next ICANN public meeting. A premature decision could trigger requests for reconsideration and further derail the discussion; (2) request that staff facilitate a full cross-community deliberation on the EOI at the next ICANN public meeting prior to any final decisions; and (3) ensure that the second summary of comments clearly documents the respective interests of respondents. The GAC would welcome the Board’s early consideration and response to this advice. *GAC (26 Jan. 2010)*. *AIM (27 Jan. 2010)*. *ICC ITIS (27 Jan. 2010)*. *P. Tattersfield (27 Jan. 2010)*. The GAC recently requested delay of decision on an EOI until after the Nairobi meeting. *USCIB (27 Jan. 2010)*.

NetChoice supports the GAC suggestion that ICANN’s Board should avoid taking a decision on EOI until the threshold question about its purpose is answered –is it data gathering or is it mandatory pre-registration for a specific string? There is no need for disclosure of strings if the EOI is just data gathering. If it is mandatory pre-registration then ICANN should finish the Applicant Guidebook and Registry Contract before asking applicants to file an EOI with a hefty fee. *NetChoice (27 Jan. 2010)*.

GAC consultation. The EOI proposal lacks consensus and its consideration has not followed proper procedures, including that the GAC should be consulted. ICANN has two clear choices: (1) turn to the GAC and seek their input as required by the Bylaws and Affirmation of Commitments consistent with the bottom-up process, or (2) make a “top-down” decision with clear public policy decisions without consulting the GAC. The wrong decision would have consequences in connection with current Affirmation of Commitments review and international fora. The Board should formally solicit the advice of the GAC and request that proper in-depth discussion of the EOI process by the community take place during the next meeting in Nairobi prior to any final decision by the Board. It would violate the Bylaws, be contrary to standard operating procedure and run counter to the Affirmation of Commitments if any EOI proposal were approved at the

February 2010 Board meeting. Also, contrary to the Affirmation of Commitments, ICANN staff has not provided a meaningful analysis of the positive and negative effects of an EOI process but instead has taken a shallow “vote counting” approach. *M. Palage (19 Jan. 2010)*.

The clear benefits of the EOI outweigh the speculative and procedural concerns raised by Mr. Palage in his statement. The EOI process does not impact public policy concerns and does not require input from the GAC. Even if it did impact public policy, the EOI process does not preclude requesting an opinion from the GAC. The EOI does not violate ICANN’s obligations under the AOC. The Bylaws do not require an in-person forum. Speculation about hypothetical reconsideration requests does not justify further delays in the new gTLD program. *Newman & Newman (28 Jan. 2010)*.

The Board should take no decision on EOI at the February meeting and should have further discussion on this issue with the community at the Nairobi meeting. *ALAC (27 Jan. 2010)*. *RySG (27 Jan. 2010)*. *USCIB (27 Jan. 2010)*. *B. de la Chapelle (28 Jan. 2010)*.

The Board should allow itself sufficient time to review and consider all of the public comments before making a decision to proceed with an EOI process and should not vote on an EOI model at its February 4 meeting. *Microsoft (27 Jan. 2010)*. *IPC (28 Jan. 2010)*.

It is my understanding that the Board expects to make a decision on the EOI at its February meeting. Based on the comments and the complexities of the issues, it is difficult to imagine how the spirit of the AOC can be achieved in that time frame. Taking one small step ahead with non-controversial TLDs would be one giant step for ICANN and the Internet community. Perhaps at the February meeting the Board could simplify the EOI (or more broadly the new TLD) process and sort out the non-contentious TLD applications and enable them to proceed, and in doing so ICANN could meet its AOC commitment. *Connecting.nyc (29 Jan. 2010)*.

There have been numerous postponements of the new gTLD program which has cost many applicants a lot of money and time. The ICANN Board should vote on EOIs at the February meeting. *C. Roussos (29 Jan. 2010)*.

GAC input about EOI should not be tool for further delays. GAC input is very important and having them comment in Nairobi is worthwhile given the AOC compelling it and that this is a global Internet. Also, the GAC in whole or in individual capacity also has the opportunity to comment in the comment period. The GAC should have input but they are not mandated nor is it necessarily appropriate for them to micro-manage this. Those who benefit from delays should not leverage the time between now and the Nairobi meeting to invent or hypothesize new overarching issues or architect further delays using the GAC input opportunity as a tool towards their ends. *J. Frakes (28 Jan. 2010)*.

It is debatable whether Board adoption of EOIs without a formal face-to-face meeting with the GAC is required by Bylaw 6.3. This is not an action that effects “public policy concerns” as mandated by 6.3. The GAC has been aware of this development since it was voted on in Seoul and had the opportunity to comment in the first phase as did all stakeholders. Given this history, the GAC should provide input in an extremely timely manner, preferably before Nairobi. The

GAC's role is not to micromanage every decision such as the exact composition of the EOI rules. *F. Krueger (27 Jan. 2010).*

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).*

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).*

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).*

EOI applicant representation within ICANN. After applicants state their EOI, they will enter into a contractual relationship with ICANN. How will it impact their representation within ICANN? Will applicants be allowed to join the GNSO? If so, will they join the registry stakeholder group or will a specific "applicant stakeholder group" be created? *M. Credou (21 Jan. 2010).*

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).*

Competition and monopoly. ICANN is catering to the best interests of the current monopolies that dominate the domain industry. All the delays in the gTLD process have served the monopolies of companies such as VeriSign (.com, .net) pretty well, and further delays are resulting in lost opportunity and the continuance of the VeriSign monopoly. The case study of the .music initiative has not been used by ICANN to show doubters that there is economic demand—we have real results submitted by users that reflect considerable demand. ICANN bylaws state that it is mandatory for ICANN to introduce policies that promote competition and are beneficial to the public interest. ICANN's preservation of monopolies is treading on antitrust or anticompetitive waters. VeriSign (.com, .net) or Afilias (.org) have not been seen to support new TLDs or to make a push to end all the delays. *C. Roussos (29 Jan. 2010).*

EOI—reconsider it or allow more time. ICANN should either reconsider the establishment of an EOI or allow enough time for the consideration of its usage. Introduction of the EOI at this stage of the new gTLDs development is unwise and does not respect the ICANN process and is a distraction from the fundamental threshold issues that remain largely unresolved. If ICANN goes ahead with the EOI process against the advice of many, then it should be ensured that the EOI would: (1) provide equal advantage to all applicants; (2) not be used to demonstrate actual economic demand (an EOI may only generate relative demand, not actual, due to defensive action and speculation); (3) not distract the community from resolution of the overarching issues; and (4) respect the ICANN bottoms-up, consensus driven process. The potential for harm to consumers, contracted parties and brand rights owners is too great for us to now create new processes and policy at this late stage in the new gTLD process. It would be helpful if the ICANN Board and Staff could supply specific objectives and criteria for the EOI program before specifying the details of its implementation—this would make the process more orderly and fair. *MarkMonitor (18 Jan. 2010). Nordstrom (26 Jan. 2010).*

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).*

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).*

Analysis:

Comments acknowledged the numbers of submissions declaring support and opposition on various issues, and expressed a concern that consideration of the public feedback by ICANN would be limited to counting “votes” for and against certain positions. It was mentioned that pure numbers would be inadequate as a measurement of community opinion for several reasons, including the possibility that some potential applicants would withhold public statements of support for business reasons. While the numbers of comments aligned with various positions is visible when reviewing the comments, the Board discussions on this issue have centered on the risks and benefits of various options, and the public interest impact of various proposals. Public comment mechanisms are designed for this sort of weighing and analysis rather than for numerical reckonings of pro versus con as a decision-making tool.

There were a number of comments that the timeframes for discussion and consideration on the EOI process had been unreasonably short, especially when taking into account the significant nature of the topic and the occurrence of a holiday season in some parts of the world. It was also noted that the timeframes did not allow enough time for entities or organizations with internal processes to consult and develop positions on the issues within their membership. There was concern that a quick decision based on insufficient consultation could lead to public harm.

There were also a number of comments arguing that there had been ample discussion and feedback, and that the matter was ripe for decision as soon as possible. Such comments stated that delays served certain entrenched interests at the expense of new entrants, and urged the Board to vote on the EOI model in February.

Comments about insufficient consultation alleged that the EOI proposal circumvented the ICANN policy development process, and suggested that the proposal should be sent to the GNSO for policy consideration, as was done recently with specified trademark protection issues.

Comment also noted that the GAC had not been explicitly consulted on a matter that could involve public policy issues, such as the possible emergence of a speculative market. The GAC stated a concern that moving forward with the EOI model would disadvantage developing areas and nonprofits, while privileging certain ICANN participants. These comments requested that the Board vote on the EOI model in Nairobi in March, after the GAC had the opportunity to convene a meeting and there was a forum for face-to-face discussion in the community. Other comments noted that the EOI proposal had been open for public comment, and the GAC was free to engage at any time.

Procedural comments noted the concern that the process followed in developing the EOI model had not considered the broad public interest, and violated the spirit of the Affirmation of Commitments.

ICANN is committed to operating in accordance with its core values and its express commitments to openness and transparency, fairness, and consultation with affected stakeholders. The EOI model emerged as a bottom-up proposal from stakeholders, and the

process for development of the model has included two public comment periods resulting in considerable input. ICANN has allocated significant time to reviewing and considering the comment received. The upcoming decision on the EOI process is an important one, and ICANN is addressing the concerns expressed about the timing and procedures by dedicating significant time to the discussion of the EOI model at the Nairobi meeting, during which formal advice from the GAC is anticipated.

D) EOI IMPACT ON OPEN ISSUES

1) Vertical Integration and Three-Character IDNs

Key Points:

- Implementation of rights protection mechanisms, vertical integration and IDN 3-character issues must be resolved prior to EOI process launch
- The EOI might inform economic studies and the root scaling issues. These two issues need not be fully settled as a prerequisite to the EOI launch – but the path to resolution and preliminary indications of answers must be in place.

Comment Summary:

Resolve 2 character IDNs and Vertical Integration. These two key issues should be resolved prior to accepting EOI funds. The communications process should still be started if and when the board approves the EOI plan. *Minds + Machines (28 Dec. 2009)*. *Sierra Club (13 Jan. 2010)*. *T. Yokoyama (7 Jan. 2010)*. *E. Clawson (11 Jan. 2010)*. *World Carbon Database (11 Jan. 2010)*.

The issues of 2 character IDNs and vertical integration sound like “insider technicalities” and should not hold up the EOI and new gTLD process. *J. Hannoun (11 Jan. 2010)*. *F. Lorenz (20 Jan. 2010)*. Solving the commercial squabble about registry-registrar separation should not have any bearing on new TLDs. Is there anyone who would apply or not apply (who isn't a registry or registrar) based on the outcome? *Dot Gay Alliance (20 Jan. 2010)*.

Vertical integration and 2-character TLDs issues can be resolved after the EOI window closes and if necessary in some cases a refund provided. *D. Schindler (29 Jan. 2010)*. The open nature of the vertical integration and 2 character IDN issues can be adequately explained in the EOI communications period. If resolution of these issues means an EOI fee must be refunded, that can be adequately handled. *R. Tindal (29 Jan. 2010)*.

These issues should be resolved soon but not cause any more delays. *Unite Berlin (27 Jan. 2010)*.

Even if these issues are resolved the Draft Applicant Guidebook will be far from approaching “functional completeness” so that the EOI phase as staff has proposed would be premature. *COA (27 Jan. 2010)*. These two issues need to be finalized before any EOI moves forward. *USCIB (27 Jan. 2010)*.

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).*

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).*

Analysis:

Under the proposed EOI process model, certain prerequisites to process launch were identified, two of which are resolution of the IDN 3-character requirement and vertical integration. The importance of these two particular issues is that they impact EOI participant and string eligibility, an understanding that is supported by several of the comments. However, other commenters feel that these issues should not slow the trajectory of the EOI process launch, since the risks to these prospective participants can be mitigated by offering refunds if their eligibility is affected by resolution of these issues. This idea has merit. On the other hand, ICANN is attempting to provide certainty and keep refunds isolated to very specific instances in order to maintain the integrity of the EOI process, and importantly, the data gathered from carrying out that process. With these goals in mind, issues that must be resolved prior to EOI launch have been identified.

2) Root Zone Scaling and Technical Considerations

Key Points:

- If the rate of delegations is a limiting factor, the number of EOI participants will be an informative statistic.
- Delegations of new gTLDs may facilitate IPv6 adoption and DNSSEC deployment as both are contractual conditions in the proposed registry agreement for new gTLDs.

Comment Summary:

Zone file access and data gathered about the number of applications in EOI process. Independent of all other issues, if the rate of change is the limiting resource, other data that the proposed EOI model is intended to acquire is decorative, not informative. The draft EOI model

continues to anticipate a volume of applications several multiples of, if not an order of magnitude greater than, the range of anticipated delegations in the briefing paper on Zone File Access. How are these two anticipations of volumes to be reconciled? *E. Brunner-Williams (28 Dec. 2009)*.

New gTLDs as driver for IPv6 adoption. New gTLDs support could be justified if new gTLDs promoted other worthwhile ICANN goals, such as helping to drive the Internet from IPv4 to IPv6 (i.e., if approvals are conditioned upon using IPv6). *Unidentified (16 Jan. 2010)*.

New application protocols. It is not ICANN's job to market TLDs and their success depends on the concept and marketing behind the TLD. We should add value and additional services to the Internet; there is room for more than http, ftp, pop3 and imap. New TLDs will make it easier to develop and use new application protocols. *TLD Consulting (27 Jan. 2010)*.

Analysis:

One of the stated objectives of the EOI process is to assist in the resolution of the root zone scaling issue. While that work is already underway, knowing with certainty the number of first round applicants will provide clarity and potentially closure to that work. The comments mentioned that the rate of delegations is a limiting factor, which is true. However, understanding the upper bound on the number of delegations will inform and assist with resolving the root zone scaling study and while also providing valuable input for operational readiness.

Of course, understanding the volume of delegations in the first round does not provide certainty for future rounds. However, it will provide certainty for a period of years (until second round delegations might start). That time can be used by root server operators to develop early warning systems and to scale operations.

It is important to note that the EOI process does not provide any estimates or assumptions on the number of expected EOI participants, as obtaining that number is a stated objective of the EOI process. As such, there is no preconceived number of EOI participants to compare against the range given in the briefing paper on Zone File Access, a paper that was undertaken outside of ICANN.

Finally, comments mentioned that IPv6 adoption may be accelerated by the introduction of new gTLDs. As IPv6 reachability is a requirement of the technical evaluation criteria, it could indeed be that case that IPv6 adoption is accelerated by the program, as all prospective applicants will need to comply with this question. However, this is not necessarily applicable to the EOI being discussed throughout this summary.

3) Economic Study

Key Points:

- The EOI will define demand for new gTLDs for the first round. However, it is not likely that the round will provide dispositive information for economists studying the costs and

benefits of new gTLD introduction.

- EOI participants may introduce innovative business models and services that will inform the cost/benefit discussion.

Comment Summary:

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).*

Economic case for new gTLDs. Submissions under the EOI do not demonstrate the economic case for new gTLDs. *Com Laude (26 Jan. 2010).* *MARQUES/ECTA (27 Jan. 2010).* *IPC (28 Jan. 2010).*

Need for economic justification. ICANN should not implement the EOI until it is confirmed that there is an economic justification for gTLDs provided through an appropriate independent study and there are agreed criteria to protect the rights of brand owners. *UBS (26 Jan. 2010).* *USCIB (27 Jan. 2010).* *Ford et al. (27 Jan. 2010).*

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).*

Analysis:

One of the stated objectives of the EOI process is to inform the economic benefits/risk discussion. Assuming the EOI process is mandatory, it will demonstrate whether or not there is demand for additional gTLDs from prospective gTLD operators. Comments pointed out accurately that this demand is from potential registry operators, not necessarily from registrants. In addition to the EOI, ICANN has commissioned the writing of several third party independent analyses regarding the effects of new gTLDs on competition and cost/benefit. The analysis indicated that competition, in the form of new options for registrants, is beneficial to consumers and presumably would lead to some demand of second-level domain names.

4) Trademark

Key Points:

- The EOI should not be launched prior to definition of meaningful trademark protection mechanisms. Sufficient trademark protections, including elements like the Trademark Clearinghouse and URS, need to be in place prior to EOI launch.

Comment Summary:

Meaningful trademark protection. Offering pre-registration for new gTLDs before ensuring meaningful trademark protection is unacceptable to all those who have opposed ICANN's new gTLD program or sought to temper a hasty rush to implementation. These statements should not be taken as a waiver of the IOC's right to proceed against ICANN for damages resulting to the IOC or the Olympic Movement from the implementation of an unlimited number of new gTLDs. *IOC (26 Jan. 2010).*

Rights protection mechanisms such as the Trademark Clearinghouse and the URS should be fully established and adopted before any further step is taken to open for pre-registration. *IKEA (27 Jan. 2010).* The creation of a Trademark Clearinghouse must have clear strategic goals such as the scope of the database system and the agreement with ICANN, whereby the same assumes real responsibility over the system. *ASIFI (27 Jan. 2010).*

Trademark Concerns. Trademark issues need to be worked through; a step by step process is better for the Internet. Unlimited new TLDs can wait until their effects on the global community are accurately projected and accounted for. *M. Menius (13 Jan. 2010).*

Trademark-flagging. To address risks to trademark owners which are raised by the proposed EOI model, EOI applicants could be required to submit an independent legal opinion on the trademark infringement risks of their string(s) on globally protected marks. Globally recognized marks could be flagged for further analysis and trademark owners notified if they were not the same as the EOI applicant. The UDRP might have a role here. If the EOI is executed with a trademark-flagging process, it could enable globally protected marks owners to more easily protect their marks by bringing speculators out into the open before they file an entire application, and it may be effective in deterring them in the first place. *Big Room (27 Jan. 2010).*

Trademark filings. The volume of "me too" filings by trademark interests seems to be transforming the process into a popularity contest. How does ICANN view these comments and do others have to follow suit and play the same game in order to be noticed or be considered? *C. Roussos (20 Jan. 2010).* How can we bring innovation in the Internet space if ICANN is being indecisive about resolving issues? It is time for ICANN to do its job and serve the community and not continue to bow to corporate interests and agendas. There has been an outcry of unrealistic complaints from the trademark community. Also, there is a disconnect between departments in some corporations—on the one hand the legal department says no to new gTLDs based on trademark concerns, while the sales/marketing departments want to pursue business opportunities involving new gTLDs. *C. Roussos (29 Jan. 2010).*

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)*.

Analysis:

There is general agreement that rights holders should have some level of protection both in the EOI process, as well as when a new gTLD is actually delegated. In regards to the EOI process, while formal objections will not be allowed until the actual new gTLD application round commences, the existing rights objection, as highlighted in the Applicant Guidebook, is still relevant. Applicants would still be required to comply with all Applicant Guidebook rules thus any EOI applicants attempting to apply for a string that may violate existing rights face the same risks as would an applicant under the gTLD program. The objection process would continue to act as a deterrent against frivolous applications and rights holders should not feel obligated to apply for a gTLD for defensive purposes.

The concept of requiring EOI applicants to submit independent legal opinion on the trademark infringement risks of their intended gTLD was suggested. The idea has merit, however, with deterrent factors inherent to the existing rights objection process, this might unnecessarily add complexity and cost to the process and the EOI applicant.

A number of comments were concerning the need to have effective rights protection mechanisms, such as the Trademark Clearinghouse and URS, fully established and incorporated into the Applicant Guidebook prior to EOI process launch. The EOI process is intended to facilitate the launch of the gTLD program, but is not a guarantee of the launch, nor does it circumvent the policy implementation process. Rights protection mechanisms remain a priority for conclusion of the Applicant Guidebook, meaning that if effective rights protections cannot be agreed upon, it may delay the new gTLD program launch.

Finally, it was commented that rights holders might be intentionally delaying the process for their own self-interest. ICANN intends to integrate sufficient rights protection mechanisms, both at the top-level and the second-level, into the program, but to also shepherd the program towards completion in an expeditious, but responsible, manner.

5) Changes to the Applicant Guidebook (Post EOI)

Key Points:

- Outstanding Applicant Guidebook issues and overarching issues can be worked on concurrently with EOI process development.
- Agreed upon parts of the Applicant Guidebook should be locked and made available prior to EOI launch to promote clarity. Changes to the Applicant Guidebook should be independent of the EOI process, as there may be incentive to make changes specific to particular EOI responses and EOI responses may even intentionally seek to influence Applicant Guidebook composition.

Comment Summary:

Resolve outstanding DAG and overarching issues concurrently. Concurrent with the EOI development process, ICANN must resolve outstanding DAG and overarching gTLD issues such as rights protection mechanisms, community scoring and vertical integration. Resolving vertical integration is particularly critical because certain potential EOI applicants may be severely impacted if no registry-registrar integration is allowed; they need to know these rules before risking significant sums in non-refundable EOI application fees. *Demand Media (25 Jan. 2010).*

DAG changes. Parts of the DAG on which there is consensus should be identified and frozen. New emerging issues from EOI applications should be constrained to those applications that cause them. *AFNIC (27 Jan. 2010). E. Pruis (28 Jan. 2010).*

There will be an incentive to complete the Guidebook in a way that does not disqualify or even disadvantage a pre-registrant. *COA (27 Jan. 2010).*

It must be possible to adapt the rules once there is the enhanced forward visibility obtained through the EOI. The need for post-EOI changes of eligibility rules is inevitable. The root scaling study already shows that ICANN cannot launch thousands of TLDs in a short time frame. It is likely that based on the EOI results, ICANN will have to set priorities and/or exclude certain types of applications. *W. Staub (27 Jan. 2010).*

The rules for new gTLD applications must be clear and final before businesses with interests in submitting applications for new gTLDs can participate in an EOI. *USCIB (27 Jan. 2010).*

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)*.

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)*.

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)*.

Objection process. Should the DAG version 3 Objection Process apply as soon as details of EOI/Stage 1 applicants and strings are published? *MARQUES/ECTA (27 Jan. 2010)*.

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.)*

Community definition in new gTLD program. The definition of community in the latest DAG is troublesome; attention is needed to bring together a definition that is in the global public interest. A “multistakeholder group” community definition is more practical and realistic. It could better serve communities such as music that have multiple stakeholder groups which range from commercial constituency groups to noncommercial constituency groups. *C. Roussos (29 Jan. 2010).*

Sharing of TLDs. TLDs should not be under proprietary ownership of single private interests. If more than one entity is interested, they should be able to work out sharing arrangements. *H. Haggerty (17 Jan. 2010).*

Non-commercial 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).*

What determines if a party is eligible or not? How does ICANN spend the \$185K—are there budget plans available? Are gTLDs open for strings in characters outside the Latin alphabet? *TLD Consulting (23 Jan. 2010).*

EOI scope—database TLDs. Will the EOI process be only for sTLDs or also for uTLDs? TLD Consulting plans to introduce a sub-type to sTLD named dTLD for “database-driven” TLD where the TLD equals the name of a database like ISBN or ISIN, and the record key in the database equals the domain. As databases belong to parties, the parties might provide funding for the corresponding TLDs. *TLD Consulting (23 Jan. 2010).*

Reserved Words. Will it be possible to reserve words for future use or to prevent a party from requesting a TLD? Some new TLDs might cause damage rather than benefit. *TLD Consulting (23 Jan. 2010)*.

Dispute resolution. Is there an international court system in case a legal war breaks out between two or more eligible parties? *TLD Consulting (23 Jan. 2010)*. How are an applicant's rights affected if it decides to participate in the EOI program but a competitor with an interest in the TLD claims that they were unaware of the EOI program and therefore failed to apply? *ASIFI (27 Jan. 2010)*.

Step by step: distinguishing types of applications. It is imprudent to maintain any longer the claim that all applications are alike, indistinguishable and better deferred indefinitely than allowed to commence registry operations. The best course of action available to ICANN is to start with “.Paris” and proceed methodically through the applications believed to be meritorious in their own right, and which are inherently safe with regard to the four overarching issues, and not dependent on the changes proposed by the CRAI report's authors, ending registrar-registry separation or allowing single-registrant applications of arbitrary type. This will allow ICANN to move forward—a critical concern that the staff and Board may under-appreciate—and simultaneously allow ICANN to hold an EOI which answers important unanswered questions. This will remove any unfair first mover advantage of some ICANN participants; prevent a speculative market for EOI application slots; and equitably treat developing country applicants and small nonprofit TLD projects that operate in the public interest. *E. Brunner-Williams (27 Jan. 2010)*. *dotGAL (27 Jan. 2010)*.

New gTLDs—phased implementation. If the ICANN community wants to test the efficacy of the new gTLD process, a phased implementation would be more useful and impose less burden on brand owners. E.g., consideration should be given to allowing only applications for community terms or generic terms (insurance, bank, automobile, restaurant, etc.) during the first round. Such an approach would allow ICANN and all the various constituencies time to test the system and revise the application process as needed. *Coca-Cola (26 Jan. 2010)*.

It is time to build on information collected and focus first on actors whose strings apparently present none of the problems that we are trying to prevent. In other words, is it possible to reward the virtuous instead of penalizing them by withholding the process until the rules to deal with all bad actors are finalized? *B. de la Chapelle (28 Jan. 2010)*.

Application types. ICANN should consider streaming applications (e.g., Private Brand, City, Geographical Region, Generic, etc.) This will promote interest and encourage participation. *Com Laude (26 Jan. 2010)*.

Exception to the EOI Process for certain applicants. Applicants that are given priority in the DAG (such as Capital City applicants) should be allowed to submit their application to ICANN without having to go through the EOI. *City of Paris (27 Jan. 2010)*.

First mover advantage for fast track IDN ccTLDs. Fast track IDN ccTLDs have an unfair first mover advantage—they faced the same overarching issues as new gTLDs. Why were these IDN ccTLDs voted in without addressing these issues? *C. Roussos (29 Jan. 2010)*.

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)*.

EOI and application windows for gTLD round. 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)*.

ICANN needs to address the example of an “other than city” filing under the EOI for a city’s TLD. Would the city’s opportunity to file during the initial round then be controlled by that entity? *Connecting.nyc (29 Jan. 2010)*.

Analysis:

Comments regarding the Applicant Guidebook fell in to two basic categories, the first being changes to the Applicant Guidebook as a result of the EOI, and the second being changes to the Applicant Guidebook to accommodate additional gTLD categories.

The proposed EOI model suggests mandatory participation and a non-refundable deposit, which are considered crucial to gathering reliable data. This data will be used to help in achieving a number of the objectives that have been set forth while also providing certain benefits, among them, identifying unanticipated issues. It is expected that by potentially identifying issues and resolving them before program launch, it will actually expedite the overall process. In addition, as suggested by some comments, work on outstanding Applicant Guidebook issues and overarching issues will continue, unhampered by the EOI process development.

There were a number of comments that expressed concern about committing to the EOI process while the Applicant Guidebook remains in draft form. It is possible that this lack of clarity may deter participation in the EOI process because it shifts undue risk onto prospective participants. Also, there is the perception that the Applicant Guidebook may be edited to specifically qualify (or disqualify) certain EOI participants. As a mitigating control, some suggested locking portions of the Applicant Guidebook that are considered non-contentious. While this idea has some merit, ultimately, one of the expressed goals of the EOI process is to gather data that will better inform the new gTLD policy implementation. This does shift some of the risk to EOI participants, but it is controlled by a limited refund policy, where a participant becomes ineligible from Applicant Guidebook changes, they would likely be eligible for a full refund.

Other comments put forth the concept of introducing additional TLD categories or perhaps a phased approach, to hasten the launch of new gTLDs. The thought is that categories of TLDs that are considered non-contentious would be prioritized, benefitting these applicants of course, but also ICANN, by effectively establishing a proof of concept round from which to draw conclusions to improve the process. The concern with this approach is that the definition of a non-contentious application will vary greatly. And, by introducing a phased approach, ICANN would be putting forth an inherently unfair process that would benefit a particular group of EOI participants. As such, ICANN remains committed to a single EOI launch for all prospective participants, to avoid introducing undue first-mover advantages. The only distinction between applied-for TLDs will continue to be community versus standard.

E) OTHER TOPICS

1) Transferability

Key Points:

- Strings might be transferred or their might be changes in control of participants after the EOI is conducted. There is economic theory indicating that resources will naturally go to those parties who can bring the highest value. Specifically, the Coase Theorem (used to predict behaviour in other markets – particularly spectrum auctions) states that regardless of who obtains property rights (in this case a TLD), as long as the transaction costs are not too high, efficient outcomes will be maximized.

Comment Summary:

Transferability will foster speculation. If EOI slots can be transferred, the EOI process will become an arena for speculation; applicants will be those who bought slots from pre-registrants, and this will eliminate any value gained from having the EOI process enable an early start on the due diligence portion of the evaluation. *Time Warner (27 Jan. 2010).*

Restrictions on transfer need to address speculation, assignment and change of control type restrictions. *MARQUES/ECTA (27 Jan. 2010).* It is hard to see how transfers would serve the public interest. ICANN does not provide any evidence to support this assertion; a detailed justification is necessary. *AFNIC (27 Jan. 2010).* *COA (27 Jan. 2010).*

ICANN should not allow transfer of EOI-derived new gTLD application slots. If ICANN insists on allowing transfers, they should be limited to wholly owned subsidiaries of EOI applicants. *Microsoft (27 Jan. 2010).* *Lovells (28 Jan. 2010).* The EOI should not be used as an opportunistic investment by parties only interested in selling slots. If ICANN is truly looking for legitimate applicants with real business plans and credibility, then selling slots should not be permitted. ICANN is not a Ticketmaster secondary ticket selling agency. Applicants should not be allowed to flip their EOI slots to illegitimate third party candidates. *C. Roussos (29 Jan. 2010).*

The EOI is not meant to be an avenue for secondary market level TLD trading and we must avoid encouraging a high level of gaming. *E. Pruis (28 Jan. 2010).* Absent restrictions on transfers,

there is risk that speculators will game the EOI process by creating a new form of “domain name tasting.” The restrictions need to cover both assignment of EOI applications and change of control of EOI applicants. *IPC (28 Jan. 2010)*. The EOI should not be structured to promote gaming or to create a market for “slots” held by respondents. *Afilias (30 Jan. 2010)*.

Transferability and security and stability. How can a market for “slots” (see Risks Considered section on page 8) cause harm to the security or stability of the DNS? *E. Brunner-Williams (19 Dec. 2009)*. *AFNIC (27 Jan. 2010)*. Will the “token” gained in the EOI be transferable, and under what conditions and constraints? What does “does not harm the security or stability of the DNS” mean in this context? *A. Doria (14 Jan. 2010)*.

Transfer risks need to be managed. The resale market created by transfers could make coming to consensus on new gTLD policy more complex. Transfers could also corrode the accuracy of ICANN-collected data which could erode the value of the EOI round. If transfers are allowed, ICANN will have to consider how to keep market-influencing information about the new gTLD process secure and manage a bottom-up policy process in a timely fashion concurrent with the creation of this market. To prevent data corrosion, EOI applicants should have to agree to keep information they submit as part of the EOI up to date and be flagged for review if they do not. *Big Room (27 Jan. 2010)*.

One option is to call for an EOI, publish the strings afterward and then allow other applicants to apply for strings within this pool. This would determine the maximum number of TLDs and type of strings while eliminating a secondary market for TLD slots. *IKEA (27 Jan. 2010)*.

Addressing concerns about speculation. The concern about a “secondary market for EOI slots” can be addressed by making them non-transferable from the listed responsible individual in the EOI unless for purpose of resolution of collisions. *J. Frakes (28 Jan. 2010)*.

There will not be demand to buy EOIs so making EOI submissions for the sole purpose of flipping them is a high-risk venture and will not occur; even if it does happen, there is no harm. *P. Stahura (29 Jan. 2010)*.

The concerns about speculation are overblown. There may be some of this trading, but it will be limited and in any event it will not cause consumer harm (as a buyer of an EOI position must continue to meet all DAG requirements). *R. Tindal (29 Jan. 2010)*.

Transferability. The EOI submission and its deposit should be transferable to another party. Corporate and individual circumstances can change during a possible 18 month waiting period between the EOI closing, full applications and launch of new gTLDs. The EOI should not be a hindrance to an entity’s business and by allowing transfers of “slots” ICANN can complete its mission without affecting the ordinary course of business. *Demand Media (25 Jan. 2010)*.

Gaming concern. Offering participants the opportunity to submit a second string after the first EOI round if there is contention is not viable. Two entities could collude and submit the same string in EOI round one with the knowledge that they will get a second chance in EOI round 2 and they will know all of the other applied-for strings. *Smartcall (25 Jan. 2010)*.

“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)*.

String-Based EOI mechanism merits serious consideration. To date, in the discussion of the EOI there are: (1) points of significant agreement; (2) points that need to be further refined; and (3) issues of real contention that need to be resolved before any final decision. Identification of these areas shows that the only alternative is not “the current EOI—take it or leave it.” There are 3 approaches to choose from: (1) a mostly data gathering exercise; (2) focus on identifying the strings to be part of the first round (and not the applicants); (3) a full pre-registration process (actually a first phase of application). In many respects the second approach (focus on strings) has de facto occurred during the last two years because many potential applicants have revealed the strings they intend to apply for; that in turn has provided some useful information, including categorization and some sense of the number of ready applicants. This shows that an EOI mechanism based on strings is viable and useful, helps actors shape their projects, and makes the process much more transparent. *B. de la Chapelle (28 Jan. 2010)*.

French model. ICANN should give serious consideration to the EOI proposal by the French government (an applicant can express interest in one or more new gTLD strings and pursue its application, but other applicants for the same string or strings would not be precluded from competing for it). No additional strings other than those identified by EOI applicants would be considered for delegation in the first round. The French proposal could be a useful starting point for an EOI model. *COA (27 Jan. 2010)*.

The EOI should not be a proxy for changing agreed DAG procedures. For example, the GAC’s representative from France has proposed an EOI model that would amend the string allocation policy in Modules 3 and 4 of the DAG. The EOI is simply an administrative mechanism for

measuring the volume and type of anticipated strings, not a tool for revisiting agreed DAG procedures. *R. Tindal (29 Jan. 2010)*.

Make EOI specific to the string, not the applicant. The current EOI implies that the respondent who pays a fee to state interest in a given TLD will be the only one allowed to apply for that string. This could lead to speculation. To mitigate speculation, and to enhance the efficiency of the process, the EOI can be made specific to the string, not the applicant. *W. Staub (27 Jan. 2010)*.

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)*.

Analysis:

It is agreed that speculation within the EOI has the potential to inflate the number of strings, thereby corroding accuracy, and eliminating any value gained by performing early due diligence. Given the additional criteria of the EOI focused on ensuring accuracy (e.g. mandatory nature and required fee), it may also warrant limiting speculation of slots prior to the application round if practical.

That said, there is economic theory indicating that resources will naturally go to those parties who can bring the highest value. Specifically, the Coase Theorem (used to predict behaviour in other markets) states that regardless of who obtains property rights (in this case a TLD), as long as the transaction costs are not too high, efficient outcomes will be maximized. For example, given that today, anyone can purchase any second-level domain name relatively cheaply, one might expect chaos. But more often than not, typing in the name of a company or other subject matter results in navigation to a website associated with that company or respective topic. The Theorem suggests that regardless of who purchases the right to a domain name, it will ultimately end up in the hands of the party who values it most. Based on this reasoning, it is preferable to rely on market forces rather than seek control over market-generated outcomes.

ICANN does not have a role in the regulation of market forces; however, there needs to be a balance struck between the objectives of the EOI (an accurate estimate of intended strings) and a free market. The proposed \$55k fee may be an appropriate barrier to prevent abuses but may not prevent market-based transfers.

The dual call option is provocative and with some supporting comments, warrants consideration. It identifies a firm pool of total strings and then opens up those strings in the application round giving the total population of participants the option to apply for any strings in the pool. However, there are also concerns with this approach. The approach could be subject to abuse by a party submitting a string, any string, to buy a seat at the table and thereby the right to apply for potentially valuable or competitive strings they had not previously considered. The creation of the pool would appear to remove any competitive advantage from some applicants and their strings and opens the potential for such predatory behavior. The risk of such practices we believe outweighs the benefits proposed in this comment.

It has been suggested that speculation in slots is a high-risk venture and that this behavior is highly unlikely. While this may be true, speculation is by its very nature a risky undertaking and those who participate are willing to accept the risk for the potential return. That said, it is agreed that the ultimate holder of the string at the time of the application round will still need to abide by the requirements defined by the final Applicant Guidebook.

In summary, the EOI is intended to identify as accurately as possible the number of unique strings for potential delegation. Although the risk that speculation has the potential to negatively impact the results, both the likelihood and impact are low. Regardless, the string will be subject to market forces implied by Coase's Theorem prior to the opening of the application round. If a speculator cannot transfer the string prior to the opening of the application round it will most likely be withdrawn, at a cost of \$55k, and perhaps pursued in subsequent rounds.

2) Additional EOI Risks

Key Points:

- Effective risk management systems have been built into the process, rather than having risk identified on an ad hoc manner.
- The EOI could pose significant delays in launching the gTLD program. Extremely controversial applicants or strings will be in the public eye for extended period of time. This may result in the identification of new issues.

Comment Summary:

EOI model needs to be flexible and nimble and have risk management systems. As proposed the EOI model may be overly bureaucratic and result in delay. Effective risk management systems need to be built into the process, rather than having staff identify multitudes of risk and attempting to devise ways to avoid those risks. *K. McCarthy (28 Dec. 2009).*

Delay Risk. 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)*.

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)*.

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)*.

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)*

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)*.

Controversial strings. One EOI outcome that could invite litigation is that extremely controversial applicants or strings will be in the public eye for an extended period of time during which ICANN will be powerless to respond to a storm of criticism. *COA (27 Jan. 2010)*.

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)*.

Analysis:

A number of risks have been identified through the public comment process. Risks pertaining to certain aspects of the EOI are captured and addressed elsewhere in document while certain other risks are addressed below.

We agree that effective risk management processes should be built into the EOI process as well as the gTLD program. ICANN is implementing an organization-wide a risk management process. A key component of the process is to identify risks that need to be addressed based on the likelihood of occurrence and magnitude of impact to the organization as well as to individual processes, projects or program. The risks identified in the EOI Model followed this process. Where possible, strategies to mitigate risks are either captured throughout various aspects of the EOI model or are expected to be addressed through other activities such as operational readiness.

Several comments have highlighted concerns with the potential delay that the EOI could cause in launching the gTLD program while others realize and accept this risk as a way forward. We agree that there is a potential to further delay the gTLD program by focusing time and effort on an EOI however, there is also the possibility that the EOI helps to resolve open issues in a more efficient manner. In addition, the EOI effort will leverage operational readiness activities currently being developed for the gTLD program. Therefore, the impact on progressing the gTLD program is expected to be positive rather than negative.

Comments highlight the possibility of controversial strings being applied for through the EOI, which could cause out-of-process political pressures on the process and gTLD program. This is an inherent risk of the EOI and of the gTLD program in general. The EOI itself will not open up the evaluation or objection processes. These processes will launch in conjunction with the gTLD program and a third-party Dispute Resolution Provider will independently manage the process.

3) Other

Support for .zulu. We support the application of the Dot Zulu Project for the Zulu community. *His Majesty King Goodwill Zwelithini Kabhekuzulu (20 Jan. 2010).*

Support for .bayern. Being the patron of the Bayern Connect I support their effort to create a .bayern TLD. *H.R.H. Prinz Leopold von Bayern (26 Jan. 2010).*

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Lisa Rockas (L. Rockas)
Brian Ross (B. Ross)
Constantine Roussos (C. Roussos)
Stephen Ruskowski (S. Ruskowski)
Dylan Russell (D. Russell)
Morvarid Sahafi (M. Sahafi)
Donna Salas (D. Salas)
Dan Schindler (D. Schindler)
Andreas Schreiner (A. Schreiner)
Alexander Schwertner (A. Schwertner)
Imran Ahmed Shah (I.A. Shah)
Siemens Water Technology Corp. (Siemens Water Technologies)
Sierra Club
Simply Teeth
Sincere Management
Vania Sitruk (V. Sitruk)
Smartcall
Jason Sowder (J. Sowder)
Clare Speed (C. Speed)
Paul Stahura (P. Stahura)
Werner Staub (W. Staub)
Keith Storey (K. Storey)
Sun Microsystems, Inc. (Sun Microsystems)
Sunkist Growers, Inc. (Sunkist)
Christy Susman (C. Susman)
James Tarin (J. Tarin)
Sandra Lopez Tartonne
Paul Tattersfield (P. Tattersfield)
Amanda Taylor (A. Taylor)
Michael Terpin (M. Terpin)

The Syllabus, Onajobi
Time Warner Inc. (Time Warner)
Richard Tindal (R. Tindal)
Top Level Domain Consulting (TLD Consulting)
Todd Traina (T. Traina)
UBS AG (UBS)
Unidentified
Unite Berlin Initiative (Unite Berlin)
United States Council for International Business (USCIB)
U.S. Olympic Committee (USOC)
Antony Van Couvering (A. Van Couvering)
Hepzaba Veenstra (H. Veenstra)
VeriSign
Verizon
Lisa Vitovich (L. Vitovich)
H.R.H. Prinz Leopold von Bayern
Fabian von Schilcher (F. von Schilcher)
Lorenz von Schintling-Horny (von Schintling-Horny)
Caspar von Veltheim (C. von Veltheim)
Oscar von Wedekind (O. von Wedekind)
Stephan von Wrede (S. von Wrede)
Travis Walters (T. Walters)
Laura Wasser (L. Wasser)
Wasserman Media Group (Wasserman)
Steffi Weber (S. Weber)
Evan Wender (E. Wender)
Jim Willenborg (J. Willenborg)
Amy Wills (A. Wills)
Matthew Wills (M. Wills)
Alexander Wolffersdorff (A. Wolffersdorff)
World Carbon Database
Andres Wyld (A. Wyld)
Tad Yokoyama (T. Yokoyama)
Jennifer Ziegler (J. Ziegler)
Zodiac Holdings Inc. (Zodiac)
Yuri Zyabkin (Y. Zyabkin)