

# BC position on the ICANN new gTLD program proposal for a draft expression of Interest / pre-registrations model

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## Background

ICANN plans an unlimited expansion of new top-level domain names (gTLDs) in 2010 and beyond, and developed a process to assess applications for new gTLDs with tests for financial and technical robustness. Key overarching issues remain unresolved to date.

ICANN is proposing a draft model for soliciting Expressions of Interest (EOI) for new top-level domains. Entities interested in participating in the first round of the new TLD program would submit basic information about themselves and the requested domain. Highlights of the proposed model are:

- mandatory participation for eligibility to submit a first round gTLD application.
- \$55,000 deposit as a credit against the \$185,000 evaluation fee
- conditional on the conclusion of some but not all unresolved issues
- the participant and domain information will be made public.

The EOI proposal will be discussed at the ICANN Nairobi meeting.

See the BC web site [www.bizconst.org](http://www.bizconst.org) for the constituency's previous positions on new gTLDs in general.

## BC position on the EOI

ICANN should first address all of the overarching issues including completing an economic analysis and a final DAG.

The Business Constituency opposes the concept of pre-registration and expressions of interest for the following reasons.

### 1. Unclear objective

ICANN's Board should avoid taking a decision on EOI until the threshold question about its objective is answered. Is it data gathering or is it mandatory pre-registration for a specific string? See below for more detailed argumentation on both these issues.

### 2. Potential distraction from unresolved issues

There are still several important issues that remain unresolved in the Draft Applicant Guidebook. The EOI process has the potential to distract ICANN staff and the community from focusing on the completion of the DAG itself and the significant number of critical issues that are not yet resolved such as:

- trade mark protection
- malicious conduct.
- compromised Internet security
- vertical separation
- 3-character requirements for IDN strings
- rules on background checks
- financial disclosures
- conflicts of interest
- the ability to maintain a registry.

### 3. No substitute for an economic study: EOI may indicate supply but cannot indicate demand

An EOI may help provide supply-side information on the number of new gTLDs that are likely to be applied for but such an indicator does not equate with registrant demand for

new gTLDs. An EOI would measure the interest of applicant Registries in the supply of new gTLDs but not the demand from potential domain name registrants.

Thus, an EOI is not a substitute for the independent economic analysis on the demand side, which was requested by the Board in October 2006 and consistently called for by a wide number of other stakeholders including the Government Advisory Committee.

#### **4. Applicants are forced to invest blind**

The EOI would require applicants to essentially invest blind, thus the ICANN Board should not implement any EOI proposal until the essential rules for the new gTLD application process are agreed upon by the ICANN community. The BC does not believe that it is fair for ICANN to expect potential new gTLD applicants to engage in a mandatory EOI process, with limited terms by which any investment deposit may be refunded, while the rules for applications are not finalized. It is not enough for potential applicants to rely on vague guarantees.

Moreover, the current EOI proposal risks artificially inflating supply-side interest because it raises fears among many of being left behind.

In summary, there are important unresolved issues, and the mandatory and irreversible model forces applications without sufficient understanding of potential future costs, which is not good business practice. We urge serious consideration of the impact of proceeding with such an EOI proposal given the state of the DAG and the negative consequences on business users.

#### **5. Ignores market dynamics**

There seems to be no facility to allow competition for the same domain names after pre-registration. This may also lead to corporations pushed into operating a registry prematurely leading to closed registries within a few years.

#### **6. A lower than market fee may encourage speculation**

Speculators may pay \$55,000 to secure rights to certain domains instead of \$185,000 in the hope of selling-on to a third party. The creation of a secondary market for gTLD applicant slots prior to the commencement of the actual new gTLD application process is surely not the intent of ICANN's Board.

#### **7. Potential for delay to the launch of applications**

Public information derived from the EOI is likely to cause preliminary legal or other disputes that may halt the entire program. On the other hand, if all the issues are worked out and the launch begins, disputed applications will follow the laid-down dispute resolution procedures while undisputed applications move forward.

#### **8. Inconsistency with ICANN's own rules**

The EOI is inconsistent with previous ICANN practice on new gTLD applications which managed to get a sense of supplier intent without a formal EOI.

END