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Via Email

RE: ICANN Organization's Initial Feedback - Draft Process for handling a Community gTLD Change Request

Craig Schwartz
Managing Director
fTLD Registry Services

Dear Craig Schwartz,

Thank you for submitting the Community TLD operator working group's proposal of a process that could be used to handle proposed amendments to Specification 12 (Community Registration Policies) of the Registry Agreement for Community gTLDs. The ICANN organization appreciates the opportunity to review and provide input on the Community gTLD working group's draft process. We thank the working group for their time and effort in developing this proposal.

While we have been in discussions with the working group regarding the concept of developing a process or procedures to amend Community gTLD contractual requirements, the receipt of this proposal from the working group in July 2017 was the Global Domains Division's first time engaging on the substance. In our discussions since the receipt of the proposal in late July, the working group requested the ICANN organization's feedback, prior to a broader community consultation. This represents our initial feedback to the draft process at the request of the Community gTLD working group.

In assessing the feasibility of implementing the draft process, the ICANN organization considered lessons learned from the New gTLD Program as well as the administration of over 1,200 gTLD registry agreements, including the Registry Service Evaluation Process (RSEP) and subsequent contractual amendment processes. We understand through dialogue with the working group leader that this proposal contains elements from criteria in Community Priority Evaluation (CPE), Community Objections, and the Registry Service Evaluation Process (RSEP).

The ICANN organization agrees with the working group that a process for Community gTLD Change requests should include the registry operator conducting consultation with the relevant TLD community and collecting documentation of support from key participants in the TLD community as part of their preparatory work to submit an amendment request to ICANN. We appreciate the concept and level of detail in the Community gTLD Change Request form and support the use of this or a similar standardized request form in a finalized process.

The ICANN organization encourages the working group to consider a single process for all Community gTLD Change requests with a single set of standards to approve or reject a proposed change. The draft proposal outlines a process with multiple decision points that trigger specific reviews or comment periods with corresponding analysis, which would add time,

complexity, and opportunities for disputes or disagreements (either by the registry operator or others in the ICANN community).

For example, the draft process outlines two possible paths for a Community gTLD Change Request based on whether the Community gTLD faced contention in the application process or was awarded as a result of a successful Community Priority Evaluation (CPE) or Objection determination. We note that the New gTLD Registry Agreement treats all Community gTLD equally regardless of whether they were awarded based upon a successful CPE or Objection determination. Therefore, we recommend not to treat these cases differently. Moreover, we recommend that the ICANN organization conduct a standard public comment period for any change request by a Community gTLD in order to ensure a sufficient level of transparency to all interested stakeholders rather than only one conducted by the registry operator toward the TLD community, as described in the draft proposal. This suggestion leverages ICANN's existing processes for registry agreement amendments, which include public comments for material changes followed by approval by the ICANN organization and/or the ICANN Board.

Another example of a potentially unwarranted decision point is the review and determination by the ICANN organization of whether the TLD operator's consultation with the TLD community was adequate. Additional criteria would be needed to properly assess the adequacy of the consultation with the TLD community and the documentation of support. It should be noted, the assessments by the CPE Panel of documented community support or opposition in the CPE process were often a point of contention despite the enumerated criteria in the Applicant Guide Book. An alternative to developing these criteria would be to reconsider if such a determination by the ICANN organization is really necessary or if the process could continue without the ICANN organization making such a determination. As suggested above, we recommend all change requests be posted for public comment. Therefore, the requirement of an adequacy determination by the ICANN organization regarding the TLD operator's consultation with the TLD community could be an unnecessary decision point.

We further note that in Enhanced ICANN Review, the ICANN organization must determine if a material change request would have affected the decision in the CPE or Community Objection. During the New gTLD application period, third party panels were responsible for the assessment of CPE and Community Objection determinations. As proposed, this portion of the draft process would place the ICANN organization in the role of determining if new information would have modified a decision made by a third party panel years ago. We believe this again could be an unnecessary decision point as this decision would be used only to determine if the change request should be posted for public comment or not.

The proposal establishes the standard for the ICANN organization to accept or reject a proposal as the "likelihood of detriment to the rights or legitimate interests of the gTLD Community." While the draft process offers examples of factors that could lead to the determination of detriment, the definition remains rather subjective. It would seem that the expertise for assessing the "rights or legitimate interests" of a gTLD Community rests in each specific gTLD community. As a result, we would require additional clarity on how the ICANN organization could consistently, fairly, and accurately evaluate the change requests to this standard. Furthermore, the reference to "proposed equity" in Enhanced ICANN Review is somewhat

unclear and we would ask for additional clarification of the working group's expectations of this step of the process.

In general, we encourage clearer and objective criteria and timelines for any of the decision points within the process and we hope to collaborate further on these aspects.

Finally, the ICANN organization recommends additional guiding principles to clearly state the goal and boundaries of the draft process as a reference during its development, finalization, and implementation. This could help establish the goal of the process as a mechanism for Community gTLDs to request changes to Specification 12 (Community Registration Policies) without removing registration requirements upheld by the registry operator and the overarching principles as a Community gTLD. We also suggest defining eligibility of timing and frequency for registry operators to use this process. Example criteria to consider would be:

- Can this process be utilized to remove the community designation (and Specification 12 of the Registry Agreement) entirely?
- Can this process be utilized prior to:
 - Delegation into the root zone?
 - The TLD completing the standard start-up procedures (Trademark Sunrise & Claims)?
 - Operating in general availability for some period of time?
- If a change is approved, how frequently should an operator be allowed to make additional changes?

We reiterate our appreciation of the time and effort of the working group members to establish this draft process. We hope this feedback provides helpful insight to the working group and we look forward to continued discussion. We will be reaching out to you to set up time to continue the discussion.

Sincerely,



Russ Weinstein
Director, Registry Services & Engagement