

COALITION FOR ONLINE ACCOUNTABILITY

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Supplemental Comments of Coalition for Online Accountability January 14, 2011

The Coalition for Online Accountability (COA) offers these brief comments for two purposes. First, we comment on the Phase II economic study (“Economic Considerations in the Expansion of Generic Top-Level Domain Names: Phase II Report: Case Studies,” found at <http://www.icann.org/en/topics/new-gtlds/phase-two-economic-considerations-03dec10-en.pdf>), which had not been publicly released at the time of our December 3, 2010 submission on the Proposed Final Version of the Applicant Guidebook for new gTLDs (PFV). See <http://forum.icann.org/lists/5gtld-guide/msg00017.html>. Second, COA wishes to supplement one point in the comments it filed on December 3.

1. Economic Study Phase II

COA believes that the Phase II economic study is fully consistent with the Phase I report, and sends the same clear and compelling message: “an open entry process may not lead to the socially-optimal number of new gTLDs,” and therefore the new gTLD launch should be re-oriented to focus on the types of applications that offer the greatest potential benefits for the public, while minimizing the costs imposed upon third parties.

The Phase II study convincingly demonstrates that “additional generic, unrestricted TLDs using the Latin alphabet” fail both the benefits and costs prongs of this test. Phase II report, at 3. Such new gTLDs “would be unlikely to provide significant additional competition for .com,” and cannot be justified on the basis of a supposed “scarcity of generic second-level domains,” which the study finds is not “a pervasive problem.” *Id.* While providing little prospect for public benefits, such “standard gTLDs with open registration policies” are also precisely the sort of new gTLD “most likely to attract defensive registration by owners of valuable brands,” and thus to impose the most onerous external costs on third parties, especially the cost of public confusion and vulnerability to fraud. Phase II report at 74.

By contrast, “differentiated offerings” seem much more likely to provide public benefits, and to impose fewer external costs. This favorable balance may be most striking for gTLDs that use non-ASCII characters (“top level IDNs”). The same analysis might apply to ASCII gTLDs that are “either . . . community-based, or [that employ] restrictions on registrants or on the use of second-level domains within the gTLDs” (Phase II report at 3); but the report raises a caution flag about these, based on the disappointing experience of applications in prior launch rounds such as .mobi, .museum, or .aero.

The bottom line is that the Phase II report, like its predecessor from six months earlier, calls for a significant re-orientation of the planned new gTLD launch. COA once again urges ICANN to give top priority to making the course corrections needed to maximize the positive potential, and to minimize the risks, of the new gTLD rollout. We are, of course, gratified that the ICANN board did not follow through on its original intention to vote on approving the PFV before any meaningful opportunity to review the

American Society of Composers
Authors & Publishers (ASCAP)

Entertainment Software Association (ESA)

Software & Information Industry Association (SIIA)

Broadcast Music Inc. (BMI)

Motion Picture Association of America (MPAA)

Time Warner Inc.

Recording Industry Association of America (RIAA)

The Walt Disney Company

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Phase II report. Now, however, it remains necessary for the Board either to follow the advice its consulting economists have given it, or to explain persuasively why it is in the public interest not to do so.

2. Preventing Malicious Conduct

In section II of its December 3 comments, COA commended ICANN for including, as new gTLD application criterion 35, a requirement for “security measures that are appropriate for the applied-for gTLD string.” We noted that asking the applicant to describe “any augmented security levels or capabilities commensurate with the nature of the applied for gTLD string” would allow members of the public to assist the evaluators, through the public comment process, in applying this criterion.

Our December 3 comments failed to note, however, that under the PFV, answers to question 35 would not be made public. Thus, the predicate for public assistance to the evaluators in applying this criterion could not be fulfilled. This is a significant problem. For example, industry experts in the area of protecting creative content online would be unable to analyze whether an applicant for a gTLD focused on a particular creative sector would be proposing to take the steps necessary to reduce the risk that the new gTLD would be a haven for massive copyright infringement.

This problem could be solved in one of two ways. First, responses to question 35 could be made public (with appropriate redactions as necessary to prevent the disclosure of sensitive security information). Alternatively, and perhaps more simply, application criterion 28, which deals with “abuse prevention and mitigation,” could be modified to require applicants to present “comprehensive abuse policies and procedures that effectively minimize potential for abuse in the TLD, *taking into account the nature of the applied-for gTLD string and the intended uses of registered domain names in the gTLD*” (italicized language to be added). If the concept of a “commensurate level of security,” now featured in question 35, were also adopted as a criterion for “commensurate level of abuse prevention and mitigation,” under question 28, the public could provide the needed assistance to evaluators, because all responses to question 28 are made public.

We also reiterate here our support (as spelled out in the December 3 submission and previous filings) (1) for providing for some sort of formal objection procedure that could be instituted against applications that, in the view of the objector, fail to meet this “protection commensurate with the nature of the string” criterion; and (2) for clarifying that not only financial services-oriented TLDs, but also others that present an unusually high risk of being the venue for criminal, fraudulent or illegal conduct, could be required by the evaluators to meet “new independent standards for demonstration of effective security controls,” or of effective abuse prevention or mitigation, as the case may be.

Respectfully submitted,

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