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ICANN:

SEEKING EQUITABLE & JUSTIFIABLE REDUCTION TO ICANN MINIMUM REGISTRY FEES

Reviewing the 2012 application round for new generic Top Level Domains (gTLDs), a casual observer would no doubt declare it an unqualified success. From a purely commercial point of view, that conclusion would be difficult to challenge. Yet ICANN is also charged with managing the global internet *in the public interest*, where drawing a comparable conclusion would be unlikely.

According to IANA there are currently 657 gTLDs and 575 dot-brand TLDs from the 2012 application round in addition to the 313 existing ccTLDs and 22 original generics. The 1,232 new TLDs resulting from the 2012 round represent an absolute increase of 5,600% (=1,232/22) from the original generics.

Given that ICANN's \$25,000 annual minimum fee assessment represents an amount set prior to the total number of applications being ascertained, what should ICANN be doing in the public interest to assure success beyond the commercial sphere? It was recently reported that dot-Hebrew [דִּיָּוּ. (.xn--9dbq2a)] is off to a "slow start" at less than 3,500 to date, but with Wikipedia estimating just seven-to-nine million Hebrew speakers in the world, should gTLDs like דִּיָּוּ. be crushed under the weight of ICANN fees being the single largest line item in their recurring budgets?

Rather than by consensus of all new gTLD applicants, the minimum fee level was established before the realities of the application round were known, and largely reflected the input of industry insiders with great influence. .whoswho believes that ICANN's commitment is to be fair to every registry operator, and not just the most powerful among them, and will see that maintaining the minimum fees as established - pre-application - is not justifiable. Pre-application was a vastly different time.

For example, in follow-up to the submission of our application, ICANN posed a "clarifying question" regarding .whoswho's initial response to Q.48, which sought an answer concerning what market research had been conducted in support of its application. Now, like all other applicants, .whoswho had in advance been advised of/directed to a Verisign report on the state of the .com and .net domain markets. However, given the blind application process, the open-ended nature of applications, and the multiple variables for each possible new gTLD, extrapolating data from the .com and .net TLDs in a world of just 22 gTLDs into the vast unknown seemed utterly meaningless. Yet little more than citing to the Verisign data was required to clear the Q.48 "clarifying question" hurdle; to "check the box," if you will.

Although Specification 13 was not even finalized when the application window closed, it may be concluded that companies seeking dot-brand status had predetermined that such annual expenditure in defense of their marques was affordable. Regardless, seven percent (7%) of dot-brands have taken the decision post-delegation to eat their losses and voluntarily terminated their ICANN contracts. The first gTLD (.doha) has also reportedly just done so.

At Article 3.2 of the 2013 Registry Agreement, ICANN covenants as follows regarding Equitable Treatment: ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.

.whoswho does not believe that Article 3.2 imposes any obligation on ICANN to maintain “one size fits all” pricing across all TLDs covered by the 2013 Registry Agreement, but rather that disparate treatment – in part ***in the service of the public interest*** – be based upon standards, policies, procedures and/or practices that are NOT applied arbitrarily, unjustifiably or inequitably. To proceed forward in this regard, such standards, policies, procedures and practices must be articulated.

Accordingly, .whoswho writes today to initiate a dialogue leading to equitable and justifiable reductions in minimum ICANN registry fees paid by innovative and niche market gTLDs

, such as .whoswho. Under current, onerous terms, ICANN’s \$25,000 minimum represents the single largest item in .whoswho’s budget, the weight of which suppresses development of the gTLD and the realization of its full potential as .whoswho seeks to re-strategize and find avenues to success through innovative uses of the DNS in the public interest (of course, pursuant to Specification 11, as required).

Accordingly, .WHOSWHO writes today to initiate a dialogue that will lead to the equitable and justifiable reductions to minimum ICANN registry fees paid by innovative and niche market gTLDs, for whom the USD25,000 minimum ICANN fee represents among the single largest recurring items in the registry’s budget. By information and belief, BEROs have responded competitively to the marketplace as it is today, as have Registry Operators.

But the weight of ICANN’s inflexible and onerous terms will continue to suppress development among the new TLDs seeking the realization of their full potential as they endeavor to re-strategize and find avenues to success through innovative uses of the DNS, perhaps in the public interest, as .whoswho intends to do.

.whoswho further believes that the *status quo* is, in and of itself, a violation of Article 3.2 of the Registry Agreement because such flat fees are assessed equally across all TLDs regardless of actual costs, and without regard to externalities. In this context, .whoswho has recently submitted our abuse compliance reports for July-November 2018, in which .whoswho reports NO ABUSE WHATSOEVER FOR THE ENTIRE PERIOD. Yet, under existing parameters ICANN is forced to bear, and .whoswho and other “good actors” to indirectly subsidize, the externalities generated by “bad actors” within the Registry community.

.whoswho looks forward to ICANN’s favorable consideration and a more discerning vision as to instances in which contributing value ***in the public interest*** demands a lower threshold for gTLD management. Additionally, when “good actors” are rewarded financially, rather than being forced to share in the costs of externalities generated by “bad actors,” ICANN will have taken action - beyond

financial considerations – to reverse damage both to the DNS and within ICANN’s sphere that is both reputational and persistent.

Thank you to the ICANN community for your attention to this request.

Respectfully,

John McCabe
for Who’s Who Registry