

The issue concerns the Registry Contract in the Discussion Draft and is related to an issue that came up in the review of the .net contract.

The draft includes the following presumption of renewal clause:

Article 4

4.2 Renewal.

(a) This Agreement will be renewed for successive periods of ten years upon the expiration of the initial Term set forth in Section 4.1 and each successive Term, unless:

(i) Following notice by ICANN to Registry Operator of a fundamental and material breach of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement, which notice shall include with specificity the details of the alleged breach, and such breach has not been cured within thirty (30) calendar days of such notice, (A) an arbitrator or court has finally determined that Registry Operator has been in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (B) Registry Operator has failed to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court; or

(ii) During the then current Term, Registry Operator shall have been found by an arbitrator (pursuant to Section 5.2 of this Agreement) on at least three (3) separate occasions to have been in fundamental and material breach (whether or not cured) of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement.

(b) Upon the occurrence of the events set forth in Section 4.2(a) (i) or (ii), the Agreement shall terminate at the expiration of the then current Term.

The presumption of renewal is a policy item on which the community has not yet reached agreement. Many argue that while there should be an advantage to a Registry who is not in breach, there should still be a chance for the community to review the performance of a Registry in respect to the manner in which it has served the global public interest of the Internet community: "how well has the Registry lived up to the obligation of running this gTLD"

In the report from the [GNSO PDP on Contractual conditions \(doc. 2006/01/03.2\)](#) approved on [Aug 09 2007](#), the following Recommendation was documented:

"The right of renewal should be standardized for all gTLD registry agreements. Two Constituencies supported this view and two abstained. (TOR 4: Rec 4A1)

"The right of renewal should be standardized for all registry agreements except when there is an exceptional situation. (TOR 4: Rec 4B1)

Until such time as an issue that splits the community in half is resolved, the presumption of renewal should be discussed by the community and should not be made policy by being enshrined in a contract. At the very least a clause should be added that, should a Policy Development Process be held on the topic of presumption of renewal, the consensus view of such a PDP would be applicable to future considerations of renewal for this contract.