

GNSO gTLD Registries Stakeholder Group Statement

Issue: Policy versus Implementation - Draft Framework

Date: 21 February 2013

Public Comment URL:

<http://www.icann.org/en/news/public-comment/policy-implementation-31jan13-en.htm>

This statement on the issue noted above is submitted on behalf of the gTLD Registries Stakeholder Group (RySG). The statement that follows represents a consensus position of the RySG as further detailed at the end of the document. The RySG statement was arrived at through a combination of RySG email list discussion and RySG meetings (including teleconference meetings).

Introductory Comments

The RySG thanks ICANN staff for preparing the paper titled ‘Policy versus Implementation - Draft Framework’ for community discussion. It is a topic that deserves serious attention by all of us in the community and one that is very timely.

We want to start off by agreeing with staff that “developing a bright-line rule as to what is policy or implementation may not be possible” because each situation for which a policy/implementation decision is needed has its own unique characteristics. We believe that the paper makes this point very well by describing a range of situations and by citing various examples that illustrate the range of options. At the same time we think that it is critical to develop a clear, community-supported approach to distinguishing policy development and implementation activities, and the principles and framework proposed in the paper provide a constructive start to the discussion.

Comments on Proposed Principles

Here is our view about the proposed principles, which we have abbreviated and quoted below, followed by our assessment in *italic font*:

1. “The determination of whether a consensus is present should consider the perspectives of all Supporting Organizations (SOs) and Advisory Committees (ACs) that have weighed in on the issue, not just the one where the policy originated.”
 - *This is a valid principle but we would add some caveats. It is the responsibility of the originating SO to provide timely notification to the rest of the community about policy development and/or implementation process. But it is the responsibility of the other SOs and ACs and stakeholders in general to determine whether or not they are impacted by that activity, and to provide their input in a timely manner. If notification is effective and*

affected stakeholders have had an opportunity to provide input, reopening issues should be done with caution. If that does not happen effectively for any stakeholder group, then the most appropriate action would be to refer it back to the primary body that developed the consensus.

2. "ICANN has supporting organizations with specific responsibilities for areas of ICANN's policy development . . ." and "(t)he Bylaws also recognize the important roles of advisory committees in the policy processes . . ."
 - *These two sentences are accurate but they are really statements of fact rather than a principle. A corresponding principle might be worded something like this: "The roles of supporting organizations and advisory committees should be clearly articulated and respected in decision-making processes."*
3. "Policies might apply to certain operational activities . . . or they might apply to Internet stakeholders such as gTLD registries and accredited gTLD registrars."
 - *This is a true statement. The same thing could be said about implementation plans. We are not sure how much value this adds as a principle except to point out that policies come in different forms with different impact.*
4. "ICANN staff will typically publish information on a proposed implementation of the principle or requirement . . . The implementation information is published for public feedback, and the implementation is refined. ICANN may continue to refine the implementation of the requirement over time as more experience is gained - without having to go back to a requirement defined in the policy as recommended, so long as public comment is solicited with regard to those proposed implementation refinements. The community can assess the success of the implementation against the requirement."
 - *We may support this principle but are still unclear about what is meant by saying "without having to go back to a requirement defined in the policy as recommended". Unless there is a misunderstanding on the part of this group as to the exact scope of the statement above, we think that it is continually necessary to go back to the defined requirement until such time that there is broad community support for deviating from that requirement and even then to do so cautiously.*
5. "In order to ensure compliance with a policy requirement, it is beneficial to include implementation details in the policy recommendation(s), and for that implementation guidance to also be part of the consensus policy as incorporated into the relevant contracts and/or agreements. This ensures that ICANN can clearly determine whether the policy is being followed."
 - *This is definitely a preferred practice but there have been times in the past when it probably was not doable and that likely will be the case in the future as well for complicated policy issues where it is difficult to reach consensus. The new gTLD PDP is a good example of this; if the PDP WG had tried to define implementation details, they may still be going today. In that case the implementation work took several years longer than the policy development work because the GNSO recommendations left a huge amount of work to do to reach agreement on implementation plans. It is probable that*

defining most of the implementation details in the PDP would have taken even longer than doing it after the PDP. This suggests that everything after the “policy” was issued was “implementation.” In our view, the PDP WG left some policy issues unresolved – we don’t think that is necessarily a bad thing, but reflects the reality that sometimes policy development is necessarily iterative. The principles should reflect this and the procedures should enable ICANN to publish information that calls for additional policy development where appropriate. Where “surgical” policy is needed, it is worth considering whether the PDP process could be streamlined or provide for more flexibility. We are of the view that some of the policy versus implementation debate could be handled through better policy development processes.

6. “One area of improvement may be to clearly separate policies from documents such as the registrar accreditation agreement (RAA), so the community can clearly assess and help evolve current policies, although clearly the RAA and other contracts would need to be aligned with the new policies. . . . Another improvement may be to clearly separate policies that apply to ICANN (e.g., as relates to the evaluation of new gTLD applicants), from policies that apply to Internet stakeholders such as registries, registrars, and registrants.”
 - *These seem to be helpful practices.*

Comments on Draft Framework

The RySG believes that the draft framework provides a very helpful starting point for outlining a process for making decisions about whether specific issues deal with policy or implementation. As indicated in the staff paper and stated at the beginning of our comments, it will not be possible to establish a ‘bright-line rule’ but it should be possible to develop a process and procedures that will greatly assist the community in this regard. With regard to the framework, we support:

- The starting premise that “. . . a proposed change is treated as an implementation change unless the objective is to create new obligations on certain parties”.
- The proposed procedure that “outlines the next steps depending on whether the proposed change is considered an: (i) administrative update, error corrections and clarification; (ii) change involving public consultation; or (iii) other changes as directed by the ICANN Board.”

While we support the ‘starting premise’ conceptually, we note that this demarcation will not be very helpful if the “policy statement” is too general. For example, if the “principle” is that new gTLD operators should “protect intellectual property rights,” then one could argue that even overly broad, entirely untried and/or unanticipated requirements are simply “implementation.” Accordingly, the underlying policy statement should be specific and concrete enough to put stakeholders on notice about possible implementation parameters. We look forward to participating in efforts to develop the concept of the proposed “Policy Guidance” track to deal with cases where “advice from Implementation Review Teams, SOs and/or ACs indicates that ‘Policy Guidance’ is required”. We believe that this is an area where GNSO focus is needed.

Questions for Discussion

Abbreviated discussion questions from the staff paper are provided below in quotation marks followed by RySG responses in *italic font*:

- a) “. . . should the level of implementation that should be part of the actual PDP be detailed? Should it be mandatory to form a Community Implementation Review Team whose task it is to provide guidance and/or clarification as needed to ICANN Staff as they develop the implementation plan?”
- *To the extent possible, PDP recommendations should include implementation detail, but that will not always be possible. Each policy development effort will need to be evaluated relative to its own unique characteristics. All PDP WGs should be encouraged to provide as much implementation detail as possible within a reasonable timeframe. Factors that should be considered include: i) the complexity of the policy issues; ii) the diversity of views in the impacted community; iii) estimated time to complete the PDP; iv) estimated time to develop implementation details; v) urgency of completing the entire process. In some cases, it may be more effective to separate policy development from implementation plan work. As noted in the staff paper, the New gTLD PDP is a good example of this. To the extent implementation detail cannot be provided, the PDP recommendations should strive to identify areas where additional policy work may be needed based on issues that become evident only in the first cut at implementation.*
 - *Forming a Community Implementation Review Team should not be mandatory. It would be unnecessary in cases where the PDP WG was able to provide adequate implementation details in its recommendations. Where that is not possible, a Community Implementation Review Team may be very useful. One additional question that should be asked is this: Would it be helpful to form multiple Implementation Review Teams in cases where the overall policy recommendations are fairly complex and can be divided into discrete categories that require different types of expertise?*
- b) “What guidance should there be on the level of particularity that PDP recommendations should embody and how/where should that be specified?”
- *See the first response to question a) above.*
- c) “How can such a consultation mechanism, proposed above as a policy Guidance WG, be improved to clarify this advice-seeking role?”
- *The GNSO should initiate a WG to develop such a mechanism. It might be appropriate for this effort to be a PDP.*
- d) “How could such consultation mechanisms be clarified to better explain the purpose and role and outcomes of the work requested? How can the work of these consultation mechanisms be updated to take into account input from other SO/ACs and the public?”
- *These questions should be included as part of the charter in the WG suggested in the response to question c) above.*
- e) “There should be recognition of the potential for overlap in responsibilities between an SO/AC and ICANN . . . where it still may be appropriate for Staff or the Board to act. In ICANN’s multi-stakeholder bottom-up policy development structures, the inability to reach consensus on key issues could produce stalemates that by default preserve the “status quo” instead of enabling

badly needed changes In addition, there may be instances where competing ‘policy advice’ is given by different SO/AC. How is the Board expected to handle such situations?”

- *First of all, it should not be assumed that a stalemate is necessarily bad. It may simply mean that there is no community consensus on how to address the issues where changes are being considered. As long as the status quo would not create any security or stability issues, that may be an acceptable outcome, although not necessarily the only option. In fact, considering the hugely diverse Internet community, it is naïve to assume that we will always be able to reach consensus or that such a consensus should, in and of itself, always be the goal. This orientation is also in line with ICANN’s first, second, fourth, fifth, seventh and ninth core values as presented in Section 2 of the organization’s Bylaws.*
 - *Second, where there is this kind of overlap, thought should be given to modifying the PDP process to include some cross stakeholder consultations to build consensus and produce, where possible, agreed upon principles to guide the policy development. We note that this approach has been used successfully by the ccNSO on several occasions.*
 - *The RySG does recognize though that there may be times when ‘badly needed changes’ are in order. Such times should be handled with serious caution because it is in times like these that there is risk of bypassing the bottom-up multi-stakeholder process that is critical to the Internet’s success. Care must be taken to involve the full community before deciding that ‘badly needed change’ is in order and in defining what that change should be, bearing in mind the respective advisory and decision-making attributions allocated to specific ICANN bodies.*
- f) “. . . could a little ‘p’olicy adopted to meet the needs of a specific circumstance (example, the Conficker response) evolve based upon changing circumstances or experience with the effectiveness of the little ‘p’olicy?”
- *Yes. Policies or procedures that are developed to address very specific circumstances should not be continued if the circumstances change. They should be modified or ended as the circumstances change.*

Possible short-term improvements

The RySG supports the staff suggested short-term improvements (shown in quotation marks below) with some qualifications as shown in *italic font*:

- “SOs/ACs to identify/specify which processes are to be used when ‘Policy Guidance’ is to be provided.” – *As stated earlier in our comments, we believe that the GNSO should form a WG to do this, but we are not convinced that this is a short-term task.*
- “ICANN Staff to provide a rationale as to why something is considered implementation and not policy (if it differs from the implementation guidance as provided in the policy recommendations). A standard set of questions could be developed for this purpose.” – *The community should be involved in developing the ‘standard set of questions’.*
- “Encourage SO/AC to be as specific as possible with regard to the implementation guidance provided with the policy recommendations or advice.”

- “SOs/ACs to identify/specify which processes are used to develop a position on whether a proposed action is to be considered policy or implementation.” - *We are not convinced that this is a short-term task for the GNSO.*
- “ICANN Board to detail their processes for requesting ‘policy guidance’ as well as how to deal with policy advice when received from the different SO/ACs.”

RySG Level of Support

1. Level of Support of Active Members: [Supermajority]

- | | |
|--------------------------------------|----|
| 1.1. # of Members in Favor: | 13 |
| 1.2. # of Members Opposed: | 0 |
| 1.3. # of Members that Abstained: | 0 |
| 1.4. # of Members that did not vote: | 1 |

2. Minority Position(s): None

General RySG Information

- Total # of eligible RySG Members¹: 14
- Total # of RySG Members: 14
- Total # of Active RySG Members²: 14
- Minimum requirement for supermajority of Active Members: 10
- Minimum requirement for majority of Active Members: 8
- # of Members that participated in this process: 14
- Names of Members that participated in this process:
 1. Afilias (.info, .mobi & .pro)
 2. DotAsia Organisation (.asia)
 3. DotCooperation (.coop)
 4. Employ Media (.jobs)
 5. Fundació puntCAT (.cat)

¹ All top-level domain sponsors or registry operators that have agreements with ICANN to provide Registry Services in support of one or more gTLDs are eligible for membership upon the “effective date” set forth in the operator’s or sponsor’s agreement (RySG Charter, Article II, RySG Membership, Sec. A). The RySG Charter can be found at http://www.gtldregistries.org/sites/gtldregistries.org/files/Charter_for_RySG_6_July_2011_FINAL.pdf

² Per the RySG Charter, Article II, RySG Membership, Sec.D: Members shall be classified as “Active” or “Inactive”. An active member must meet eligibility requirements, must be current on dues, and must be a regular participant in RySG activities. A member shall be classified as Active unless it is classified as Inactive pursuant to the provisions of this paragraph. Members become Inactive by failing to participate in three consecutively scheduled RySG meetings or voting processes or both. An Inactive member shall continue to have membership rights and duties except being counted as present or absent in the determination of a quorum. An Inactive member immediately resumes Active status at any time by participating in a RySG meeting or by voting.

6. ICM Registry LLC (.xxx)
 7. Museum Domain Management Association – MuseDoma (.museum)
 8. NeuStar (.biz)
 9. Public Interest Registry - PIR (.org)
 10. Societe Internationale de Telecommunication Aeronautiques – SITA (.aero)
 11. Telnic (.tel)
 12. Tralliance Registry Management Company (TRMC) (.travel)
 13. Universal Postal Union (UPU) (.post)
 14. VeriSign (.com, .name, & .net)
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