

I'd like to point out to the ICANN Board that the proposed registry agreement between ICANN and DotCooperative LLC (.coop) has at least one unique provision in it – different than prior sTLD and gTLD agreements. This provision is problematic for two reasons. First, in general, having unique provisions in registry agreements is not in the best interest of ICANN or the ICANN community. Second, the specific new provision in the draft agreement – permitting .coop to seek an exemption from ICANN-approved Consensus Policies – is certainly not in the best interest of ICANN or the ICANN community. Indeed, ICANN should be supporting its core principle of bottom-up consensus policy making, as opposed to enabling top-down consensus policy exempting.

Specifically, [Section 3.1\(b\)\(vii\)](#) of the proposed agreement would grant a new and unique right to .coop that apparently does not exist in any other TLD agreement:

“In the event that the Sponsor has a reasonable basis to believe that the established Consensus Policy is not relevant, or may represent an unreasonable burden to the Sponsored Community, Sponsor shall have the right to seek an exemption from ICANN. If ICANN declines the exemption, the Sponsor and ICANN shall utilize the process for resolution of disputes set forth in Article 5.”

ICANN should reject .coop's demand for a vehicle to exempt it from Consensus Policies and ensure that all members of the ICANN community abide by the same set of bottom-up processes and rules.

Uniformity in contracting should be encouraged.

There are many reasons to support fundamental similarity in the form and content of ICANN registry agreements. Uniformity helps ensure fairness to the contracting parties. No one registry should be able to negotiate a better deal and create an uneven playing field.

Uniformity also means that other parties won't need to demand updates to their agreements. Allowing one registry operator special terms leads to demands for similar treatment by the other TLD operators. This is not to say that registry agreements can't be improved, but one time exceptions generally do not make sense. Once a new beneficial provision is granted for one registry, the others rightfully would want the same provision. We saw this most recently with the [.biz, .org, and .info](#) registries seeking similar provisions granted in the .com agreement, and with the [.mobi](#) registry seeking similar payment terms as the [.tel](#) registry.

Having uniform terms also would save ICANN resources. It would minimize the level of legal resources used in individual contract negotiations with registries in the first place, as well as resources working on reactive amendments.

Likewise, uniformity in the registry agreements would foster transparency – one of ICANN's core values. When everyone in the ICANN community can expect that registry agreement terms are fundamentally similar and ensure a level playing field, there will be greater confidence in the ICANN system. For the broader Internet community, it means that we won't have to spend considerable time and effort combing various proposals for differences between terms. Unfortunately, in this case, we couldn't count on ICANN's initial claim that the current proposal “provides for the same set of requirements for these key terms . . . [including] compliance with consensus policies.”

ICANN itself has supported the principle of bringing registries agreements into uniformity. We have seen ICANN mention this in its calls for public comments on the more recent [.museum](#) and [.asia](#) agreements, and in its justification for approving the [.biz, .info and .org](#) renewal agreements.

.Coop should not be able to seek exemptions from Consensus Policies.

One of ICANN's core principles is its bottom-up, consensus-driven approach to policymaking. Consensus Policies are at the cornerstone of ICANN's existence and they are not easily developed. They require the active participation of the GNSO, various constituent groups, the ICANN staff, and the ICANN Board, and take a great deal of time to complete. Indeed, since 1999, ICANN has only enacted seven Consensus Policies.

.Coop already is protected against problematic Consensus Policies without this provision. Under the contract, the subject matter of any Consensus Policies impacting .coop is limited to those areas enumerated in the contract (the so called "picket fence"). Moreover, under Section 3.1(b)(v) of the proposed agreement, .coop may ask for a reasonable amount of time to become compliant with any Consensus Policy. Finally, .coop is represented by the Registry Constituency during the policy development process, and may participate in the process in its individual registry capacity. To the extent that it or its sponsoring community has some sort of concern with a proposed policy, it can be addressed during the policy development process.

If this agreement is approved as is, .coop would be able to seek exemption from any Consensus Policy it reasonably believes is not relevant or that would be a burden to its sponsored community. Of course, as mentioned above, the other registries would want this same provision. Such an exemption for one or more registries would completely undermine all of the effort that went into crafting that policy. It also would diminish the prospect that ICANN constituents would be willing to invest the substantial time and effort that goes into a Consensus Policy if they knew that one or more of the registry operators could simply get an exemption for their user base. Such an outcome would be antithetical to a consensus-based organization.

This is especially true considering that the criteria for granting an exemption are not defined in the proposed renewal agreement. Nor does the agreement state who at ICANN would need to approve or deny the exemption. If ICANN doesn't grant an exemption, it might even be subjecting itself to litigation from the impacted registry.

It appears that the rationale for seeking this unique right to seek an exemption is that .coop wants to be able to delegate certain policy making authority to its sponsoring organization. Removing the problematic language would not alter the sponsoring community's ability to make certain policies for the registry.

Moreover, some have argued that .coop has certain rights in its 2001 agreement that should be maintained in this agreement. I find that argument to be the most specious. I'm sure that .coop was very happy to accept the uniform provisions in the draft agreement that gave it a 10 year term versus a 5 year term in the 2001 agreement, as well as an automatic right of renewal versus a requirement that it justify its renewal. In return, .coop should happily accept the requirement that it abide by Consensus Policies, as all other registries have committed to in their contracts.

ICANN should reject this provision and any other unique provisions in the draft .coop agreement.

With that said, I am very supportive of .coop and wish it success in continuing to serve its sponsored community. I am not supportive, however, of ICANN agreeing to a provision that would be a very bad precedent for other registries, would cast a shadow on the policy development process, and undermine one of ICANN's important core values.

Respectfully,

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