



## GoDaddy.com Comments on CRA International Report

23 December 2008

### 1. Introduction

1.1. Go Daddy has and continues to be an advocate for eliminating the existing limits on registry/registrar cross-ownership. The CRAI report is not definitive in its conclusions but generally favors at least relaxation of the current cross-ownership limitations.

1.2. The arguments that have been presented in favor of maintaining the status quo simply do not hold water. Current and past examples of cross-ownership already serve as test cases that demonstrate cross-ownership can and does work, and it can be successfully monitored.

1.3. It is clear that many within the community have concerns about relaxing registry/registrar cross-ownership rules, and that these concerns are part of a larger body of issues that have been raised regarding the new gTLD implementation plan. We recommend that Staff and Board consider a limited and well controlled roll out of the new gTLD process.

### 2. Eliminating Limits on Registry/Registrar Cross-Ownership Will Stimulate Competition.

2.1. Competition in the gTLD domain name market at the retail level is alive and well. This is evident from; a) the number of registrars and resellers; b) the retail prices of domain names; c) the range of complimentary services offered by registrars; and d) the range of registrar business models. Competition at the wholesale or registry level is not yet evident.

2.2. At the end of 2004, three years after the introduction of the first new gTLD (.info), .com registrations accounted for 71.60% of all gTLD domain names<sup>1</sup>. There are now fifteen live gTLDs opened for general or sponsored registrations. However, as of 31 July 2008 .com registrations accounted for 73.82% of all gTLD domain names<sup>1</sup>, an increase of 2.22% over 2004, and a slight increase (0.1%) over 2007<sup>1</sup>. The combined original gTLDs of .com/.net/.org accounted for 90.27% of all gTLD names at the end of 2004<sup>1</sup>, and 91.72% as of 31 July 2008<sup>1</sup>. Any claim that the introduction of the twelve new gTLDs has increased competition is arguable. The original three gTLDs still control the market, with .com by far the most dominate player.

2.3. Promoting competition and choice is one of the principles upon which ICANN was founded, and is a primary reason for the introduction of new gTLDs. However, the CRAI report notes that, "While ICANN's approach has generally supported and stimulated registrar competition, economic theory and practical experience in many other industries have shown that mandating ownership separation can sometimes hinder, rather than foster, effective market competition."<sup>2</sup> The CRAI report goes on to state that, "Experience has shown that the experimentation and innovation that often result when firms are free to operate without vertical restrictions can produce significant benefits for consumers."<sup>3</sup> Ultimately, the CRAI report concludes, "The potential benefits of vertical integration briefly identified in Section 6 offer a clear argument in favour of a relaxation of the vertical separation requirement where the competitive concerns

described above are not strong and there is no price cap. We would encourage ICANN to consider a full liberalization of this requirement.”<sup>4</sup>

2.4. ICANN Staff and Board came to a similar conclusion in 2001 when proposing the revised VeriSign agreement for .com/.net/.org stating that it had become, “apparent that the importance and value of the separation of ownership of VeriSign's registry and registrar businesses to ICANN and the community had diminished quite significantly over the 15 months since the original registry agreement was signed.”<sup>5</sup> ICANN Staff and Board concluded, “ownership separation is no longer necessary or useful in promoting competition... This reflects ICANN's belief that there is little if any additional competitive value under today's market circumstances in forbidding the registry operator from also being a registrar, so long as it is done in such a way so as not to discriminate against other competitive registrars.”<sup>6</sup> In addition, the original registry agreements for .info, .biz, .name, and .pro required only legal, not ownership, separation of registry and registrar functions.<sup>7</sup>

2.5. The 2001 announcement also noted that ICANN had not received any complaints regarding discriminatory conduct by VeriSign<sup>8</sup>, and to our knowledge no such complaints have ever surfaced regarding any gTLD. Yet, in 2005 new registry agreements and the agreements negotiated for renewal of registry contracts began to contain provisions that limited registry ownership of registrars<sup>9</sup> with no rationale provided to the community for such change. Given ICANN's previous position as noted above, and the fact that there are no known problems that would justify such a change, it appears as though the registries themselves requested this change. In the interests of transparency we would like to know the rationale for this change.

2.6. The pending introduction of new gTLDs has the potential to introduce competition at the registry level. This is recognized in the CRAI report as well as by ICANN Staff and Board. Eliminating the arbitrary restrictions on vertical integration would enhance the potential for successful competition. This too is recognized in the CRAI report and by ICANN Staff and Board. It will allow for a wider range of experienced applicants with knowledge of domain name consumer expectations and needs. It will also provide newer entrants a better opportunity to succeed.

2.7. The dominance of .com in the market place will continue for some time to come. It will not be challenged by simply increasing the number of gTLDs; we have already seen that has not worked. Operators of new gTLDs will need not only an appealing string, but will need significant amounts of time, resources, and registrar support to effectively garner mind share from the incumbent gTLDs. The amount of time that a new operator of a gTLD will have to succeed is directly related to the financial resources it has to draw on and its ability to garner registrar support.

2.8. Owning or otherwise operating an accredited registrar will require additional financial resources. These will be in addition to the financial resources required for operations, to market and promote a new gTLD, and to recruit a substantial base of accredited registrars. ICANN Staff and Board should consider reducing the minimum annual fee of \$75,000. We would suggest a lower minimum fee of \$30,000 annually for registries with up to 100,000 names and increasing by \$3000 increments for every additional 10,000 names up to a maximum minimum annual fee of \$75,000. This will allow new operators to use their available resources where they are really needed and give them more time to succeed. The possible reduction in failed registries may make up for any short fall in cost recovery, or may be made up from any excess application fees collected.

2.9. We believe the only way to guarantee a new operator will have registrar support is to allow it to own or control a registrar of its own. This must be done with the existing accredited registrar paradigm or we will risk the loss of the registrant protections that have been or will be developed through the accreditation and consensus policy processes. It may be possible to duplicate these protections in some fashion by accrediting the operator to sell directly to the consumer but that creates the necessity for the ICANN Staff and community to maintain parallel processes for accreditation, compliance, and policy. A registry selling direct to consumers also destroys the concept of equitable treatment of registrars due to the inevitable perception by consumers that buying direct provides advantages over buying through resellers. During the recent consultations regarding the CRAI report various concerns have been raised regarding registry/registrar cross-ownership. We address those in the next section.

### **3. Recent Concerns Voiced Regarding Registry/Registrar Cross-Ownership.**

3.1. Concern: *A registry owned or operated registrar could be used to economically disadvantage other registrars.*

3.1.1. Response: There is a huge market incentive against this. A successful gTLD will need the support of a large base of accredited registrars and a reputation for conducting business fairly and equitably. The registrars themselves will police this to a large extent. There is also nothing preventing this today between a registry and registrar who decide to work together. In fact, it would be more difficult to detect when there is no known relationship. Either ICANN can enforce equitable treatment in all situations, or it can't.

3.2. Concern: *If a registry owned or operated registrar were allowed to offer registrations in other, non-affiliated gTLDs the registry would have access to domain name check availability search information and the contact information of its competitors, giving it an unfair advantage against the other gTLDs. Or the registry may provide this information to its registrar, giving it an unfair advantage over other registrars.*

3.2.1. Response: Registries typically have access to this information now. Many registrars, including GoDaddy.com, check availability of names against multiple registries, often including all gTLD registries and several ccTLD registries, whether that particular registries TLD has been specifically selected for the search by the user or not. So access to this information is not new. Most existing registries also have provisions in their agreements allowing them to make use of what is called "traffic data" that could include availability check information to promote the sale of domain names. They may also share this data with third parties as long as it is done on terms that are not discriminatory<sup>10</sup>. Again, providing its own registrar or any other registrar it may be partnering with special access to this data is an enforcement issue. If ICANN can enforce it today, the ownership issue makes little difference.

3.2.2. Contact information is already public information and available via port 43 and Web interfaces. Registrars are even required to make it available in bulk form. Other personally identifiable information that may be held by a registrar may be made available through renting or selling of lists. Again, access to this information is not new. How it is used is the key issue, and that is true regardless of the ownership issue.

3.3. Concern: *To avoid gaming, warehousing, etc. the registry owned or operated registrar should have a cap of 50,000-100,000 names. Once that cap is hit the registry operated registrar should no longer be allowed to offer new registrations but could continue to support management of their existing names.*

3.3.1. Response: This concept simply provides a warm fuzzy. The concerns about gaming or taking advantage may have some merit and is something ICANN Staff should be wary of, but if a registry is going to engage in gaming or warehousing it is not likely to do it in such an obvious way – through its own registrar. Either way, gaming and warehousing by a registry is more likely to occur within the first 50,000 names, or even far less, since this is when the more valuable names are still available and being allocated. In reality, if cross-ownership works successfully with the first 50,000 names, there really is no sound reason to limit it there.

3.3.2. Others, including the CRAI report, have expressed the related idea that registries with market power and/or price caps should continue to have restrictions on cross-ownership. While there is no known evidence that supports such conclusions, we would not oppose it. But we believe that for such registries, pricing issues, such as the removal of existing price caps, are a much bigger concern. Please see our submitted comments on the Application Guidebook for more detail.<sup>11</sup>

3.3.3. Another problem with imposing arbitrary limits on the number of new registrations is that existing registrants who want additional names in that name space must then manage them between two different entities, or incur additional expense in getting their existing names transferred. Just trying to explain such a situation puts the registry in an awkward situation that would incur considerable support costs and risks the loss of registrants in their name space. It creates unnecessary registrant confusion and potential for gaming that is not likely even completely understood.

3.4. Concern: *Registry/Registrar cross-ownership is a new concept that should not be tried with this first round of new gTLDs.*

3.4.1. Response: This is not new. Besides the aforementioned VeriSign ownership of the registry and registrar functions of .com/.net/.org, there are currently numerous examples where cross-ownership or similar situations exist. Hostway owns and operates the .pro gTLD registry. A consortium of registrars formed the .info gTLD registry and some are still investors and occupy the Board. There are also examples within the ccTLD community that can shed light on the fact that fears are unfounded. VeriSign controls both the registrar and registry functions of .tv. Go Daddy is the largest shareholder in the venture that controls the registrar and registry functions of .me. There are no such integration restrictions within several major ccTLD name spaces, yet it isn't collapsing, there is robust competition, and the ccTLD space continues to grow. It is our opinion that most concerns over registry/registrar ownership are because it *\*will\** truly introduce more competition into the gTLD name space.

3.4.2. What is new are the two test cases suggested by the CRAI report. The concept of Single Owner TLDs<sup>12</sup> describes aspects of private network TLDs that are currently employed by many corporate entities. There is no need for an entry in the public root to accomplish much of what is described. The very act of putting a corporate identity into the root will present issues later when that entity desires to expand its use of the TLD. The CRAI report wisely suggests that a bright-line definition of whom or what qualifies for this type of TLD should be developed to avoid gaming by applicants with broader intent. We suggest that before contemplating the addition of Single Owner TLDs to the process the matter should be referred back to the GNSO Council for vetting with the community and examination of the policy implications. The Hybrid Integrated TLDs<sup>13</sup> is simply not a true test case. None of the concerns raised about integration would actually be tested. It also does not address the issue of registrar support for new gTLDs.

3.4.3. We understand the desire to create a climate where new registries have an opportunity to succeed and create real competition at the registry level. Allowing integration, which has been tried with no evidence of real problems, is a better solution than untried, complicated, and confusing ideas with which there is no real understanding of what will be involved in enforcing them or what protections registrants may ultimately lose.

#### **4. A Limited and Well Controlled Roll Out May Dispel Many Concerns.**

4.1. We believe that many of the concerns expressed regarding the new gTLD process and registry/registrar cross-ownership may be addressed by limiting the application round and the number of new gTLDs approved, and by the addition of a preliminary Letter Of Intent stage.

4.2. In our comments on the Draft Applicant Guidebook we suggested a practical limit of 100 applications during the first round of the new process, and that from those 100 applications no more than 20 new gTLDs should be approved<sup>14</sup>. The limits are aligned with Principle A of the GNSO policy which calls for new gTLDs to be introduced in an orderly, timely and predictable orderly process will also enhance ICANN's ability to follow through with Implementation Guidelines, paragraph 3<sup>15</sup>.

4.3. A preliminary Letter Of Intent stage would provide an opportunity for the entire community to have an overview of the possible first round applicants as well as to provide comment and feedback. It would allow ICANN Staff to gauge the resources necessary for various aspects of the actual application process. And it would provide the applicants themselves with valuable information to use in making their final decision to apply. A description of a possible implementation of this stage and its benefits is in the attached document, Preliminary Stage for Letters of Intent.

#### **5. Conclusion and Recommendations.**

5.1. Allowing registry/registrar cross-ownership will help new entrants succeed by providing a viable option for guaranteed registrar support. Maintaining the accredited registrar paradigm will maintain existing and future registrant protections and lower implementation costs for ICANN Staff.

5.2. The minimum annual fee should be lower and based on the number of names under management, allowing for lower costs in the earlier stages of the registry lifecycle leaving resources available for registry/registrar operations, marketing, and promotion.

5.3. A limited and controlled roll out will address many concerns expressed by the community and is in line with the GNSO policy which calls for a predictable and orderly introduction of new gTLDs.

5.4. Introducing a preliminary stage for Letters of Intent will reduce costs, allow for better planning, and provide transparency into the process.

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## References

1. Registry Operator Monthly posted on ICANN's website:  
<http://www.icann.org/en/tlds/monthly-reports/>
2. CRA International report of 23 October 2008 on Revisiting Vertical Separation of Registries and Registrars(CRAI08), page 2, last paragraph, first sentence:  
<http://www.icann.org/en/topics/new-gtlds/crai-report-24oct08-en.pdf>
3. CRAI08, page 3, first paragraph, third sentence.
4. CRAI08, page 27, last paragraph.
5. ICANN Announcement, 1 March 2001 (ICANN01), Section C, first paragraph;  
<http://www.icann.org/announcements/icann-pr01mar01-1.htm>
6. ICANN01, Section D, paragraph 5.
7. Archived registry agreements:  
<http://www.icann.org/en/registries/agreements-archive.htm>
8. ICANN01, Section B, first paragraph.
9. Registry Agreements dated 2005 and later, section 7.1(c), see .travel and .com for example:  
<http://www.icann.org/en/registries/agreements.htm>
10. Registry Agreements, section 3.1(f), see .com, .info, and .biz agreements for example:  
<http://www.icann.org/en/registries/agreements.htm>
11. GoDaddy.com comments on Draft Applicant Guidebook, Section 4:  
<http://forum.icann.org/lists/gtld-guide/msg00131.html>
12. CRAI08, Section 7.1, page 28.
13. CRAI08, Section 7.2, page 28.
14. GoDaddy.com comments on Draft Applicant Guidebook, Section 5:  
<http://forum.icann.org/lists/gtld-guide/msg00131.html>
15. Summary Principles, Recommendations & Implementation Guidelines:  
<http://gnso.icann.org/issues/new-gtlds/summary-principles-recommendations-implementation-guidelines-22oct08.doc.pdf>



## Preliminary Stage for Letters of Intent (LOI)

1. This preliminary stage would allow potential applicants to first submit a LOI that identifies and describes in some detail the gTLD, how it is intended to be used, target market, and how it will be operated. The results of this stage will have numerous benefits to the community, the applicants, and to ICANN.
2. The cost of this stage should be minimal. There will be some administrative costs that need to be considered, and the fee adjusted accordingly. But the fee should be cost recovery based and justifiable as such. This step could also result in the creation of the applicants application account.
3. This stage would be a mandatory step for anyone intending to apply for a new gTLD. In fact, only the participants of this stage would be allowed to submit an actual application later. A set period of time would be allowed for this stage, perhaps 30-days. All LOIs would be kept confidential until the LOI period closes.
4. Once the LOI period closes, all LOIs are made available for public comment and objection for a period of time, 30-60-days. This could be done by providing a typical public comment forum, and also allowing for a separate submission of a Notice of Intent to Object (NIO), the required content of a NIO needs to be discussed further. All comments and NIOs would be made public.
5. There would be short period after the comment/NIO period closes, perhaps 10-days, during which the potential applicants may post a public response if they choose.
6. At the completion of the LOI stage, potential applicants will have to decide whether they believe moving forward with a full application is still desirable.
7. At this point, the application round opens allowing only those who submitted LOIs to complete full applications if they still choose to move forward. **NO NEW APPLICANTS WOULD BE ALLOWED.** The process (and application cost) continues from here as currently defined in the Applicant Guidebook or as it may be refined based on recent public comments.
8. Benefits to the community:
  - a) Allows the entire community to see what new gTLDs may be proposed;
  - b) Provides an opportunity for registrants to express their support, concerns, and objections;
  - c) Allows IP stakeholders to identify potential conflicts and make them known through NIOs.
  - d) Allows Governments, NGOs, and civil society to identify potentially objectionable strings and provide comments or NIOs.

- e) Allows registrars, resellers, and hosting and application providers to see what may be coming and begin to prepare for it as necessary.
- f) Allows the technical community to submit concerns or questions regarding affects on the DNS, possible security issues, and affects on other critical applications.

9. Benefits to the Applicants:

- a) Allows them to better evaluate the real costs that will be associated with their application - costs of objections, possible auction if there are multiple applicants;
- b) Allows them to see if there are community based competitors for their string;
- c) Allows for evaluation of initial public perception, concerns, questions regarding their intended gTLD;
- d) Gives them an opportunity to fine tune their applications as they may deem necessary, or alternatively, to pull out without incurring any additional costs.

10. Benefits to the ICANN Staff:

- a) Allows for resource planning – level of work for evaluators, potential for objections, potential for string contention, etc.;
- b) May help to identify security and stability issues that Staff and evaluators will need to prepare to examine;
- c) Will invoke confidence of the community by providing a transparent and open process through which all stakeholders may play a part;
- d) May result in the more contentious strings not continuing on with the actual application process.

11. There are no doubt other benefits not identified above. There will be objections to such a preliminary stage such as it delaying the process, discouraging potential applicants from continuing, etc. This should all be considered before any decision is made to include this preliminary stage, and prior to finalizing exactly how it will work. However, I am confident that the mechanics can be adjusted to overcome any concerns and that the overall benefits will far outweigh any concerns that cannot be fully addressed.