JN Squared Proposal

1. Definitions
   1. “Affiliate” shall mean a specified person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity specified.
   2. “Control” (including the terms “controlling”, “controlled by” and “under common control with”) shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting or debt securities, by contract, or otherwise.  As used in this definition, the term “control” means the possession of beneficial ownership of more than fifteen percent (15%) of the equity interests or more than fifteen (15%) of the interests entitled to vote for the election of, or serve as, the board of directors or similar managing authority of the entity.
2. Registry Operator or its Affiliate may serve as an ICANN-Accredited Registrar in any top-level domain other than the TLD for which Registry Operator or its Affiliate serves as the Registry Operator.
3. Except as set forth in Section 4 below, Registry Operator may not be Affiliates with an ICANN-Accredited Registrar distributing names in the TLD.
4. For the first 18 months of the New TLD program, ICANN only may approve a greater than 15% interest (or control) in three cases:
   1. Single Registrant TLD -- use must be limited to registrant entity, its employees, and its agents -- no other third parties
   2. Community Applicant – Registry Operator or its Affiliates must only maintain up to 30,000 domain name registrations in the TLD.
   3. Orphan Registry Operator -- Registry Operator must make good faith showing that it attempted and failed to get traction in registrar marketplace, and Registry Operator or its Affiliates must only maintain up to 30,000 names without demonstration that it again made good faith efforts to attempt -- and failed -- to get traction in the registrar marketplace. In order to maintain this exception, the Orphan Registry Operator must demonstrate on an annual basis that it made good faith efforts to attempt – and failed – to get traction in the registrar marketplace. No change of control shall be allowed of an Orphan TLD absent ICANN approval. In the event ICANN approves change of control by an ICANN-Accredited Registrar, they lose orphan TLD status.

ICANN may consult with relevant competition authority at its discretion when reviewing any of these requests for approval.  In so doing, ICANN should use a "public interest" standard.

1. After the first 18 months, ICANN may amend the criteria for its approval of a greater interest only with consensus approval of the community.  ICANN also may consult with relevant competition authorities at its discretion or at the request of the applicant when reviewing a specific request for approval.
2. Use of Registrars/Discrimination -- Registry Operator must use only ICANN-accredited registrars in registering domain names, provided that Registry Operator shall have the flexibility to determine eligibility criteria for Registrars in its TLD; such criteria shall be applied equally to all ICANN-Accredited Registrars; such criteria are reasonably related to the purpose of the TLD; and the Registry Operator may not discriminate among the registrars it selects.
3. Back-end Registry Operators -- these requirements to be added to the Registry Operator Agreement
   1. Back-end registry service providers are bound by the same rules as the Registry Operators if they (a) are Affiliates with Registry Operator, or (b) otherwise control the pricing, policies, or selection of registrars for that TLD.
   2. Back-end registry service providers that are not Affiliates with Registry Operator or don’t otherwise control the pricing, policies, or registrar selection may be affiliated with an ICANN-Accredited Registrar only if the affiliated registrar operations are kept separate from the operations of the registry service provider; the affiliated registrar does not receive preferential treatment in pricing or any other way; strict controls are in place to prevent registry data and other confidential information from being shared with affiliated registrar; annual independent audits are required; and a sanctions program is established.
4. Registrar Resellers -- these requirements to be added to the Registry Operator Agreement:
   1. Restriction on Registry Operators or its Affiliates from serving as or controlling an ICANN-accredited registrar extends to registrar resellers for the first 18 months of a Registry Operator's existence. If an exception has been granted under Section 3, then those exceptions shall equally apply to this restriction.
   2. After 18 months, Registry Operators may distribute domains as a registrar "reseller" as long as the ICANN-Accredited registrar that it distributes through is not affiliated with Registry Operator; the operations of the affiliated registrar reseller are kept separate from the operations of the Registry Operator; the affiliated registrar reseller does not receive preferential treatment in pricing or any other way; strict controls are in place to prevent registry data and other confidential information from being shared with affiliated registrar reseller; annual independent audits are required; and a sanctions program is established.