

It is impossible to know or completely understand all potential business models that may be represented by new gTLD applicants. That fact has been an obstacle to finding consensus on policy that defines clear, bright line rules for allowing vertical integration and a compliance framework to support it while ensuring that such policy is practical and beneficial in the public interest.

However, it is recognized that certain new gTLDs likely to be applied for in the first round will be unnecessarily impacted by restrictions on cross-ownership or control between registrar and registry<sup>1</sup>.

During discussions there seemed to be general acceptance of the need for a process that would allow applicants to request exceptions and be considered on a case by case basis. The reasons for exceptions and the conditions under which exceptions would be allowed, varied widely in the group, but there did seem to be a general acceptance of the need for the following:

- Possible exceptions based on certain public interest needs where those needs would not otherwise be addressed (certain language groups, developing countries, certain communities due to size or economic conditions, etc.).
- In cases where the facts of competitive disadvantage cannot be established until after operations are begun (e.g., “orphan” registries), the exception may be requested and granted, but only exercised when defined circumstances are met (e.g. insufficient registrar support).
- That there needed to be an agreed upon list of circumstances defining the cases where the granting of an exception would be allowed.
- That an external review panel would be responsible for reviewing applications for exception
- That the Vertical Integration Policy Development Process should provide a set of guidelines for an external review panel
- There should be no additional cost to the applicant for requesting the exception or for being evaluated for it. The evaluation would take place at an appropriate point following the Initial Evaluation. If the request is denied, the applicant may withdraw and receive the appropriate pro-rated refund.

It was also accepted that if there is consensus on these five bullets then they could be recommended to the GNSO council and that the VIWG would continue to discuss the elements on the exception list, the nature of the review panel, and the guidelines that would be provided to that external review panel while the public comment period and other PDP follow-up processes were ongoing. The public comment could specifically request comments on the elements of the exceptions lists and other elements related to an exceptions policy. These comments would then be considered by the VIWG and, if appropriate, folded into the recommendation on the

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<sup>1</sup> Note: this proposal does not presuppose any specific control or cross-ownership thresholds but rather deals with the case of exceptions to that threshold policy. The issue of specific control or cross-ownership thresholds are dealt with elsewhere in the VIWG reporting.

details of the exception policy and sent to the council for review and approval. A specific VIWG charter extension for this work would be recommended to the GNSO Council.

Examples of the kind of criteria for exception that will be discussed as the VIWG continues its work include but are not limited to:

- a. Where the registry cannot find unaffiliated registrars to offer its gTLD to the public.
- b. Where the gTLD caters primarily to a specific language group, and where the registry cannot find unaffiliated registrars who will offer its gTLD in an order process in that language.
- c. The applicant may define criteria reasonably related to the purpose of its gTLD as conditions for Accredited Registrar participation, but may not otherwise discriminate or restrict Accredited Registrar access.