Free Trade Model

1. LIMITS DO NOT APPLY ACROSS TLDS

In the Free Trade model for the coming round, there are no limits to Cross Ownership (CO) & Functional Control for new TLDs that distribute domains with equivalent access. The issues discussed around this concept have very little to do with percent ownership and more to do with the abuse and harms of having integrated control of data. Setting random percent ownership limits does nothing to mitigate harms and abuse. Such abuse examples are Discrimination, Insider trading, Domain registration abuse, Domain tasting, Front-running, Predatory pricing, Account lock-ins, Transfer-out pricing, reduced product variety. No harms have been shown to have occurred unmanageably to date, in any namespace, due to lack of VI/CO restrictions. Any alleged harms, if any, occur roughly equally across DNS, regardless of any such restrictions, if any. Whether the Registry (Ry) operates in self distribution model or a co-distribution model with "equal access" to all ICANN-accredited registrars, the concept of market power is essential when conducting the risk analysis and policy development of allowable models.

In the new TLD space, and indeed the existing gTLDs (perhaps other than .com/net/org), there is no justification for any restrictions on vertical integration, cross-ownership, or the requirement of any or equal access to registrars. On the other hand, there is much likely benefit from avoiding or eliminating those restrictions. All other models foster the demand for exceptions in addition to the issue of harms and abuse. Therefore no such restrictions or requirements should be imposed upon new TLD registry operators. Of course, registrars will continue to be widely used by consumers to register new gTLD domains, to that extent the registrars must be ICANN-accredited to offer gTLD names. Registries who sell direct must also agree to the RAA and pay registrar fees to ICANN.

Registrars will still be able sell most new gTLDs and charge fees based on their business model, but the ability to buy direct from a registry is certainly in consumer best interests to keep registration fees lower. ICANN assumes that the new TLD launch is in consumers' best interest, in order to expand consumer choice among domain names and in order to encourage DNS innovation, so it is logical that ICANN should enable new entrants to the gTLD market as much as possible. Thus the ability for new registries to sell direct, and to control their own distribution channel outside of ICANN's traditional model, is certainly in consumer's best interests.

2. CONTROL/OWNERSHIP

No ownership limits. 100% Cross Ownership and complete Vertical integration is allowed.

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4. EXCEPTIONS

The Free Trade model removes the need for exceptions like Single Registrant – Single User (SRSU), Single Registrant – Multiple Users (SRMU), & Orphan TLDs.

5. REGISTRY SERVICE PROVIDERS

New gTLD Registry Operators should be free to contract with Registry Service Providers (RSP) regardless of ownership, so long as the obligations of the Registry contract are fulfilled.

6. COMPLIANCE AND ENFORCEMENT

To the extent that any harms are actually caused by violation of CO or VI restrictions today, it is because existing rules have not been clear enough and/or have not been enforced fully enough. Clarity in the rules would greatly benefit new TLD operators, Regardless of the rules that are devised, if any, ICANN's funding of contractual compliance resources and expertise must match the demands of the new gTLD expansion.

Questions:

What is the best way to prevent gaming in a cross-owned entity -- percentage ownership caps, restrictions on control, both or something else?

- Percentage ownership caps become irrelevant with respect to gaming if Functional Control is allowed and compliance to address violations is established. Gaming is primarily a function of the Vertical Integration debate rather than the concept of Cross Ownership. Therefore to mitigate gaming of new TLDs, the community must identify the ways these forms of abuse stemming from Functional Control can affect the market and establish a compliance framework that defines the thresholds, monitors for breach, and enforces penalties for violations.

Do the benefits of increased competition (registrars becoming registries or back-end service providers) outweigh the potential risks of gaming from a cross-owned entity, or vice-versa?

- Yes. The potential risks of gaming, if any, can be addressed by compliance, monitoring, and enforcement mechanisms.

Common ownership

Should a registry be able to own a registrar, and vice versa, provided it doesn't distribute its own TLD?

- Yes, and should be able to distribute its own TLD.

What is an acceptable level of cross-ownership (0 - 100%) if self-distribution is permitted?

- 0 – 100%

What is an acceptable level of cross-ownership (0 - 100%) if self-distribution is prohibited?

- 0 – 100%

Should a registry be able to control a registrar, and vice versa, provided it doesn't distribute its own TLD?

- Yes, and should be able to distribute its own TLD with the equivalent access model

Absent an arbitrary restriction on percentage of cross-ownership, what constitutes control?

- The functional control of Registrar data and operations of the TLDs in which they operate.

What restrictions should be put in place to prevent control? Do these vary if self-distribution is prohibited?

- Functional control should not be prevented, but any abuses and gaming that are alleged as likely to result from control should be researched and contractually defined in a manner that removes the incentive or contains consequence.

Enforcement and Compliance

Is ICANN capable of enforcing contract compliance to prevent gaming in a cross-owned entity?

- To the extent we understand the alleged harms, and how the marketplace has adequately addressed those harms to date in TLDs that have no VI/CO restrictions, the answer is yes. Any rules can be "gamed" by someone's definition of gaming. Eliminating CO/VI rules will result in less need for compliance as to corporate formalities, which are generally irrelevant to issues of abuse. Thus elimination of CO/VI rules will allow more compliance resources to focus on combating actual DNS abuses that affect internet users.

Scope

Should the scope of ICANN contracts be increased?

- No, Back-end Registry Service Providers (RSPs) shall be required to be accredited by ICANN for technical sufficiency. It is expected that RSPs shall also be bound by the similar terms, conditions, and restrictions imposed on Registry Operators through their contractual agreement with each Registry Operator.
- Existing ICANN contracts may require a few adjustments based on implementation.

Specifically, should Registry Service Providers be required to enter into contracts with ICANN?

- No, Back-end Registry Service Providers (RSPs) shall be required to be accredited by ICANN for technical sufficiency. It is expected that RSPs shall also be bound by the similar terms, conditions, and restrictions imposed on Registry Operators through their contractual agreement with each Registry Operator.

Should other entities (eg Resellers) also be required to enter into contracts with ICANN?

- No, not at this time.

Exceptions to cross-ownership and self-distribution restrictions

Permitted for Single-Registrant, Single-User (SRSU) TLDs?

- Not applicable with the Free Trade model

Permitted for "orphaned" TLDs that can't get registrar distribution?

- Not applicable with the Free Trade model

Permitted for "community" TLDs?

- Not applicable with the Free Trade model

Should there be numeric caps for any or all of these?

- Not applicable with the Free Trade model

Interim solution

Should the results of this first-phase VI-WG PDP be limited to the first round of new TLDs only?

- No. This PDP will either create a Policy and or the ICANN Board will make decision with respect to the Vertical Integration and Cross Ownership model. Said model will evolve up through to any subsequent TLD round only modified or terminated by subsequent PDPs.