21 April 2010

Proposal for Limited Introduction of Vertical Integration

Go Daddy's position on the vertical integration (VI) issue has changed over time. When VI discussions first began our position was very much to the left (if left is full, unqualified VI), but it has moved steadily to the right (if right is maintaining the so-called status quo). At this point, we are nearly fully on the right.

This move from left to right is the result of our participation in and observance of all the VI discussions, workshops, and consultations to date. We have also carefully reviewed all of the proposals submitted to the VI WG, including the proposal recently submitted by Afilias. We have had discussions with many of those who have submitted proposals. After consideration of all that has been said and written by the proponents on all sides of this issue, it has become evident to us that there is the potential for harm to registrants (undermining their expectations as to the reliable behavior of our industry) as well as to the domain name industry as a whole (reducing trust in the security and stability of the system).

Clearly there is a wide range of views and concerns about what VI will mean for registrants, registrars, registries, and other stakeholders. We have come to believe that these views and concerns cannot be reconciled sufficiently to facilitate the timely and orderly rollout of the initial round of new gTLDs. We believe that any rush in an attempt to do so will result in a process that is not predictable for applicants or registrants, and a process that will create unintended consequences after the fact.

The long held tenet of "First, do no harm," should be foremost in the Board's consideration of any changes to the status-quo regarding VI, and in that regard security and stability should continue to be the Board's primary goal. While we believe that some level of VI could be permitted without harm and with minimal risk, we do not believe that we or anyone else knows what that level is. Even the various economists who have been consulted do not agree. As a result, we believe that an ultra-conservative approach to the introduction of VI is warranted.

Such an approach to the easing of the VI status-quo would involve research, trial, testing for impact on stakeholders as well as testing for potential disruption of existing services (including those at the edge), and public notice and review. Therefore, we would like to propose that the Board adopt the following conservative approach:

1. Maintain the So-called Status Quo for the First Round of Applications

ICANN will permit cross ownership, both by a Registry Operator in an Accredited Registrar and by an Accredited Registrar in a Registry Operator, up to 15%. The limitation should also apply to the ownership of registry backend service providers by Accredited Registrars and to Accredited Registrar ownership of registry backend providers. The latter limitation can be enforced through the Registry Operator agreement with ICANN. In the event of any such cross ownership full administrative and structural separation should be maintained. Adherence to Recommendation 19 of the GNSO policy on the implementation of new gTLDs should be maintained. ICANN will abide by section 2.4 of the May 2009 RAA.

Why 15%? As Afilias points out in its proposal, this ownership cap has a longstanding basis in the ICANN contractual framework; it would maintain a level playing field between the new gTLDs Registry Operators and the incumbents; and there is no indication that it has resulted in anti-competitive

behavior. Most importantly, it is a conservative approach that will not risk unintended consequences or behaviors resulting in disruption of existing expectations (first, do no harm).

Why the status-quo for the first round? Besides the concerns we expressed above, ICANN has had two very limited test bed rounds that resulted in fourteen new gTLDs. While a lot has been learned, this next round is proposed to be unlimited and will likely result in dozens to hundreds of applications and new gTLDs. Entirely untested processes for dealing with string contention and objections will be introduced. The new concept of Community-based is being introduced. New mechanisms to protect the rights of IP owners will be introduced. The community is still working on DNSSEC implementation. And we have no idea how registrants will be affected by or will respond to what will be for most unexpected changes in the environment. We believe there are already more significant changes than is ideal in rolling out the first round. The introduction of something as game changing as VI should wait.

2. Allow Sufficient Public Notice

Introduction of VI should not proceed for at least twelve months following the close of the first round of new gTLDs. The introduction of VI should be preceded by broad public notification. Such notification could begin in conjunction or concurrence with the four month communication period and should continue up to and through the next round of new gTLD applications (at which time we envision a limited and tightly controlled introduction would occur).

Beginning as soon as practical, a cross AC/SO Working Group effort should be initiated to fully exam the VI issue anew. Consideration of existing reports and data would not be prohibited, but this new WG would develop a cohesive and thorough plan for examining the VI issue including benefits and potential harms with the goal of producing recommendations for a VI test bed in the next round (not the first) of new gTLD applications.

One year after the introduction of VI ICANN will initiate a review of its impact. Such review should be preceded by broad public notification. We believe such notifications, versus the standard public comment notice/period, are vital to ensure that the subsequent review adequately evaluates the impact of VI on registrants so deficiencies can be addressed and successes repeated.

The cross AC/SO WG would be reconvened to consider the result of the review and consider recommendations for the next step, if any, in the introduction of VI.

3. Mitigating Registry Failures

It's important to be reminded that none of the existing gTLDs are without Accredited Registrar support. The concerns expressed over such support for the new round of gTLDs is only speculation at this point. Nothing in the early implementation of the GNSO policy on new gTLDs should have led any applicant to believe that exceptions would be made to Recommendation 19.

That said, in those cases where a new gTLD registry believes its survival is threatened by a lack of support of Accredited Registrars (or perhaps for other reasons) it can appeal to ICANN for relief. Once a thorough examination of the facts is complete (that may involve the community as a whole), a proposal to mitigate the failure can be published for public comment. However, we do not need to expend time and resources on developing a process to deal with any number of as yet unknown issues. We already have some precedent for this dealing with these types of issues - .museum, .name, and .pro.