



## Comments on Terms of Reference for PDP (Feb 2006)

### 1. Registry agreement renewal

- a. Examine whether or not there should be a policy guiding renewal, and if so, what the elements of that policy should be.

We generally see different classes of TLDs coming up in the future. The two main differences between TLDs will be whether a TLD is based on a defined community (sponsored/chartered TLD like .edu, .cat, or .berlin) or not (unrestricted TLDs like .web). But there might be other TLDs coming up which cannot be assigned to one of these classes.

Registry operators of community-specific TLDs should be normally enrooted in the real existing communities of their respective people or organisations. For this reason it doesn't make sense to give the registry operation to other parties outside the community or for instance to change prices. The policy-making body and the community itself should be able to manage any problems which might occur with the operation of the registry. We think, that a renewal policy is not necessary with community TLDs.

For other TLDs with only one applicant it is assumed that now other registry operator is interested in running that TLD. For this reason a renewal policy is not needed.

If there are TLD strings with two or more applicants for that TLD string a policy regarding renewals might make sense.

- b. Recognizing that not all existing registry agreements share the same Rights of Renewal, use the findings from above to determine whether or not these conditions should be standardized across all future agreements.

For the reasons explained above there should be no standardised procedures on renewals. However, with more TLDs there will be some standardised agreements available on which future TLDs might build on. Diversity and bottom-up decision-making are fundamental pillars of the internet. Top-down policy standardization should be used very cautiously.

### 2. Relationship between registry agreements and consensus policies

- a. Examine whether consensus policy limitations in registry agreements are appropriate and how these limitations should be determined.

We will see an extended spectrum of usage possibilities for new TLDs in the future. Therefore there should be a differentiated treatment of the TLDs with regard to the delegation of policy-making authority. For a given TLD, there may be a need for contractual protection against unexpected policy changes, in particular if the forum where such policies are decided might have concerns that are not at all related to that specific TLD.

- b. Examine whether the delegation of certain policy making responsibility to sponsored TLD operators is appropriate, and if so, what if any changes are needed.

The principle of delegation of the policy-making authority to the respective community based registry operator or sponsoring organisation is an appropriate way to maximize the all over success of that TLD. The success of the various chartered/sponsored TLD communities in turn contributes to the success and beneficial development of the internet as a whole.

If the registry operator (or TLD charter or sponsoring organization) has an adequate and credible community-based policy-making body ICANN should delegate policy-making to the framework belonging to that community. The delegation of the policy-making power ensures that decisions are made within the community whenever this is appropriate.

### 3. Policy for price controls for registry services

- a. Examine whether or not there should be a policy regarding price controls, and if so, what the elements of that policy should be. (note examples of price controls include price caps, and the same pricing for all registrars)

For community-specific TLDs, price controls at the level of ICANN/GNSO would be a questionable approach. Moreover, communities should have the possibility to differentiate prices. For instance with city TLD one could imagine that there are different price levels:

- Reserved domains
- Domains for government and institutions
- Domains for charity/welfare use
- Domains for promotions

- b. Examine objective measures (cost calculation method, cost elements, reasonable profit margin) for approving an application for a price increase when a price cap exists.

We believe that these issues should be handled on a case-by-case basis. Any global policy-based definition can easily be circumvented and would therefore do more harm than good. For a chartered/sponsored TLD, the oversight and control mechanism related to pricing should be determined within the respective community with regard to the specificities of the TLD.

### 4. ICANN fees

- a. Examine whether or not there should be a policy guiding registry fees to ICANN, and if so, what the elements of that policy should be.

New TLDs enable ICANN to diversify its funding sources and model thanks to the application fees and the ICANN fees paid for second level domain registrations under the new TLDs. By contrast, in the absence of new TLDs ICANN is strongly dependent on legacy TLD operators for its funding. Therefore a policy could incorporate the following registry fee elements:

- + One-time not-refundable fees of US\$ 50,000 for the TLD application
- + Annual fees of US\$ 10,000 for running the TLD
- + 5% of the price to the registrar per second level domain
- = Total registry fees for ICANN

- b. Determine how ICANN's public budgeting process should relate to the negotiation of ICANN fees.

While there is an inevitable relationship between the ICANN budgeting process and the income received from TLDs - be it with existing TLDs via the registrars or directly from the registry - there should be safeguard in the interest of registrants, registrars and registries. In particular, the burden should be fairly shared and the method of calculation should avoid undesirable side-effects. For instance, situations should be avoided where the bulk of the cost of a given domain registration are ICANN fees.

With new TLDs it is hard to predict how many new TLD applicants will show up when in the future. Therefore ICANN's budgeting should not be built on or relate upfront to fees in connection with handling the application or the registration of second level domains. Until approving TLDs on a frequent basis and as standing process in ICANN's daily business these sources of income should be seen as welcome addition to ICANN's budget. In a few years this could change to a constant flow of revenues.



## 5. Uses of registry data

Registry data is available to the registry as a consequence of registry operation. Examples of registry data could include information on domain name registrants, information in domain name records, and traffic data associated with providing the DNS resolution services associated with the registry.

- a. Examine whether or not there should be a policy regarding the use of registry data for purposes other than for which it was collected, and if so, what the elements of that policy should be.

We think that ICANN's policy regarding this matter should state that the national laws of the country where the registry operator or sponsoring organisation is based are framework for handling the use of registry data. Oversight from far away cannot be as effective as local policy or law based regulation within the community.

- b. Determine whether any policy is necessary to ensure non-discriminatory access to registry data that is made available to third parties.

We believe that an effective oversight mechanism exercised by a body that is close to the community is a better approach than a generic policy decided upon by a body that is not familiar with the specificities of a TLD. There must certainly be oversight and the registry provider or sponsoring organisation must agree to an appropriate mechanism. On this basis, the access to data can be approved for certain usages and diligent screened recipients. The concept of non-discriminatory access, however, could make the oversight ineffective and allow the rules to be bent or circumvented easily.

## 6. Investments in development and infrastructure

- a. Examine whether or not there should be a policy guiding investments in development and infrastructure, and if so, what the elements of that policy should be.

Policies regulating investments of registry operators and sponsoring organisations in development and infrastructure are a good idea in general and should be standing part of their operations and corporate responsibility. But how and where to invest in activities like research or bringing the internet to under-served communities should not be decided centrally. It's better to delegate the policy making as an obligation to the registry operator and sponsoring organisation.

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