ICANN

Internet Corporation for Assigned Names and Numbers

Report on

Policies for Contractual Conditions

Existing Registries (PDP Feb06)

Lisbon – 29 March 2007

ICANN

Outline

- Registry Constituency issue with Terms of Reference
- Proposed Recommendations with majority support
- Proposed Recommendations without majority support
- Next Steps

ICANN

Registry Constituency position on the Terms of Reference

- The Registry Constituency has, throughout the policy development process, expressed its opposition to
    - the Terms of Reference,
    - to the potential applicability of any of the proposed policy recommendations and
    - to the work of the Task Force as whole.
- The Registry Constituency (RyC), prior to the commencement of the formal PDP proceedings, issued a statement and a preface to that statement which set out its objections to the process.

ICANN

Sequence of events

- "… The creation of the PDP was a decision taken by supermajority vote of the GNSO Council, under Annex A, section 3(c) of the bylaws.

- The use of a task force and their terms of reference of the task force is a decision of the Council taken in accordance with Annex A, section 4 of the bylaws.

- The outcomes of the task force would need to be considered by the Council, before voting to approve any recommendations for the ICANN Board.

ICANN

Sequence of events, cont'd

- The ICANN Board would then need to vote to approve any recommendations as policy, taking into account public comment, and any legal advice it may receive, along with advice from GAC, ALAC, SSAC, etc.

- Then the terms of existing contracts would affect whether any new ICANN policies were implementable.

- The contracts have various terms to resolve disputes, and ultimately a legal court could be used to resolve any disputes.

ICANN

Recommendation with Majority Support

- Criteria
  - At least 4 constituencies
  - With some Nomcom member support
- 9 Recommendations with Majority Support

TOR 1a

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

1. There should be a policy guiding registry agreement renewal.

2. Registry agreements should be a commercially reasonable length.

ICANN

ToR 3a

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

3. The present limitations to Consensus Policies are appropriate and should continue.

ICANN

ToR 2b

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

4. Certain policy making responsibility should be delegated to the sponsored gTLD operators.

ICANN

ToR 4a

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.

5. In order to improve ICANN accountability and effective business planning by registries, ICANN staff should immediately implement a system that avoids individual negotiations of ICANN fees and provides consistency unless there is an established justification for disparate treatment.

I C A N N

ToR 4b

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

6. The ICANN Board should establish a Task Force or Advisory Committee to examine budgeting issues, including the manner and allocation of revenue collection, budget oversight and budget approval processes. This group should solicit and review public comments on the issues.

ICANN

ToR 5

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.

7. In order to determine whether there is a need for a new consensus policy on the collection and use of registry data, including traffic data, for purposes other than which is was collected, there is first a need for a properly targeted study by an independent third party on the data collected and the uses to which it is put.

I C A N N

ToR 5 cont'd

7. Cont'd

The study should provide appropriate safeguards to protect any data provided for the purposes of the study, and the confidentiality of which registry, or other group, provides the data. The findings of the study should be published and available for public review. A Statement of Work should be developed by the GNSO Council, with appropriate public review, to cover an analysis of the concerns for data collection and use, the practice involved in collection and use of data - including traffic data, and the availability, when appropriate, for non-discriminatory access to that data.

ICANN

7. Cont'd

It is recommended that a current processes document be developed, describing the current registry practices for the collection of data and the uses of that data, for example, but not limited to, operating the registry; preparing marketing materials to promote registration of domain names; gathering of 'null' returns, ensuring the integrity of the Registry, or the DNS. This report should be available to the group doing the external study and should be made available to the public for comment.

After examining the results of the independent study and public discussions recommended above, the GNSO Council should examine the findings and determine what, if any, further policy process is required.

ICANN

ToR 6a

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.

8. There should not be a policy guiding investments in development and infrastructure

ICANN

ToR 6a cont'd

9. ICANN should establish baseline requirements for the security and stability of registries and anything above that would be negotiated on a case-by-case basis, if necessary. Baseline requirements should be recommended to the Board by the Security and Stability Advisory Committee (SSAC) after consultation with the gTLD registry operators. In determining those recommendations, the SSAC should solicit and consider public comments.

ICANN

Proposals that have <u>not</u> reached Majority support

- Proposals that had fewer then 4 constituencies in support

- Discussions among constituencies still ongoing until 28 March

-

ICANN

ToR 1a

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

Opinion divided on 3 proposals - that there should be:

• a reasonable expectation of renewal with a mandatory re-bid (with an advantage to the incumbent operator)

•a discretionary re-bid based on ICANN's determination of poor performance (or other bad acts) with an advantage to the incumbent.

•no re-bid unless there was a history of repeated material breaches.

ToR 1b

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.

2 views on standardization of conditions of renewal

- The 'right of renewal' should be standardized for all gTLD registry agreements
- The 'right of renewal" should be standardized for gTLD registry agreements except where there is an exceptional situation, such as a situation of market dominance or market power.

ICANN

ToR 3a

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)

Some Support for

- There should be a policy on price controls

ICANN

ToR 3b

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

Opinion divided among 3 views on policy relating to pricing

- It is too early to formulate a policy. A new PDP should be initiated on this topic.

- Policy relating to pricing should not be discussed

ICANN

ToR 3b cont'd

- When a registry contract is up for renewal, there should be a determination by an expert panel whether that registry is market dominant. If the panel determines that there is a situation of market power, then the registry agreement must include a pricing provision for new registrations, as currently is included in all of the largest gTLD registry agreements. If the panel determines that there isn't market power, then there would be no need for a pricing provision. Regardless of whether there is market dominance, consumers should be protected with regard to renewals.

ICANN

Status

- 28 March
  - end of 2nd public comment period
  - end of effort to achieve majority support on proposals that have not yet reach majority support
- 12 April
  - 'Post-comment' Final draft available
- 19 April – Final Conference Call
  - vote on sending report to GNSO Council
- 26 April
  - possible consideration of PDP Feb06 on Council Agenda

ICANN