

**SUMMARY OF PUBLIC COMMENT
ON INITIATION OF THE GNSO POLICY DEVELOPMENT PROCESS
ON VERTICAL INTEGRATION BETWEEN REGISTRARS AND REGISTRIES**

The GNSO Council opened a public comment forum on the commencement of a policy development process on the topic of vertical integration between registries and registrars. A summary of the comments submitted during the public comment forum from the period 29 March 2010 – 18 April 2010 is provided below.

Background

The GNSO Council commenced a policy development process (PDP) on the topic of vertical integration between registrars and registries. The GNSO Council has formed a working group to evaluate whether policy recommendations, if any, should be developed on the topic of vertical integration between registrars and registries affecting both new gTLDs and existing gTLDs.

The public comment forum sought comment on any aspect related to the topic of vertical integration between registries and registrars that should be taken into account by the Working Group as part of its deliberations. Comments were suggested on the following topics: (i) the recommended models for the New gTLD Program, (ii) the economic analysis conducted by economists retained by ICANN, including the [CRA Report](#) [PDF, 512 KB] as well as the one recently submitted by [Salop and Wright](#) [PDF, 42 KB], (iii) the [Board approved model](#) proposed by the Board at the ICANN Meeting in Nairobi on 12 March 2010, or (iv) whether the restrictions currently applicable to existing gTLD registries should be changed, or (v) additional work that should be performed by the Working Group to recommend models for the New gTLD Program.

Summary

Six comments were received from five commentators during the public comment period. Two comments were erroneously submitted for a separate public comment period (on the options for the ICM application for .xxx) and are not summarized below.

Stakeholder Group /Constituency Statements.

As part of the GNSO Council's policy development process, the working group has requested constituency and stakeholder group statements on the topic of vertical integration between registries and registrars. These statements are due on 6 May 2010.

The Registrar Stakeholder Group (RGG) reaffirmed the prior Registry Constituency position on Registry-Registrar separation. That position is described in its entirety in **Annex A**.

Need for Definitions of Industry Roles.

Melbourne IT noted the need to clearly identify three industry roles: gTLD manager, gTLD registry operator, and gTLD registrar. The following definitions were recommended:

gTLD Manager- contracts with ICANN to manage a gTLD. The gTLD manager does not own the TLD, but is licensed to use the TLD for a fixed period of time. The licence can be renewed for further terms provided the conditions of the contract with ICANN continue to be met.

gTLD Registry Operator operates three key components of the gTLD infrastructure: shared registration system (SRS), gTLD DNS nameservers, gTLD WHOIS servers. The core role is that of an infrastructure manager.

gTLD Registrar is responsible for creating, changing and cancelling records in the gTLD registry. The core role is that of a records manager. A gTLD registrar has a contract with the registrants of domain names within a gTLD to perform registrar services. The gTLD registrar has a contract with the gTLD registry operator that governs their roles and responsibilities.

Ashe-lee Jegathesan, Melbourne IT

Mandatory Use of ICANN Accredited Registrars.

Two commentators recommended that ICANN maintain its policy recommendation that a gTLD must use ICANN accredited registrars. *Ashe-lee Jegathesan; Melbourne IT, Registrar Stakeholder Group Statement*

Equivalent Access Requirements.

ICANN should maintain the current requirement that registry operators not discriminate amongst registrars. *Registrar Stakeholder Group Statement*

Melbourne IT recommends that an ICANN accredited registrar that meets the policy requirements of a gTLD, must be able to operate within that gTLD under the same contractual conditions as other gTLD registrars. *Ashe-lee Jegathesan, Melbourne IT*

ICANN's decision to expand the Internet will increase competition and provide consumers with more options. Brand TLDs and community-based TLDs must be vertically-integrated. Why would these types of TLDs be forced to use a registrar? *Constantine Roussos, music.us*

Structural Separation Requirements.

Melbourne IT and the Registrar Stakeholder Group recommend that ICANN continue to maintain structural separation between the role of gTLD registry operator and gTLD registrar. *Ashe-lee Jegathesan, Melbourne IT; Registrar Stakeholder Group Statement*

Cross Ownership Among Industry Players should be permitted.

ICANN should not prohibit affiliates of ICANN-accredited registrars to apply to be a New TLD registry operator. *Registrar Stakeholder Group Statement*

ICANN should not prohibit affiliates of ICANN-accredited registrars to provide any types of services to registry operators. *Registrar Stakeholder Group Statement*

ICANN should not strictly prohibit registrars from selling registrations for TLDs of an affiliated registry operator. *Registrar Stakeholder Group Statement*

Keeping the registry-registrar separation makes sense for dominant extensions such as the .com, .net and .org but it makes no sense for upcoming new gTLDs, who will be attempting to set themselves apart from the Big gTLD 3 (.com, net, .org) and provide better services to benefit consumers. This holds especially true for the cases of brand owners with trademarks and community applicants. Why would these types of applicants engage in lobbying activities to get shelf space on registrars such as Godaddy? In the end what ICANN is assuring is the dominance of the other Big Registry 3. How does ICANN expect to have any competition in the registry industry if it adopts anti-competitive and anti-innovative measures such as registry-registrar separation, when the reality of the matter is that new TLDs are not expected to become as large as .com but are expected to differentiate themselves from the old regime and market leaders. *Constantine Roussos, music.us*

Melbourne IT asserts that a gTLD manager should be able to own and perform the function of gTLD registry operator for the gTLD being managed. Examples (VeriSign for com/net, Afiliacast for .info, and Neustar for .biz). *Ashe-lee Jegathesan, Melbourne IT*

Melbourne IT asserts that a gTLD manager or gTLD registry operator (or their parent company), may own up to 15% of an ICANN accredited gTLD registrar. If a gTLD manager or gTLD registry operator wished to own more than 15% of an ICANN accredited gTLD registrar, separate ICANN Board approval would be required, and additional contractual provisions to avoid anti-competitive behavior. *Ashe-lee Jegathesan, Melbourne IT*

Melbourne IT also asserts that gTLD accredited registrar (or their parent company), should be able to own up to 15% of a gTLD manager or gTLD registry operator. If a gTLD accredited registrar wished to own more than 15% of a gTLD manager or gTLD registry, this would require separate ICANN Board approval, and additional contractual provisions to avoid anti-competitive behavior. *Ashe-lee Jegathesan, Melbourne IT*

Melbourne IT states that a gTLD manager should be permitted to own and perform the function of gTLD registrar for a small gTLD that has less than 100,000 total registrations. *Ashe-lee Jegathesan, Melbourne IT*

The GNSO should do the right thing: introduce vertical integration. Ask consumers what they want. Pessimism and protecting the status quo or do they want the possibility of better services and innovation in the domain space. This is a no brainer for brand gTLDs and community gTLDs. *Constantine Roussos, music.us*

Vertical Integration restrictions must be removed because it is problematic for the upcoming gTLD open application process.

Case 1

For example, if someone with a long-standing trademark wants to create a new top level domain for their trademark, and wants to allow certain, approved entities to purchase domains with the trademarked extension, how will this be done without the Registry in effect acting as a Registrar.

Case 2

My second example involves someone who is approved to run a new top level domain Registry, but is not able to get any Registrar to list their domain.

While you may keep the restriction in place for .com, given their dominance, the Registry/Registrar ownership restriction should be completely eliminated for all other top level domains. *Mary Iqbal*

Use of Registration Data where there is cross ownership.

Any requirements intended to protect registrants from malicious or abusive conduct, including data issues, should go to the conduct at issue and not serve as an excuse to exclude an entire potential class of competitors along with the attendant public benefits of such competition. *Registrar Stakeholder Group Statement*

Melbourne IT notes that neither a gTLD manager nor gTLD registry operator, should use any of the registration data collected as part of managing/operating the gTLD, for the purposes of marketing registrar services for any other gTLD. *Ashe-lee Jegathesan, Melbourne IT*

Certain Cross Ownership Among Industry Players should not be permitted.

Melbourne IT notes that where a gTLD manager owns a gTLD registrar, that registrar should not perform the role of ICANN accredited registrar for any other gTLD. *Ashe-lee Jegathesan, Melbourne IT*

Observations on Current Market Conditions.

There is a rich history of registrars selling TLDs of affiliated registry operators in the gTLD and ccTLD spaces without any allegations of wrongdoing. *Registrar Stakeholder Group Statement*

Afilias has indicated in their post on CircleID on April 8th, 2010 that in 2010 the domain industry has grown to over 190 million domain names. The .com, .net and .org grew to over 80 million names and ccTLDs like .de (Germany) and .cn (China) have grown to about 45 million names. However, new gTLDs total less than 15 million names or only 7% of domain market share. New gTLDs are under-represented and competition generated from the existing new gTLDs (any gTLD other than .com, .net and org) is minor, as highlighted by the existing 7% market share. *Constantine Roussos, music.us*

How does ICANN believe that the oligopoly market power of the Big 3 registries can be addressed to increase competition in the registry industry and lower prices. How is preventing competition in this space good for the Internet? This is the year 2010 and the very concept of not allowing vertical integration based on historic reasons and the lobbying power of current registries certainly defies the purpose of leveling the playing field in the domain marketplace. *Constantine Roussos, music.us*

Melbourne IT made the following observations regarding current competition between gTLD managers:

- There is some level of competition between gTLDs at the time a registrant makes a decision to register a domain name.
- Once a registrant chooses a particular gTLD for a registration and begins to actively use the domain name, the switching costs are very high to move to another gTLD.
- Over time, most registrations within a particular gTLD will be from existing registrants, and only a small percentage of new registrants will be added every year. Thus a gTLD manager will have market power with respect to most of their registrations in the longer term.

Melbourne IT made the following observations regarding competition amongst registry operators:

- There is active competition amongst registry operators.
- A gTLD manager can contract with a particular registry operator, but can also change registry operators or even bring the services back in-house.
- Several registry operators today provide services across multiple TLDs.
- In the new gTLD environment additional companies will enter the market as registry operators, and gTLD managers will gain the benefits from a wide range of choices.

Melbourne IT made the following observations regarding competition amongst registrars:

- There is very active competition amongst registrars for the major gTLDs such as com/net/org/biz/info.
- Registrants can choose from a range of business models, and registrars often bundle services such as email and hosting with domain name registration.
- The registry/registrar separation model is now the dominant model used across both gTLDs and major ccTLDs.
- Many ICANN accredited gTLD registrars, are also registrars across many ccTLDs, with some being significant ccTLD registrars as well as gTLD registrars.

Melbourne IT believes that the market power that a gTLD manager can exert through their operation of a major gTLD (with more than 100,000 registrations), would allow them to have an unfair advantage as a gTLD registrar in other gTLDs. The gTLD manager could cross-subsidize the operations of a gTLD registrar to gain customers in other gTLD spaces, and attempt to up sell their own gTLD to those customers (which in turn would give them an unfair advantage over other gTLD managers). Thus Melbourne IT supports the separation of gTLD managers and registry operators from registrars, and also notes that a small gTLD Manager that owns a registrar for its gTLD should not provide registrar services for other gTLDs.

Ashe-lee Jegathesan, Melbourne IT

The ICANN Board should consider the enormous difference between the trajectory of the successful .cat registry, profitable in its second month of operation, and the range of exception from Recommendation 19 sought by the Vertical Integration working group “on behalf of linguistic and cultural or from developing country”, 25% to 125% larger than .cat’s registration base after four years of successful, profitable operation. *Eric Brunner-Williams*

Regarding the CRA International Report.

Melbourne IT notes that the CRA International report supported a relaxation of the vertical separation requirements where the competitive concerns are not strong. Melbourne IT agrees that supporting some level of integration for small TLDs allows innovation in the creation of

new gTLDs, and allows a gTLD manager to have some control over the whole process of launching and marketing a new gTLD to new registrants. *Ashe-lee Jegathesan, Melbourne IT*

Comments on the Board Resolution.

If the available choices are limited strictly to the Board's Resolution #5 at the Nairobi meeting, and imprudent exploits which put at risk consensus among stake holders, retention of the Board's Resolution #5 is probably the better of those two choices. *Eric Brunner-Williams*

Single Registrant TLDs.

Melbourne IT expects that single registrant TLDs will emerge in the gTLD round. The registration policy for such as TLD could be that all registrations in the gTLD must be licensed to the gTLD manager. For a small such TLD it would make sense that the gTLD manager could also own and operate a registrar function. However it would be necessary to ensure that a single-registrant TLD is not circumvented by ensuring all the registrations are in the name of the gTLD manager, but that the gTLD manager then rents out websites etc associated with those domain names – which in effect could be third party registrations. *Ashe-lee Jegathesan, Melbourne IT*

One participant expressed concern that should the GNSO makes a recommendation for some "single registrant" type of application, the Board should consider whether capture has taken place by parties previously not participatory in the new gTLD process development. *Eric Brunner-Williams*

Comments on the Salop and Wright Paper.

Melbourne IT points out that Salop and Wright notes that while vertical integration can facilitate innovation, in some circumstances vertical integration can harm competition through higher prices, lower quality levels, too little product variety, or less innovation. *Ashe-lee Jegathesan, Melbourne IT*

Perceived Benefits of Vertical Integration.

The Registrar Stakeholder Group agrees with ICANN's expert economists that vertical integration of registries and registrars will enhance consumer benefits and provide consumers with lower prices, better service, and new innovation. *Registrar Stakeholder Group Statement*

The risks of malicious and abusive conduct that certain parties have raised as a concern would not be prevented by restricting the ability of a registrar to sell names of an affiliated registry operator. *Registrar Stakeholder Group Statement*

Vertical Integration, especially for closed community gTLDs, will benefit consumers by allowing the creation of service/product bundling as well as offering consumers differentiated pricing

options given an increased product variety. Vertical integration will allow new gTLDs to be innovative by introducing new distribution and marketing channels in regards to product placement. *Constantine Roussos, music.us*

Vertical integration will allow new gTLDs to differentiate themselves from competitors such as .com. It will allow them to offer a higher quality product with a competitive advantage that is attached to the opportunity to incorporate new, innovative services that extend beyond mere domain name registrations. Vertical integration will help increase consumer willingness to pay given the value creation opportunity that it brings. These are some benefits:

- Economies of scale
- Economies of scope and strategic similarity between vertically-related activities
- Cost reduction
- Competitiveness
- Reduce threat from powerful suppliers and/or customers
- Higher degree of control over the entire value chain
- Leads to expansion to core competencies

Constantine Roussos, music.us

General Observations on the Proposals Discussed in the Working Group

A participant in the GNSO Working Group summarized the two broad areas of policy choices advocated in the Working Group as follows:

One set of proposals restores caps on registry ownership (or control) of registrars. Some treat the question of registrar ownership of registries, uncapped prior to Nairobi. In general, these proposals find minority ownership (or control) at the current level without harm, and more beneficial than no mechanism for registries to ensure competent access to registrants.

The other set of proposals generally propose to substantially increase, or remove, the cap on registry ownership (or control) of registrars. In general, these proposals find near-majority, even total ownership (or control) without harm, and more beneficial than the lower limits in the other set of proposals, and also more beneficial than no mechanism for registries to ensure competent access to registrants.

Eric Brunner-Williams

The Board should consider whether the GNSO's working group is addressing the issue of vertical integration at all, or the allocation of profits for applications of a type anticipated by a significant plurality of those who engage in advocacy. *Eric Brunner-Williams*

Recommended Models for Vertical Integration:

Model Submitted by Melbourne IT:

Melbourne IT recommends that an allowance of 15% be made for a gTLD manager or gTLD registry operator to own a proportion of a gTLD registrar, or vice-versa. This means that ICANN would not be burdened with having to approve minor changes in ownership.

Melbourne IT also supports vertical integration for small gTLDs with less than 100,000 registrations, provided that the gTLD registrar owned by the gTLD manager is not able to offer registrar services for other gTLDs.

Where a gTLD manager, gTLD registry operator, or registrar seeks a greater than 15% ownership structure, Melbourne IT believes that the parties would need to show:

- the benefits to registrants of the new ownership structure, and show that these benefits would not be available through the current competitive registrar model
- that the gTLD manager does not have more than 100,000 registrations
- that the gTLD registrar does not have more than 40% of the total registrations in any gTLD with more than 100,000 names

Ashe-lee Jegathesan, Melbourne IT

Annex A

REGISTRAR STAKEHOLDER GROUP (RSG) POSITION STATEMENT

After consideration of the public interest benefits, the RSG supports the following principles regarding Registry-Registrar separation for New TLDs:

1. The RSG continues to support the GNSO recommendation that domain names be registered only through ICANN accredited registrars. This ensures that the public interest is protected by having all registrations governed by the rights and responsibilities found in the Registrar Accreditation Agreement;
2. ICANN should maintain the current structural separation requirements between the registry and registrar functions (i.e. the functions are handled separately);
3. ICANN should maintain the current requirement that registry operators not discriminate amongst registrars;
4. We agree with ICANN's expert economists that vertical integration of registries and registrars will enhance consumer benefits and provide consumers with lower prices, better service, and new innovation;
5. The risks of malicious and abusive conduct that certain parties have raised as a concern would not be prevented by restricting the ability of a registrar to sell names of an affiliated registry operator;
6. There is a rich history of registrars selling TLDs of affiliated registry operators in the gTLD and ccTLD spaces without any allegations of wrongdoing;
7. Any requirements intended to protect registrants from malicious or abusive conduct , including data issues, should go to the conduct at issue and not serve as an excuse to exclude an entire potential class of competitors along with the attendant public benefits of such competition;
8. ICANN should not prohibit affiliates of ICANN-accredited registrars to apply to be a New TLD registry operator;
9. ICANN should not prohibit affiliates of ICANN-accredited registrars to provide any types of services to registry operators; and
10. ICANN should not strictly prohibit registrars from selling registrations for TLDs of an affiliated registry operator.

CONCLUSION

ICANN should move forward positively and firmly to permit the integration of registry operators and registrars for New TLDs without sales restrictions, as such would inure to the benefit of consumers and the public interest.

The opinions expressed by the RSG in this Position Paper should not be interpreted to reflect the individual opinion of any particular RSG Member.