



December 2, 2011

Dear ICANN:

Thanks for the opportunity to comment on the Continuity of Operations (COI) requirement in the Applicant Guidebook. As you probably know, the requirement is causing a great deal of angst among potential applicants, because of the uncertainty of the amount and the fear that it will be crushingly high. That's not good for the new gTLD program and it's hurting ICANN's operational reputation. ICANN should make some changes to the COI to resolve these issues. Here's our analysis and suggestions.

There is a great deal about the COI that could use reform, but what is needed at this moment is certainty. After some discussion, we suggest a simple short-term fix, but a more durable solution should be developed after the application period.

The COI is there to protect existing registrants and to keep the DNS stable and secure in the event of a registry failure. That is laudable and practical and I think we can all agree that it makes sense. The question is how much, and how is it calculated. It must be sufficient for its purpose, but not excessively onerous or punitive to applicants. After all, the point is to bring choice and competition to the marketplace, which requires successful registries.

Right now the COI is excessively onerous. It makes every applicant, including small cultural and linguistic TLDs, cities, everyone, put aside sufficient money to pay for something that's extremely unlikely to happen – catastrophic failure, where both the registry and the back-end registry operator fail at the same time, requiring the intervention of an Emergency Back-End Registry Operator (EBERO). But how often is that going to happen? Until now, no gTLD registry has gone out of business, and certainly not catastrophically.

What's the biggest risk to a nascent registry? It's not fires or earthquakes or tsunamis. With the backup and failover procedures that ICANN has in place, and which will be

tested prior to delegation of a TLD, even big disasters will have a limited effect on registry operations. Neither is the biggest risk selling too many domain names. Having insufficient office space or servers that need upgrading is every entrepreneur's dream – it means you're doing well, and funding for improvements will not be hard to find.

The biggest risk to a new registry, by a long shot, is insufficient revenue. Sales didn't go as well as hoped for, revenues fell short, and the dream of a self-sustaining or profitable registry looks like it will be extinguished. That's the oldest story in the world, and some registries will recede into history after a short existence.

What does such a business failure look like? Today the majority of gTLD registries have outsourced back-end technical services. That will be even more prevalent with new gTLDs. The most likely scenario for a failing registry is that the existing back-end registry services provider will continue to run the registry on life support, making modifications for existing customers until a new owner is found. All the infrastructure will be in place and functioning – it would make no sense to move it.

In other words, the most common cost for a failing registry is pretty close to zero. The back-end registry provider who continues to run the registry may suffer a bit, but frankly that's just a cost of doing business, and you factor that in when you sign up a client. In any case, with very few names, the cost is not that high. This will be the most common case by orders of magnitude.

So let's deal with what's likely to happen first, and find a way to address it within the parameters of the current Guidebook and the short timeline before us

Our suggestion is that ICANN should base the amount of the COI on the "worst case" scenario estimates in the financial section of the new gTLD application, instead of the "most likely" scenario. Presumably if you're hitting your numbers you're in good shape financially. It's the low numbers you have to worry about. Setting the amount of the COI at this more reasonable and likely threshold will take care of the vast majority of failures. Will some EBEROs in some cases not get as handsomely paid as they would have hoped? Possibly, but it's a small risk and, again, a cost of doing business, and I doubt it would dissuade any potential EBEROs. Even now the registry constituency is looking for ways to lower the COI – they know it needs to be changed.

After the flurry of the application period, the ICANN community and ICANN staff should conduct a more thorough re-assessment of the COI, which would include recognizing and accrediting the role of back-end registry service providers; assisting with data so that private insurers can underwrite policies for registries; and more correctly assessing the likely time and cost for transition and temporary registry services, based on empirical data.

In the meantime, however, ICANN should deal with the likeliest case (by a long shot) of registry failure, which is insufficient revenue, which correlates very closely to very few names in the registry zone. ICANN should therefore base the COI on the “worst case” financial scenario in the new gTLD application. The effect will be that more people will apply, more registries will be successful, and the point of the whole program – to introduce choice and competition into the top level of the DNS namespace – will be closer to being achieved.

Thanks for your attention to this important part of the new gTLD application.

Sincerely,

Antony Van Couvering
CEO, Minds + Machines