.nai
native-aboriginal-indigenous

Applicants have no interest in Vertical Integration

First, I thank in advance the ICANN staffers who provide support for the VI WG, Margie Milam, Liz Gasster, Gisella Gruber-White, and Mike Zupke. The VI WG has been unusually demanding, of ICANN staff as well as its volunteers. I also thank the ICANN staffer who will summarize the public comments.

As the coordinator of this application, and as an active participant in the Vertical Integration Policy Development Process Working Group (VI PDP WG), I can see no material interest in the policy question of whether parties-as-registrars to contracts with ICANN or parties-as-registries to contracts with ICANN may merge their structures, with or without functional separation, and with or without the issue of market power informing the policy drafters.

These registries and registrars are simply parties with existing contracts. Whether they can increase the number of contracts they are parties to, as registrars, registries, or both, they are parties to existing contracts with ICANN. In contrast, an applicant is without an existing contract; the point of submitting a response to a new gTLD RFP is to enter into a registry operations contract.

The exploit of the present – is the masquerade by existing contracted parties that they are the "applicants," and their interests, however rationalized, substitute for the interests of applicants who seek to enter into a registry operations contract and begin service to registrants through registrars. While interesting in itself – and treated briefly below – allocation of benefits to existing beneficiaries of past economically, geographically, culturally, and linguistically limited grants of contract is not a substitute for expanding service beyond the legacy monopoly and the beneficiaries of the 2001 and 2004 new gTLD rounds.

Our pursuit of a registry contract is unconditional. We do not need to be allowed to hold both a registrar contract and a registry contract.

Because dotNAI is an applicant, we do not require a "change in the rules" to improve our margin at the expense of non-applicants. Since before there was an ICANN the plan for an indigenous TLD have been in development, and thus we know how the system works. Jon Postel and I first discussed adding something to the choice of country codes in March 1988, at the 9th IETF, three months after RFC1032 was published. Oneida Indian Nation employees Dan Garrow, MIS Director and a member of the Mohawk Nation, and Dan Umstead, Internet Coordinator, had a similar discussion with Jon Postel in 1995. In October 1999 I addressed this issue in Position Paper E to Working Group C, thirteen months to the day after ICANN was created. In this paper, I wrote,

> ***[A] jurisdictionally scoped, policy specific gTLD, elsewhere described as a "chartered" or "sponsored", specifically a gTLD jurisdictionally scoped to North America and the***

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territories, trusts and treaty dependencies of the United States and Canada, and with a policy model of registry delegation to, and registry operation by, the Indigenous Nations and Peoples of North America.

The cost in 1988 and 1995 was what Jon Postel charged any "Friend of Jon" to make a delegation – nothing but the promise to be responsible and competent for a "country code" – language he repeated later in RFC1591. However, the cost in 1999 for those without a "country code" was a $50,000 application fee – and the willingness to risk that at odds no better than 1 in 7. The cost today for those without a "country code" is a $185,000 application fee (though with much better odds than 1 in 7) if and when ICANN finally accepts applications.

And that – the if and when question – not the how much question, or how many changes to the past decade of ICANN registry contracting practice, is the only question to which we seek an answer.

The burden of arbitrary delay was not imposed upon puntCat, an application I had the honor of playing a very small part. From the mid-March 1994 filing of a New sTLD RFP Application to the mid-September 2005 signing of the .cat application, only eighteen months elapsed.

The new gTLD evaluation process currently proposed takes at least half that much time, and after seventy two months have elapsed, is represented as being incomplete today for community-based applications that are not dissimilar from the sponsored applications of 2004.

The issue before applicants – not contracted parties – is should communities defer submitting applications until there is an exception to a "Vertical Integration" policy that benefits others. If so, their needs are subordinated to the drawn out machinations of policy development for registrars that wish to capture registries and registries that wish to capture registrars.

The pace of ICANN policy development over fundamentals, such as the WHOIS data disclosure policy, or the intra-registrar transfer policy, is glacial. WHOIS policy development has taken most of a decade and it is not completed yet. The transfer policy development took a large part of the last decade as well. It is possible, though unlikely, that a consensus policy recommendation will originate from the GNSO on registry-registrar separation in the current year. Vertical Integration was raised in Kurt's letter to CRAI in January of 2008, so policy development has been going on for 30 months, with no sign of consensus, and could easily go on for another 30 months, or longer.

There are five proposals contained in the Initial Report: JN2, RACK+, Free Trade, CAMv3 and the IPC proposal. The JN2 and RACJ+ proposals would both raise the co-ownership limitation to 15%, the first for 18 months, with per-contract variation after 18 months, the second without limit. Both therefore offer a predictable base model. Other than in the limited duration of stability, the JN2 proposal contains a set of exceptions from the co-ownership cap for failed ventures, community-based registries, and commercial brands.

The Free Trade proposal allows complete co-ownership – predicated on an enforcement regime without precedent in ICANN's history – to prevent harms innate to pricing systems in which the wholesaler and retailer act in concert, for innately valuable, as well as fungible domain names.

The CAMv3 proposal also allows complete co-ownership, predicated on an involvement by national competition authorities – also without precedent in ICANN's history.

The IPC proposal is offered without reference to the standard and community-based types of applications, and is a distinct and covert attempt to develop a new type of application, in which co-ownership figures only incidentally as an implementation detail.

The first two proposals, JN2 and RACK+, offer stability for existing contracted parties meeting the co-ownership limitation at the expense of contracted parties that planned on co-ownerships in excess of that limit. The second two proposals offer opportunity to all contracted parties, subject to one or the other of the control mechanisms, intervention by ICANN upon detected harm or intervention by a national competition authority upon detected competition policy concern. The last proposal offers opportunity only to trademark holders, and is at odds with RFC1591's conception of public purpose.

It could be observed that the first two proposals offer stability at the expense of increased competition, and the second two proposals offer increased competition; but this observation only has meaning if the universe of parties interested in new gTLD policy is restricted to the existing, contracted parties.

There are parties that seek a change in the base registry contract before they are willing to submit a registry application. Obviously all current contracted parties supporting "change" policy positions, and all parties supporting "exception" or "new type" policy positions are reluctant to apply at present.

As an applicant, there is no substantive difference between the Board's Nairobi zero co-ownership language, the DAGv4's 2% language, the 15% language of two of the VI WG positions, and the 100% language of another two of the VI WG positions. These affect the contracted parties, not applicants. Those policy choices that attempt to capture applicants, particularly communities as applicants, by offering them exceptions from the terms and conditions they seek to impose upon other contracted parties, offer little but the opportunity for delay.

Applicants have the choice of simply articulating their community's desires for the DNS and offering their community sustainable registry service and cooperating with similar applicants and eventual operators to accommodate all legitimate interests and stakeholders.

No Change But Now. Please.

Eric Brunner-Williams, August 12th, 2010, Ithaca New York