

Demand Media Comments on the Initial Report on Vertical Integration between Registrars and Registries

As Demand Media is an active participant in the Vertical Integration Working Group, we appreciate the opportunity to comment on this Initial Report. The report is the result of an incredible effort put forth by the members of the Working Group and all members of the group should be commended for their time-consuming effort. Unfortunately, the Working Group was not able to reach consensus on any single matter. This was a result of limited time to work through the issues and regrettably, the refusal of some members to compromise and move towards consensus. The results, or lack thereof, can be seen in this Initial Report which has multiple proposals, all with solutions to the “problems” of Vertical Integration (“VI”) or Co-Ownership (“CO”). *However, the report does not include a single line reporting on what the actual “problems” or “harms” resulting from VI or CO may be!*

With the implementation of ICANN’s new gTLD program, the top level and second level domain marketplaces will drastically change. The monopolistic situation that precipitated vertical separation in the first place will not be present with a couple hundred new gTLDs, none of which will have any market power. So what is the reasoning behind some of the proposals in this Report for the forced separation of Registries and Registrars? In a word, the opponents of market competition cite “harms.” However, the Working Group has not addressed what these harms are and how they can occur. This seems like an area that must be deliberated so that the GNSO and the ICANN Board are able to make an informed decision on the appropriate vertical integration policy.

We also believe a study of the cause of any harms would help this working group reconcile some of the beliefs in certain proposals in this document. For example, the JN2 proposal, which in essence allows up to 100% co-ownership without self-distribution (not allowed to sell in your own TLD), is backed by two of the largest registries, VeriSign and Neustar, among others. Yet, this proposal did not receive approval from the registry Afiliias, as they felt the harms would be too great if there is anything above 15% ownership. An exploration of potential harms could help this working group, the GNSO and the ICANN Board understand how two groups with similar experience could come to such divergent conclusions and support such different proposals.

We would also like to reiterate some of the concerns that we addressed in our DAGv4 comments, as they are still an open issue and ICANN Staff has not addressed them as part of this VI Working Group's Initial Report. The United States and other nations have strong laws and regulatory enforcement agencies to guard against anticompetitive activity and unfair trade practices. Efforts or policies that prevent registries from owning registrars and vice versa clearly limit competition for the respective markets, whether registries or registrar services, and thus have a negative effect on consumer welfare. Consumers are denied the benefits of open competition; namely, better prices and services. The competitive process only works when the market provides services in a free and independent manner.

These comments should not be construed as legal advice to ICANN, or as accusations against any person or party of improper activity. It is not our place to dispense such advice or lodge allegations. However, we do respect ICANN as an institution and prefer not to see ICANN and up-standing members of the ICANN community embroiled in antitrust disputes or under investigation by government authorities and/or regulators, whether launched by the government itself or as the result of a complaint filed by a frustrated ICANN participant. This would not be a good outcome for ICANN, the gTLD program and the general public that will benefit from the expanded choices and services that a competitive gTLD marketplace will bring. We are supportive, not fearful, of robust competition. It is best promoted by an even playing field, not by anticompetitive policies and conduct that might suppress superior products, innovative services, and consumer benefits.

Demand Media is hopeful that the Vertical Integration WG can push hard and update the Initial Report to include a comprehensive list and analysis of potential harms as discussed in our comments. With this information we believe the ICANN Board will see that allowing some form of VI or CO in the first round of TLDs, whether a numerical limit (allowing VI up to 250,000 domains) or 100% cross-ownership without self-distribution (JN2 Proposal), will benefit consumers, encourage growth and allow for new entrants in this marketplace. All stated goals of ICANN and the new gTLD process.

Sincerely,

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Demand Media