**RICHARD TINDAL COMMENTS ON DAG 3.0**

**Introduction**

DAG Version 3.0 is the culmination of tens of thousands of hours of work by hundreds of ICANN participants over an eighteen month period. ICANN staff has been diligent in reviewing and considering all public comments and explaining the rationale for subsequent changes to the DAG. As a result of this extensive community input hundreds of changes have been made to previous versions of the DAG. These changes have improved the clarity, fairness and efficiency of the document and the process for approving new TLDs.

These collective efforts to improve the document have been overwhelmingly successful. The current DAG provides a highly equitable and sensible process for selecting TLDs and registry operators. Few documents in commercial, Government or non-profit arenas have undergone the sort of detailed input, scrutiny and change the DAG has undergone. I agree strongly with the conclusion in the current version that the Evaluation Criteria/Procedures, Dispute Resolution Standards and Procedures, and Contention Resolution Procedures *‘have matured in development over the past year to a point where the process of continuous iteration and community feedback is essentially complete’.*  I view the DAG Modules as largely complete.

My comments on DAG 3 are limited to the Registry Agreement and its Attachments. These documents define the operating requirements for registries. Based on my experience in managing ccTLD and gTLD registries over the last 10 years I have suggested changes which I think will benefit this portion of the DAG.

**Section 2.9 ‘Use of Registrars’**

Of the four options regarding registry/ registrar separation I support the first - **(a) No cross-ownership restrictions except where there is market power and/or registry price caps (regulation needs, if any, left to regulating authorities).**

I call this option ‘Vertical Integration’ and believe it is the best approach for new TLDs for the following reasons:

* Conventional economic theory strongly supports the view that vertical integration benefits consumers through better price, innovation and service
* Historical precedent within ICANN has permitted vertical integration without restrictions in numerous TLDs
* It is the norm in almost every other industry
* Safeguards such as separation of registry and registrar functions, open access to all registrars, and non-discriminatory treatment of registrars will remain in place
* Sweeping allegations that additional abuse will occur are illogical and unproven. None of these abuse concerns occurred with previous TLDs that permitted vertical integration
* Without vertical integration many new registries (especially those for small and community-based TLDs) will be severely hindered should existing registrars decline to offer their TLDs
* ICANN’s economists and competition experts support this option
* Registrars, the main beneficiaries of vertical separation rules in .COM, support this option for new TLDs

**Section 2.10 ‘Pricing for Registry Services’**

There is new parenthetical language towards the end of this section:

*“[Registry Operator shall offer all domain registration renewals at the same price, unless the registrant agrees to a higher price at the time of the initial registration of the domain name following clear and conspicuous disclosure of such renewal price by Registry Operator.]”*

The intent of this language appears to be consumer safety such that registries must make a renewal price the same as that for an initial registration, unless the registrant is made aware of a potentially higher renewal price at the time of initial registration. I support the intent of this language but I believe it needs to be worded more clearly as the current version does not differentiate between varying second level names, and does not fully recognize the role played by registrars in domain pricing.

I believe the following, modified language better meets the intent of the section:

*“[Registry Operator shall offer a domain registration renewal at the same price as the initial registration price for that name, unless the registrant agrees to a higher price at the time of the initial registration of the domain name following clear and conspicuous disclosure of such renewal price by Registry Operator and clear advice by the relevant registrar that renewal price may be higher than initial registration price.]”*

**7.1 ‘Amendment of Terms and Specifications’ and 7.2 ‘Process for Changes’**

Earlier versions of the DAG allowed ICANN to make unilateral changes to registry operator obligations in the event of: *‘substantial and compelling need related to the Security or Stability of the Internet or the Domain Name System ’.* For example, ICANN could deem a new and highly expensive technical requirement necessary for registries, and unilaterally impose that requirement on registries (at full cost to those registries). The intent of this provision is for truly compelling and unforeseen Stability or Security requirements critical to the DNS, however there is obviously latitude for ICANN’s Board to decide what is *‘substantial and compelling’.*

In previous comment periods there appeared to be some acceptance of the need for this potentially onerous provision, however the new version broadens even further the powers of ICANN by allowing it to make such unilateral changes to registry fees if *‘justified by a financial need of ICANN’*. This fee provision is not linked to Stability or Security. Fees can be raised for any reason ICANN deems necessary.

This is an incredibly loose and dangerous clause and one which would allow ICANN to raise registry fees at any time under almost any circumstance. (Note: the proposed provision is in addition to the section 6.4 provision that allows ICANN to make annual increases in registry fees based on inflation). The new, proposed provision needs to have a much higher standard (e.g. ‘*a compelling financial need based on unforeseen circumstances beyond the control of ICANN’*) and there needs to be an annual limit placed on any fee increase (e.g. no more than 10% increase per year).

**Specification 7 – Post Delegation Dispute Resolution Procedure (PDDRP)**

This is the first DAG in which a PDDRP has been specified. The PDDRP in the DAG varies widely from that proposed by the IRT, and widely from the many comments submitted on the IRT proposed PDDRP. The DAG PDDRP is deficient in many, significant ways:

1. **ICANN takes itself out of the process**
2. **It changes the grounds for dispute**
3. **It eliminates all protections for abusive filings**

A thorough appraisal of the many problems with this PDDRP is available at <http://www.circleid.com/posts/post_delegation_dispute_irt_concept_unsupportable>

I support the concerns raised in this article and recommend either (a) a reversion to the PDDRP proposed by the IRT (albeit with changes proposed by the many commentators on the IRT version) or (b) elimination of a PDDRP from the DAG. The version that is currently proposed is unworkable and unacceptable.

Thank you for time in considering these comments

Richard Tindal

11/20/09