

Registrar Stakeholder Group Position on Proposed New gTLD Registry Agreement

BACKGROUND

In October 2009 ICANN published the New gTLD Draft Applicant Guidebook Version 3 ("DAG V3"). The ICANN Registrar Stakeholder Group ("RSG") has reviewed DAG V3 and this Position Statement captures the overall sentiment expressed by RSG Members. Due to time constraints, however, no formal vote regarding this Position Statement was taken.

RSG POSITION

Included in an attachment to Module 5 of DAG V3 is the proposed New gTLD Registry Agreement ("Registry Agreement"). The RSG is very troubled by and is strongly opposed to provisions contained in "Article 7" regarding contract amendments to the Registry Agreement. The RSG believes that this section, as it is currently drafted, provides ICANN with overbroad power to unilaterally amend the Registry Agreement without the consent of the registry operator. In particular, section 7.2(f) allows ICANN to amend the Registry Agreement regarding a wide range of material terms, including the fees payable by the registry operator to ICANN, even after a majority of registry operators subject to the amendment have notified ICANN of their disapproval.

The amendments section of the proposed Registry Agreement renders the entire Agreement far too uncertain. In the RSG's view, an agreement with so much uncertainty is likely to result in many unintended consequences that will ultimately harm the domain name community. These could include difficulty for registry operators seeking investment capital or business partnerships, or uncertainty in operational planning that could contribute to instability.

While not a party to the proposed Registry Agreement, the RSG is also decidedly concerned about the possibility that ICANN may attempt to impose similar provisions in future versions of the Registrar Accreditation Agreement ("RAA"). The RSG would be vigorously opposed to such an attempt, and objects now to the precedent that would be set by the proposed Registry Agreement.

CONCLUSION

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