

COMMENTS FROM CORE ASSOCIATION ON THE PROPOSED AMENDMENT TO THE BASE NEW GTLD REGISTRY AGREEMENT

CORE Association ("CORE") welcomes the opportunity to comment on the proposed Amendment to the Base New gTLD Registry Agreement (the "Amendment"), and wants to thank all parties and individuals involved in the process of drafting the proposal.

CORE (aka CORE Internet Council of Registrars) is a non-profit association formed by domain-name registrars and resellers which is the Registry Operator for 3 unrestricted IDN TLDs. CORE is also a Registry Service Provider (and consultant) for 12 community-based TLDs (subject to the 2001, 2005 and 2013-types of Agreement) and 9 exclusive-use/.brand TLDs. Additionally, CORE serves as one of the three EBERO providers. CORE's wholly-owned subsidiary, COREhub SRLU, was assigned in 2014 the registrar accreditation (IANA-15), which CORE held since the initial testbed in 1999.

Our views on the Amendment are tributary to all these different roles and interests, to the interests of our customers, and to a mandate to consider the DNS as a resource that has to be managed according to the public interest.

We take advantage of this opportunity to file a general supporting comment, some specific remarks to a concrete point we do not support (amendment to Section 2.10 of the Registry Agreement), and two proposals to implement the discretionary Registry fee reduction waiver proposed in Section 4.7 of the Registry Agreement:

[A\) GENERAL COMMENT: supporting the Amendment](#)

[B\) Section 2.10: NOT IN SUPPORT](#)

[C\) Section 4.7 IMPLEMENTATION \(objective and non-discriminatory criteria\)](#)

[D\) Section 6.1: ADDITIONAL PROPOSAL for currency exchange-rate neutrality.](#)

A) GENERAL COMMENT: supporting the Amendment

CORE welcomes and supports most of the changes proposed in the Amendment. While we are not sure about the real need for some of them, CORE sees no reason to oppose them, except for the one mentioned in B) below, and encourages ICANN to move ahead with the Amendment.

CORE believes, though, that a further number of points of the Base Agreement should get some attention and be amended (some aspects of Specifications 4, 5 and 9, some SLA measurements, etc.). We also perceive the need to further adapt the Base Agreement in those cases where there are specificities such as Community-based (sponsored) or geoTLDs and exclusive-use/.brand TLDs, and we hope there will be opportunities to address these additional amendments in the near future.

B) Section 2.10: NOT IN SUPPORT

The only point raising enough doubts on its consequences in CORE's view, and hence, preventing us from supporting the Amendment as drafted is that in Section 2.10. The current proposal suppresses the obligation to notify ICANN of price increases in initial registrations and in renewals.

CORE understands the logic and coherence of this proposed modification with regard to the actual obligations and procedures of Section 2.9 as amended.

However, from a public interest point of view and in accordance with ICANN's core values, it would be preferable that ICANN collects any Registry Operators' price increase information.

According to Section 2 of the ICANN Bylaws, ICANN should promote and sustain a competitive environment. Pricing is indeed a key element for evaluating competition and its evolution. While ICANN is neither a consumer protection agency nor an antitrust authority, it is the only party that can guarantee an adequate collection of this information, and hence its availability for the assessments of this competitive environment's evolution. In other words, price evolution studies could not be properly conducted should ICANN cease to collect this information. CORE therefore recommends to put this modification on hold until full discussion of its long-term implications is carried out.

C) Section 4.7 IMPLEMENTATION (objective and non-discriminatory criteria)

CORE welcomes the introduction of a Registry Fees Reduction Waiver. While the current level of fees seem appropriate for medium-sized TLDs, .brand TLDs and portfolio Registry Operators, it is a serious handicap for single-TLD Registry Operators in an environment in which, for many of them, attaining 50,000 DUM is not realistic in the short term. This 50,000 DUM threshold, from which the "regular" Fix Fee/Variable Per-Domain Fee starts to apply seems too high of a bar to set the "regular" fees. A discretionary reduction waiver as proposed may be a valid tool to address the real situation.

But sole discretion of ICANN in its application could and should use some guidance. It must not be arbitrary or discriminatory, and we all agree on that. It cannot simply be an automatic application of proportional reduction across all TLDs (such as "0.5% reduction" or "USD 0.05 per domain under management" across all TLDs. One-size fits-all, treating equally what is intrinsically different, is also discriminatory.

CORE would like to propose ICANN some objective and non-discriminatory criteria to implement the Fee Reduction Waiver in a way that is efficient, fair and not discriminatory. We have taken as a model the long-standing Registrar Fees Forgiveness that combines both a quantitative cap (less than 250,000 domains under management, DUM) and behavioral, but still objective and quantifiable, criteria (no more than 200 attempts per create, as this was established at the time of the so-called "delete wars"). ICANN correctly applied the widely-supported environment policy principle that "polluter pays", both as a question of fairness and as an attempt to reduce the extent of the problem. Similar principles should apply here.

In this regard, CORE suggests that Fee Reduction Waiver should NOT be granted in the following situations

1. TLDs over 50,000 DUM.

The cap could be low, but probably 60,000 is the one making most sense as the point from which the variable fee starts applying but also the cost starts going below USD 0.5 per domain/year, which seems the maximum reasonable fee.

2. Registry Operator manages at least 3 TLDS in the situation described above at 1.

Portfolio Registry Operators should not be excluded on that ground, but as they manage their TLDs as such portfolio, not each one of them should be taken individually.

3. Exclusive-Use/Brand TLDs (i.e., those having obtained an exception under Specification 9 or signed Specification 13).

The per-domain cost implied in the quantitative criteria does not fit here. Many of these TLDs have 1-100 DUM but as they are not open to third-party registration, the economic logic about counting domain names “sold” carries no meaning here. Brand owners have applied for a TLD for a wide variety of reasons, but not to manage a Registry business in the traditional sense. Given the variety of reasons, and business models behind their decision to become a Registry Operator, and also given the fact that it would be unimaginable that any of them values their brand below the economic equivalent of 50,000 DUM, it seems only logical to exclude them from the waiver consideration.

And now some of the “polluter pays” criteria:

4. The Registry Operator has received no more than a given number of First Notices, Second Notices (lower threshold) or Third Notices (even lower threshold) in ICANN compliance cases.

This could be on annual basis, or as a disqualification for subsequent years.

5. The Registry Operator has been involved in more than a given number of total successful URS and UDRP complaints.

ICANN and the whole community have spent tons of time, energy and money dealing with IP rights abuses, but some Registry Operators, including but not only some community-based Registries, have been proactive upstream, and implemented both policies and enforcement procedures that enormously reduce both the damage to third parties as the need for those mechanisms. It is fair that they benefit from the waiver as they have incurred costs to save costs to ICANN, and the community. Those creating those externalities should not be eligible for the waiver.

6. Specification 11-related measurements?

At this point in time, there is nothing specific enough to design an objective measurement in Abuse Monitoring obligations, but it could be so in the future.

Finally, regarding the amount of the reduction:

7. The waiver should establish an annual minimum fee of USD5,000.00. Between this annual minimum fee and the regular fee the reduction should result in a fee not exceeding USD 0.5 per domain under management (for example USD10,000.00 for 20,000 DUM; or USD15,000 for 30,000 DUM).

The criteria proposed above are not a closed list. In fact we propose that a cross-constituency Working Group is set up by ICANN to help developing and refining such objective and non-discriminatory criteria.

D) Section 6.1: ADDITIONAL PROPOSAL for currency exchange-rate neutrality

CORE would like reintroducing a proposal we made back at the Applicant Guidebook time: USD25,000/year for each TLD (or any other given fee) seems uniform across all TLDs at a given point in time, but in the long term it is not. Many Registry Operators price their TLDs in currencies other than the USD, due to either their location or the market at which the TLD is specially aimed at. Currency exchange-rate variations of 30% and beyond are not uncommon between USD and EUR, CHF, GBP, RUB, BRL, CAD, CNY, JPY, KRW, AUD or ZAR (or any other you may think about).

The result is that some Registry Operators may be paying less but many other may end up paying much more annually than those USD25,000.00 annual amount.

For many of them located in weaker economies this may represent a huge cost increase per domain. This is neither ICANN's nor the Registry Operator's fault and no party involved has any control over currency value fluctuations, but it represents a huge liability and an actual discrimination for some of the new Registry Operators.

Imagine the following scenario: 10 small TLDs (say, less than 10,000 domain names under management) are affected by a 30% currency devaluation. For these Registries this would mean USD1 extra per domain compared to USD-priced TLDs.

Beyond the impact on the Registry's finances, this increase is not justified and it is unfair compared to other TLDs not affected by currency fluctuations. The lack of corrective measures represents that a uniform rule creates an inconsistent and discriminatory treatment.

The solution seems evident: ICANN, as the proxy for the DNS community, could and should bear this risk instead of the various Registry Operators individually.

The costs for preventing the said risk are minimal to ICANN. Assuming the rationale of the previous example, this would entail a total of US D75,000 lesser total income for ICANN per year, which both on its budget dimension and its specific new gTLD registry fee income is of a very marginal scale. Or jsut over USD60 per new gTLD, to give it a clearer context.

The number of TLDs affected would not be very large because a) many of them use USD, irrespective of their location, and b) some may be priced in stable enough currencies and have no interest (EUR based TLDs). CORE, for instance, while based in Switzerland, uses USD and EUR for its 3 TLDs, but we can see no mandate in ICANN's Bylaws to impose USD as the only currency in domain name operations. Registry Operators should be free to choose, and still be charged the same fee by ICANN.

Here are the concrete elements of our proposal:

1. Registry Operators may choose payment in their local currency if their domain names are marketed in such currency.
2. The exchange rate should be fixed at a given date, e.g. the deadline for applications in 2012, for instance (as this was the time Registries evaluated the financial impact of Registry fees). The selection of the date by no means affects already paid fees, but only future invoices which would represent the then-equivalent of the USD6,250 per quarter in the Registry Operator's currency.
3. Registry Operator should commit to a minimum period of 5 years before it may reverse to USD.

The goal of this proposal is to provide certainty and fairness among all Registries, and not to allow betting on past or future exchange rate fluctuations or any kind of short term games.

Thanks for your attention.

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