

# Registrar Constituency Position on New gTLD Draft Applicant Guidebook

December 15, 2008

## BACKGROUND

In November 2008, the members of the Registrar Constituency (“RC”) were asked to provide feedback regarding ICANN’s New gTLD Draft Applicant Guidebook (“gTLD Draft Guidebook”). This Position Paper captures the overall sentiment expressed by the RC members who provided feedback about this matter and seems to reflect the general sense of the RC. However, due to time constraints, no formal vote regarding this Position Paper was taken.

## RC POSITION

The RC supports the timely introduction of new gTLDs. The introduction of new gTLDs will foster competition at the registry level, which will help ICANN meet its core objective of promoting competition while ensuring the ongoing security and stability of the Internet. The RC anticipates that the introduction of new gTLDs will have a positive effect on the ICANN community. The RC recognizes that ICANN has committed significant resources to this initiative, and the RC shares ICANN’s commitment to seeing the new gTLD process succeed. Accordingly, after reviewing the gTLD Draft Guidebook, RC members have raised a variety of concerns.

### 1. New gTLD Annual Fees Are Too High.

New gTLD fees should not be so high that they prohibit new registry operators from entering the market. The proposed new gTLD annual fees (> \$75,000 or 5% of revenues) are difficult to reconcile with ICANN’s commitment to promote competition. At the proposed annual fee level, niche registries serving specific communities may not be viable. Additionally, the proposed new gTLD annual fees are difficult to justify when compared with annual fees other gTLD registries have recently paid.<sup>1</sup> Greater annual fees are likely to be passed on to registrars and registrants, undermining the benefits of competition noted above.<sup>2</sup> Moreover, in calculating the 5%, ICANN proposes to include “all bundled products or services that may be offered by Registry Operator and include or are offered in conjunction with a domain name registration.” ICANN fees should only be paid on domain registrations and not other value added services.

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<sup>1</sup> (a) VeriSign only paid \$100,000 in .com fees in 2002 and \$151,000 in 2005 when it had 21MM+ and 38MM+ .coms under management, respectively;

(b) VeriSign paid less than 2% of their .com revenues in FY2008 (\$8M on some 68M .coms @ \$6.00-\$6.42);

(c) biz/info/org only pay a little over 2% of their revenues (currently \$0.15 on \$6.42, \$6.75 and \$6.75, respectively).

<sup>2</sup> Some RC Members also believe that high evaluation and startup costs may increase the likelihood for registry failure. CORE has provided an alternative proposal regarding annual fees, which RC Members supporting this view would like ICANN to consider: <http://forum.icann.org/lists/gtld-transition/msg00018.html>.

Similarly, some RC Members argue that the proposed application fees are too high and cannot be justified at \$185,000. In light of previous application fees, as well as ICANN's stated objective to promote competition, some RC Members feel that the proposed application fees of \$185,000 are excessive. If it can be demonstrated that new gTLD program costs are sufficiently recovered during the first round of applications, the RC would like ICANN to commit to maintaining (or reducing) the application fees for subsequent application rounds.

## 2. How Will ICANN Use Annual Fees to Protect Stability of Internet?

RC Members note the high Annual Fees for new gTLDs and question how ICANN intends to use those fees to ensure new gTLDs are successful. RC Members desire clarification about how the new gTLD Annual Fees will be used to protect the stability of the Internet from failed registries.

## 3. Integral Contract Terms Need to Be Included in New gTLD Agreement.

The absence of several fundamental provisions in the new gTLD Agreement could negatively impact registrars and their registrants, as well as create artificial competitive disadvantages in the domain registration market. These include:

- ICANN must include the limit on the transactional component of the Variable Registry-Level Fee currently not to exceed \$0.25 per Section 7.2(c)(i). This cap on ICANN fees is an important accountability measure. Without it, ICANN essentially could write itself a "blank check" at the expense of registries, registrars, and registrants.
- ICANN must include in its covenants with the new operators the same promises it has with its existing operators, including without limitation, the obligations to be open and transparent and to provide equitable treatment.
- ICANN should specify the subject matter limitation of consensus policies. This is important for registry operators and the broader community as it provides a contractual basis for determining what issues can be raised by a policy process.
- ICANN should mandate an explicit requirement of non-discriminatory access to Registry Services. This is essential for competition. All existing registry operators are bound by such a non-discrimination clause. The absence of this requirement could allow new operators to favor preferred resellers, to the detriment of other registrars and their registrants. Without this requirement, registrants, registrars, and other registry operators whose contracts forbid discriminatory treatment would find themselves at a competitive disadvantage.
- ICANN must revise the draft agreement to strike its ability to change the contract terms unilaterally. It is unprecedented to propose a unilateral change and have it

ratified by the Board of Directors even if 2/3 of the Registry Constituency opposes the change. This would undermine the foundation of ICANN's policy making model; bottom-up, consensus-based decision making based on the active solicitation of input from the community.

4. The RFP Should Be More Explicit in a Few Areas.

The proposed RFP document, while very comprehensive, should be more explicit in a few areas. First, there should be a clearer distinction and explanation between an open and community based TLD. Second, the withdrawal and refund policy should be delineated in the RFP with specificity.

5. Implementation of New gTLDs Must Not Delay Implementation of IDN gTLDs.

IDN TLD support is critically important to the greater adoption of the Internet in Europe and Asia. In light of ICANN's proposed timeline for implementation of new gTLDs, RC Members are concerned that implementation of IDN gTLDs may be delayed. RC Members urge ICANN to implement new gTLDs without causing a delay in the implementation of IDN gTLDs.

6. Section 2.8 of The Proposed New gTLD Agreement ("Registrar Relations") Should Explicitly Require The Accredited Registrar Model.

Section 2.8 of the Proposed New gTLD Agreement concerning covenants of registry operators does not yet define registrar relations. Rather, the Proposed New gTLD Agreement says that the Registrar Relations section is "TBD" and refers readers to the paper posted on ICANN's web site discussing registrar marketplace issues (the "CRAI Report").

In the RC's view, the Accredited Registrar model should be required regardless of how the vertical integration and separation issues are resolved. The concept that registries must register names only through Accredited Registrars is one that does not depend on decisions regarding the CRAI Report.

## **CONCLUSION**

The opinions expressed by the RC in this Position Paper should not be interpreted to reflect the individual opinion of any particular RC member.