



October 27, 2006

GoDaddy.com's comments regarding the revised INFO/ORG/BIZ agreements.

The revised INFO/ORG/BIZ agreements contain three changes in response to public comments and in response to a resolution of the Board on October 18, 2006 that stated:

"Resolved (06.___), after having considered the public comments and the responses from the registries, the President and the General Counsel are hereby requested to renegotiate the proposed agreements relating to: competition-related concerns (in particular price increase restrictions); traffic data and review mechanisms resulting from the introduction of new studies or additional information."

1. Pricing of Registry Services

The proposed revision imposes a 10% annual cap on price increases over the life of the agreements. This is an improvement over the previously proposed versions that have no caps or controls whatsoever. We believe it adequately addresses concerns over differential pricing of renewals and transfers and provides reasonable protection and predictability for incumbent registrants.

2, Uses of Traffic Data

The proposed changes to this section are inconsequential to the concerns that have been expressed. It appears to attempt to further protect Personal Data that a registry collects through its provision of domain name registration services. However it fails to take in account the following:

- Registries may at some point collect personal data through its provision of new registry services that are approved through the newly established funnel process for that purpose. The language should state that the Registry Operator is not permitted to disclose any Personal Data in conjunction with Traffic Data no matter how it may be collected, including but not limited to domain name registration services or any new Registry Services as defined in the agreement and subsequently approved through the funnel process.
- The changes still do not reconcile with the Staff statement regarding the intended use of Traffic Data. The Staff stated (emphasis ours):

"Consistent with the proposed new .COM registry agreement, each of the proposed .BIZ, .INFO and .ORG registry agreements contains a Section 3.1(f) on ***the use for statistical purposes only of 'traffic data.'***"

Yet Section 3.1(f) actually states (emphasis ours):

“Nothing in this Agreement shall preclude Registry Operator from making commercial use of, or collecting, traffic data regarding domain names or nonexistent domain names **for purposes such as, without limitation** ... and promoting the sale of domain names ...”

Clearly there is still a conflict between the Staff’s statement regarding the intended uses of Traffic Data, and the actual language of the agreements. No explanation or clarification has been offered. We again urge the Board to direct the Staff to clear up this conflict by either publishing a statement of their true intent or by clarifying the language in the agreement.

3. Review Mechanisms - Introduction of New Studies or Additional Information

We would be interested in understanding how the individual Board members interpret their resolution quoted above regarding “review mechanisms.” We understood the intent to be that the agreements would be renegotiated to allow for the implementation of recommendations made by these “new studies” or “additional information” requested by the Board. However, what the Staff and Registries are proposing is more or less meaningless. What does “consider and discuss” mean? It appears to be an attempt to placate the community and the Board without putting any real teeth into it, especially considering the ironclad nature of the presumptive renewal that is part of these agreements. Is this what the Board intended? We don’t believe so.

We urge the Board to direct the Staff to follow its instructions as stated in its resolution quoted above. The Staff must negotiate language that ensures any recommendations as a result of these “new studies” and “additional information” can be implemented if the Board should approve them. It may even be necessary to add language to exempt these recommendations from Consensus Policy Limitations defined in the agreements. Otherwise, what is the point of spending time and money on the commission of the independent study on the economic questions posed by the Board?

Other Issues not Addressed

Presumptive Renewal – Community concerns over the form of presumptive renewal in these agreements still have not been addressed. Neither the Board nor the Internet community, in whose benefit the Board is supposed to act, should be satisfied with the renewal conditions proposed in these agreements.

It is obvious to any reasonable person that these proposed agreements do not simply provide a presumptive renewal; they virtually guarantee renewal in perpetuity without any reasonable opportunity for the Board to ever consider re-bidding these agreements regardless of the conduct or performance of the incumbent registry operator. In fact, the registry operator is allowed to repeatedly breach the agreement without limitation as long as they cure each breach within the specified time periods. The consequences of such repeated breaches regardless of their nature is not failure to renew, it is simply monetary damages.

There has been considerable opposition to the lack of appropriate renewal conditions from within the international Internet community, and even several representatives within the US Congress have voiced concerns over the proposed COM agreement in part due to the lack of appropriate renewal conditions.

We urge the Board to direct the Staff to put appropriate renewal conditions back into these agreements, or in the interest of openness and transparency explain more fully to the Internet community why the Board believes it is in the community's best interest not to do so and allow appropriate time for community feedback. The conditions that we request be included are those similar to section 25.B of the current COM agreement, in particularly items (b), (c), and (d), and the conditions stated in 16.C of the current COM agreement (or the similar conditions stated in section 5.4 of current BIZ and INFO agreements).

GNSO Request to wait and PDPFeb06 – Numerous stakeholders, including the GNSO and five of its six constituencies, have publicly requested the Board to hold off approving these agreements until after: the Sao Paulo meeting; the completion of PDPFeb06; and the seating of the Nominating Committee's selected Board members. There is no good reason not to comply with these requests. The current INFO/ORG/BIZ agreements allow ICANN, in its sole discretion, to decide whether or not to call for competing bids (see section 5.2.1 and 5.2.2 of all three agreements). If the incumbent Registry Operators should choose not to negotiate with ICANN on any necessary extension to allow time to appropriately address the community's concerns, so be it. The Board may then decide to start the re-bid process. The Board should expect and direct the Staff to negotiate agreements that are in the best interest of the Internet community as a whole, and not in the sole interests of a single stakeholder.

Tim Ruiz
Vice President
Corporate Development and Policy
GoDaddy.com