Comments of the GNSO gTLD Registries Stakeholder Group

Proposed ICANN Process for Handling Requests for Removal of Cross-Ownership Restrictions for Existing gTLDs

June 1, 2011

Request for public comments URL:

http://www.icann.org/en/announcements/announcement-02may11-en.htm

Regarding the issue noted above, the following statement represents the views of the ICANN GNSO gTLD Registries Stakeholder Group (RySG) as indicated. Unless stated otherwise, the RySG position comments were arrived at through a combination of RySG email list discussion, surveys and RySG meetings (including teleconference meetings).

The RySG supports ICANN efforts in developing a predictable process for existing gTLD registries that would like to remove cross-ownership restrictions. The RySG appreciates the opportunity to provide input to the process proposed by ICANN and respectfully submits the comments below.

On section 1.A:

The RySG would like to reiterate its earlier comment regarding section 2.9 of the draft new gTLD registry agreement (see RySG comments dd. May 15 on the AG April 2011 discussion draft):

In Section 2.9(b), the current language states that if a registry subcontracts provisioning of a registry service to an ICANN-accredited registrar, it has to disclose such arrangement to ICANN. What if the registry’s subcontractor is not an ICANN-accredited registrar initially, but obtains registrar accreditation at some later point? Or starts operating as a reseller? Or its own affiliate does so? Is the registry supposed to somehow find that out and inform ICANN? This may be not an insignificant obligation; especially given the definition of Affiliate is quite broad. The RySG recommends further clarification of this issue, specifically as it relates to the actions of third parties after the fact.

On section 1.B:

The RySG would like to reiterate its earlier comment regarding the proposed Registry Operator Code of Conduct (see RySG comments dd. May 15 on the AG April 2011 discussion draft):

The RySG believes that the spirit of Para. 1a of the Code of Conduct requires registry operators to provide equal level of operational access to the registry’s systems and support services. This would be in line with the provisions existing in the current Sponsored TLD agreements. The current language would appear to prohibit a broad array of arrangements that would be common practice between affiliated companies. For example, it would appear to prohibit a registry from providing an initial capital contribution to an affiliated registrar, or from providing shared services or facilities to such a registrar. Prohibiting a registry from providing these kinds of assistance to an affiliated registrar would render it impracticable for a registry to establish such a registrar, which would be inconsistent with the Board’s directive to permit such arrangements. It could also put the registrar
at a competitive disadvantage with other registrars that may enjoy such support from their affiliated companies.

In addition, as only registrars have access to a registry's systems and support services, we do not believe it is necessary to prohibit registries from providing a preference or special consideration to resellers.

In light of the foregoing, the RySG suggests amending Specification 9, Para. 1a as follows:

In connection with the operation of the registry for the TLD, Registry Operator will not, and will not allow any parent, subsidiary, Affiliate, subcontractor or other related entity, to the extent such party is engaged in the provision of Registry Services with respect to the TLD (each, a “Registry Related Party”), to:

a. directly or indirectly shows any preference or provide any special consideration to any registrar or reseller with respect to the TLD operational access to registry systems and related registry support services, unless comparable opportunities to qualify for such preferences or considerations are made available to all registrars and resellers on substantially similar terms and subject to substantially similar conditions;

Paragraph 3 of Specification 9 says: “Registry Operator will conduct internal reviews at least once per calendar year to ensure compliance with this Code of Conduct. Within twenty (20) calendar days following the end of each calendar year, Registry Operator will provide the results of the internal review, along with a certification executed by an executive officer of Registry Operator certifying as to Registry Operator’s compliance with this Code of Conduct, via email to an address to be provided by ICANN. (ICANN may specify in the future that the reports be delivered by other reasonable means.) Registry Operator agrees that ICANN may publicly post such results and certification.” The RySG notes that publication of the results may deter discussion of confidential matters, which may be an unwanted result.

Further, the RySG recommends the following changes to Section 1(e) of Specification 9:

In connection with the operation of the registry for the TLD, Registry Operator will not, and will not allow any parent, subsidiary, Affiliate, subcontractor or other related entity, to the extent such party is engaged in the provision of Registry Services with respect to the TLD (each, a “Registry Related Party”), to:

(items “a” to “d” omitted)

disclose Fail to adopt, implement and enforce policies and procedures reasonably designed to prevent the disclosure of confidential registry data or confidential information about its Registry Services or operations to any employee of any DNS services provider, except (i) as necessary for the management and operations of the TLD, and (ii) to the extent unless all unrelated third parties (including other registry operators) are given equivalent access to such confidential registry data or confidential information on substantially similar terms and subject to substantially similar conditions.

Paragraph 6 of Specification 9 says: “Notwithstanding anything set forth in the foregoing, this Code of Conduct shall not apply to Registry Operator if (i) Registry Operator maintains all registrations in
the TLD for its own use and (ii) Registry Operator does not sell, distribute or otherwise make available to any unaffiliated third party any registrations in the TLD.” The definition of unaffiliated third party needs to be clarified in this context – Need to limit use with respect to customers, subscribers, employees?

The RySG also notes that Specification 9, Section 1b does not provide a carve-out for registration of names in order to preserve security and stability of the DNS (i.e.; conficker). This omission could negatively impact the capability of registries to operationally protect the security and stability of TLDs.

On section 2:

“If the registry operator opts to proceed with the request, the amendment request will remain in pending status until such time as the competition authority or authorities have provided a substantive response to ICANN.”

Should the request to amend the registry agreement be referred by ICANN to the competition authorities, there should be a reasonable time limit for the request to remain in pending status. If no substantive response is received from the competition authorities within the established time, ICANN should proceed with its consideration of the amendment request.

On the proposed process in general:

The RySG believes ICANN should commit to reasonable time limits for its own consideration of the request to amend the registry agreement. This would be in line with the provisions existing in similar procedures adopted by ICANN such as the Registry Services Evaluation Process.

The RySG notes the proposed process does not establish clear criteria for ICANN’s approval of the registry request. The RySG recommends adding language specifying in which circumstances the registry request to remove cross-ownership restrictions will be approved by ICANN.

Summary of RySG Support

1. Level of Support of Active Members: Supermajority
   1.1. # of Members in Favor: 9
   1.2. # of Members Opposed: 1
   1.3. # of Members that Abstained: 0
   1.4. # of Members that did not vote: 3

2. Minority Position(s): None
General RySG Information

- Total # of eligible RySG Members: 15
- Total # of RySG Members: 13
- Total # of Active RySG Members: 13
- Minimum requirement for supermajority of Active Members: 9
- Minimum requirement for majority of Active Members: 7
- # of Members that participated in this process: 13
- Names of Members that participated in this process:
  1. Afilias (.info & .mobi)
  2. DotAsia Organisation (.asia)
  3. DotCooperation (.coop)
  4. Employ Media (.jobs)
  5. Fundació puntCAT (.cat)
  6. Museum Domain Management Association – MuseDoma (.museum)
  7. NeuStar (.biz)
  8. Public Interest Registry - PIR (.org)
  9. RegistryPro (.pro)
  10. Societe Internationale de Telecommunication Aeronautiques – SITA (.aero)
  11. Telnic (.tel)
  12. Tralliance Registry Management Company (TRMC) (.travel)
  13. VeriSign (.com, .name, & .net)
- Names & email addresses for points of contact
  - Chair: David Maher, dmaher@pir.org
  - Alternate Chair: Keith Drazek, kdrazek@verisign.com
  - Secretariat: Cherie Stubbs, Cherstubbs@aol.com
  - RySG representative for this statement: Vladimir Shadrunov, vshadrunov@telnic.org

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1 All top-level domain sponsors or registry operators that have agreements with ICANN to provide Registry Services in support of one or more gTLDs are eligible for membership upon the “effective date” set forth in the operator’s or sponsor’s agreement (RySG Articles of Operation, Article III, Membership, ¶ 1). The RySG Articles of Operation can be found at [http://gnso.icann.org/files/gnso/en/improvements/registries-sg-proposed-charter-30jul09-en.pdf](http://gnso.icann.org/files/gnso/en/improvements/registries-sg-proposed-charter-30jul09-en.pdf). The Universal Postal Union and ICM, Inc. have concluded registry agreements with ICANN, but as of this writing have not applied for RySG membership.

2 Per the RySG Articles of Operation, Article III, Membership, ¶ 6: Members shall be classified as “Active” or “Inactive”. A member shall be classified as “Active” unless it is classified as “Inactive” pursuant to the provisions of this paragraph. Members become Inactive by failing to participate in a RySG meeting or voting process for a total of three consecutive meetings or voting processes or both. An Inactive member shall have all rights and duties of membership other than being counted as present or absent in the determination of a quorum. An Inactive member may resume Active status at any time by participating in a RySG meeting or by voting.