

**Response from the gTLD Registries Constituency to the straw poll  
for the Feb '06 PDP on contractual conditions for existing registries.**

The gTLD Registries Constituency (RyC) hereby provides its response to the PDP Feb 06 Straw Poll Results on Draft Policy Recommendations. As stated on numerous occasions both orally during task force calls, as well as in writing in previous RyC statements, the RyC believes that most, if not all, of these recommendations are beyond the scope of the Policy Development Process as documented in the ICANN Bylaws and the gTLD Registry Agreements entered into by ICANN and the gTLD Registry Operators.

These responses have been thoroughly vetted by the entire gTLD Registry Constituency on the constituency mailing list, a number of conference calls, and at the face-to-face meeting in Sao Paulo, Brazil.

**TERM OF REFERENCE 1**

ToR 1a. Registry agreement renewal

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Examine whether or not there should be a policy guiding renewal, and if so, what the elements of that policy should be.

Policy Recommendation A: There should be a policy guiding renewal.

**RyC: No. There should not be a GNSO policy guiding renewal. Provisions regarding renewal are contractual conditions outside the scope of the GNSO.**

Policy Recommendation B: There should be a standard term for all gTLD registries that is a "commercially reasonable length."

**RyC: Subject to A above, the RyC believes all gTLD Registry agreements should be of a commercially reasonable length. We believe it is beyond the expertise of the task force, however, to determine what would constitute a "commercially reasonable" length. That said, a good starting point would be to look at the existing agreements.**

Policy Recommendation C: There should be a reasonable expectation of renewal for all registry agreements.

OR

Policy Recommendation D: There should be a renewal expectancy for all registry agreements.

OR

Policy Recommendation E: There should be a presumption of renewal for all registry agreements

**RyC: E. As stated above, all RyC agreements should contain a presumption of renewal as is currently documented in the .aero, .asia, .biz, .cat, .com, .coop, .info, .jobs, .mobi, .museum, .net, .org, .tel and .travel agreements.**

1b. Registry agreement renewal standardization

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Recognizing that not all existing registry agreements share the same Rights of Renewal, use the findings from above to determine whether or not these conditions should be standardized across all future agreements.

Policy Recommendation F: The 'right of renewal' should be standardized for all gTLD registry agreements.

OR

Policy Recommendation G: The 'right of renewal' should be standardized for gTLD registry agreements except when there is an exceptional situation, such as a situation of market dominance or market power.

**RyC: ABSTAIN. The RyC believed that the report provided insufficient information on policy recommendation G to make its decision. In addition, the RyC does not believe it is appropriate to engage in discussions on market dominance or power.**

**TERM OF REFERENCE 2** -- Relationship between registry agreements and consensus policies

2.a

Policy Recommendation H: Consensus policies limitations are inappropriate.

OR

Policy Recommendation I: Consensus policies should always apply to all gTLD registries.

OR

Policy Recommendation J: Consensus policies should always be applied to all gTLD registries. On an individual basis, during the contract negotiation, a registry

could present a situational analysis and justification, which should be posted for public comment before acceptance/inclusion in the contract, for an exception/or modification from a particular consensus policy, due to unique circumstances of how a particular policy would affect that registry. Such an exception will not create any prejudice for extension to any other gTLD registry.

OR

Policy Recommendation K: The present limitations to Consensus policies are appropriate and should continue.

**RyC: K.**

2b.

Policy Recommendation L: Certain policy making responsibility should be delegated to the sponsored gTLD operators, but variations can be made, based on characteristics of the sponsoring community. Variations should be discussed/disclosed in charter for public comment. Examples of policy making responsibility to be delegated to the sponsored gTLD operators include but may not be limited to:

- Charter and scope of 'sponsored community'
- Eligibility to be in the 'sponsored category'
- Eligibility for a particular name
- The concept of a conflicts/dispute process as a service to the sponsored community

**RyC: YES**

**TERM OF REFERENCE 3 -- Policy for price controls for registry services**

**RyC: WE HAVE INTENTIONALLY OMITTED FROM THE RYC RESPONSE ANY REFERENCES TO THIS TERM OF REFERENCE. WE BELIEVE THAT NOT ONLY IS THIS POLICY “RECOMMENDATION” OUT OF SCOPE FOR THIS PDP, BUT WE BELIEVE IT RAISES SUBSTANTIAL ANTITRUST CONCERNS. THE RYC SPECIFICALLY DID NOT (AND WILL NOT) ENGAGE IN ANY DISCUSSION ON THIS TOPIC.**

**TERM OF REFERENCE 4 -- ICANN fees**

4a. Examine whether or not there should be a policy guiding registry fees to ICANN, and if so, what the elements of that policy should be.

Policy Recommendation O: In order to improve ICANN accountability and effective business planning by registries, ICANN staff should immediately implement a

system of ICANN fees from registries that avoids individual negotiations of ICANN fees and provides consistency unless there is established justification for disparate treatment.

**RyC: ABSTAIN. We support the notion of creating more transparency and accountability in the process of determining the fees for ICANN, but we believe that there is no formula that could apply to all TLDs recognizing that each TLD has its**

**own business model. However, the RyC was split on this recommendation. Certain registries expressed the view that no gTLD registry operator should be held hostage by ICANN on ICANN fees and that they had little bargaining power to negotiate ICANN Fees.**

4b. Determine how ICANN's public budgeting process should relate to the negotiation of ICANN fees.

Policy Recommendation P: The ICANN Board should establish a Task Force or Advisory Committee to examine budgeting issues, including the manner and allocation of revenue collection, budget oversight, and budget approval processes. This group should solicit and review public comments on the issues.

**RC: No. The RyC supports existing mechanisms (rather than the creation of a new Task Force or Advisory Committee) to look at these issues provided that there is more transparency into the process.**

#### **TERM OF REFERENCE 5 -- Uses of registry data**

5a Examine whether or not there should be a policy regarding the use of registry data for purposes other than for which it was collected, and if so, what the elements of that policy should be.

Policy Recommendation Q: There should be a policy regarding the use of registry data [which includes traffic data] for purposes other than that for which it was collected.

**RC: No. The RyC believes that more work needs to be done on clarifying the issues related to “registry data”. More specifically, the RyC was unclear on the definitions of “Registry Data”, “Traffic Data” and the phrase “for purposes other than that for which it was collected.” Without further definition of these concepts, which are not simplistic ones, we cannot support this recommendation.**

5b. Determine whether any policy is necessary to ensure non-discriminatory access to registry data that is made available to third parties.

Policy Recommendation R: There should be a policy to ensure non-discriminatory access to registry data that is made available, but that policy should include

safeguards on protection against misuse of the data.

Agreed by all the TF members that further work is needed at the Task Force level.

**RyC: No. For the same reasons cited for Q above, we do not believe enough work has been done to support this recommendation. In addition, we do not necessarily believe that this Task Force is the appropriate body to do more work on this issue.**

**TERM OF REFERENCE 6 -- Investment in development and infrastructure**

6a. Examine whether or not there should be a policy guiding investments in development and infrastructure, and if so, what the elements of that policy should be.

Policy Recommendation S:

There should not be a policy guiding investments in development and infrastructure. ICANN should, however, establish baseline requirements for the security and stability of the registries and anything above that would be negotiated on a case-by-case basis, if necessary. Such a baseline requirements should be recommended to the

Board by the Security and Stability Advisory Committee ("SSAC") after consultation with the gTLD registry operators. In determining these recommendations, the SSAC also should solicit and consider public comments.

Notes: Revised text developed by Jeff Neuman and Jon Nevett

**RyC: YES. The RyC supports the recommendation but recognizes that the SSAC may not be the correct committee to do this work. The RyC would support a separate Board Committee that has the appropriate expertise to examine this issue with the gTLD Registry Operators.**

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