

Registry/Registrar Separation

A Path Forward Towards *True* Integration
With *Real* Consumer Safeguards

Presented by:
Michael D. Palage
Pharos Global, Inc.

Problem Statement

- The domain name eco-system is comprised of 184 million names: 109.6 million gTLDs registrations (60%) and 74.4 million ccTLD registrations (40%)
- This eco-system comprises:
 - One ICANN;
 - Hundreds of registries;
 - Over a thousand registrars;
 - Over a hundred thousand resellers; and
 - Tens of millions of registrants.
- ICANN's Economic Analysis to date has been piecemeal and overly narrow, it has failed to look at the entire market global domain name market (gTLD and ccTLD) as originally cited by the ICANN Board in 2006;

Problem Statement

- The new gTLD round offers a potential evolution of domain name ecosystem;
- The challenge for ICANN is finding the appropriate balance:

Security & Stability
Consumer Safeguards



Innovation
Choice

- The initial CRA Report provided a path forward for the controlled and responsible integration of registry and registrar services;
- The current DAG appears to have rejected that clear path forward and instead proposed contractual terms that impede innovation and choice;

Hypothetical

- Global Bank XYZ is considering applying for a .XYZ TLD
- Purpose of this TLD is to provide increased global branding under the .XYZ TLD, instead of a conglomeration of gTLD and ccTLD domain names;
- Global Bank XYZ would like to assign every customer a unique second level domain for secure transactions utilizing DNSSEC and other innovative anti-fraud mechanisms;

Hypothetical

Obstacles Presented by the Current DAG

- All gTLDs must provide equal access to all ICANN accredited registrars. Thus Global Bank XYZ needs to provide equal access to this key infrastructure to approximately 1,000 ICANN accredited registrars, even those that have been engaged in questionable/illegal activity.
- All gTLD registries are required to use ICANN accredited registrars, there is no ability for a registry to go direct. Global Bank XYZ must enter into a registry contract with ICANN **AND** then either become a registrar to service its own clients, or contract with an ICANN accredited registrar to service its customers (inefficient and unnecessary additional costs)

Hypothetical

- ICANN fees. Under the current proposal, ICANN would charge Global Bank XYZ a registry fee (\$ 0.25) and a registrar fee (\$0.18). Why charge Global Bank XYZ twice?
- ICANN has premised this whole new gTLD initiative on a **cost recovery** basis, why is ICANN charging Global Bank XYZ a per domain name fee on par with .COM ?

Global Bank XYZ has a vested interest to closely supervise the activities occurring within .XYZ, much more closely than ICANN has ever done in connection with any gTLDs.

If Global Bank XYZ has 2 million customers, why should they have to pay ICANN almost 1 million dollars a year? **There appears to be a disconnect between the fees imposed and ICANN's costs in administering .XYZ.**

Proposal

- The CRA Report proposed “relax[ing] the requirement , initially only in limited cases” recognizing that “it is difficult to pull back once regulations have been pulled back.”
- Therefore for the purposes of the first round there should be a **rebuttable presumption** in favor of continued registrar registry separation.
- Applicants would be able to seek an exemption to this presumption on one of three bases:
 - “Single Registrant” model as originally proposed by CRA;
 - Hybrid “No Self Dealing” model as originally proposed by CRA;
 - “Self Dealing with Safeguards”
- Rebuttable presumption requirements and other safeguards shall be part of review called for under 9.3 of the Affirmation of Commitments.

Expanded “Single Registrant”

- The CRA Report proposed a new model TLD model “where the registry and registrants are one. “
- Concern regarding the lack of a “bright line definition” in the case of BIG Company suppliers wanting to register domains within the registry;
- Proposed Definition for Single Registrant TLDs:
Bona fide legal relationship between the registry and the registrant, where the domain name is merely an ancillary service.
- Registry permitted to go direct, provided that all registrant safeguards are incorporated into the Registry agreement;
- Registry would not be required to comply with equal access obligations;

Hybrid “No Self Dealing”

- The CRA Report also proposed relaxing the vertical separation requirements to allow cross ownership in a hybrid model;
- Hybrid Model would prohibit common ownership registrar from providing domain name registration services in the common ownership registry;
- Proposed Enhancement to minimize potential gaming:
Prohibition would not be limited to common ownership, but would also include affiliates.

“Self Dealing with Safeguards”

- This proposal was not referenced in the CRA Report, but is modeled in response to the more expansive proposals that have been made;
- Cross ownership of registry and registrar permitted and self dealing, provided that the following conditions are met:
- Condition #1: No applicant can seek a rebuttal presumption if the applicant fails a **heightened evaluation** of the criteria currently set forth in the Mitigating Malicious Conduct document in DAG 3.0, see <http://www.icann.org/en/topics/new-gtlds/mitigating-malicious-conduct-04oct09-en.pdf>
- “Heightened evaluation” criteria, any ownership interest, not just merely above 15%.

“Self Dealing with Safeguards”

- Condition #2: Applicant agrees to pay for an Annual Independent Neutrality Audit, similar to VeriSign’s obligations in 2001 and 2002;
- Condition #3: Imposition of a Three Strikes compliance program:

Strike 1: Material violation of neutrality obligations. Common ownership registrar is prohibited for 30 days from either directly or indirectly registering any new domains in the common ownership registry.

Strike 2: Material violation of neutrality obligations. Common ownership registrar is prohibited for 180 days from either directly or indirectly registering or renewing any domains in the common ownership registry.

Strike 3: Material violation of neutrality obligations. Permanent prohibition.

Bottleneck Facilities & Market Power

- Appendix A of the CRA report discusses “bottleneck” facilities and their impact on the marketplace when they have “market power”;
- The Root Zone is a essential bottleneck facility of the Internet;
- ICANN has authority over recommendations for inclusion, removal, and/or edits to the Root Zone.
- Under the criteria set forth in Appendix A of the CRA Report, ICANN is responsible for a bottleneck facility (Root Zone) which also has “market power” (exclusion from the Root prevents unique global resolution)
- **Unanswered Question:** Does ICANN’s one-size fits all fee structure for new gTLDs represent an “excessive price to access the [bottleneck] facility?”

Path Forward

- ICANN's new gTLD process, like all policy development processes, should be bottom-up;
- The ICANN Board should approach the Registry/Registrar separation issue the same as they have the IRT recommendations, i.e. send it back to the GNSO for expedited consideration;
- Options presented to the GNSO council should not be limited to those selected by Staff as in the case of DAG 3.0;
- All reasonable and well founded options should be included for consideration.