Policies for contractual conditions for existing gTLDs

PDP Feb 06 Task Force
Report to GNSO Forum

6 Dec 2006
São Paolo, Brazil

Current Status

- Currently have a working draft covering the 6 Terms of Reference
- Currently in process of moving from set of proposals to draft recommendations
  - Constituencies in process of discussing some of the proposals
  - On some proposals sufficient constituency support has been recorded to consider the proposals as proposed recommendations
    - If 3 constituencies support then indicate <u>Support</u>
    - If 4 or more constituencies support then indicate <u>Strong support</u>
- Once process is completed TF will publish *Draft Final Report* for another round of constituency and public comment

Note

- The Registry constituency has questioned whether the work of the Task Force vis a vis contract terms or pricing policy is appropriate and has suggested the TF cease work on these items.
- The question of the appropriateness of the Terms of Reference was taken back to the GSNO council which reaffirmed that the TF should continue to work on the Terms of Reference
- All discussion of the appropriateness of any of the terms of Reference are referred to the GNSO Council

ToR 1a:
registry agreement renewal

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

ToR 1a:
Proposed recommendations

- <u>Strong support</u> for
  - There should be a policy regarding renewal
- <u>Support</u> for
  - There should be a standard term for all gTLD registries that is a "commercially reasonable length"
    - "commercially reasonable length" remains to be defined
    - Open question of alignment with New gTLD PDP definition

Tor 1a:
Proposals under discussion

- 3 views on contract renewal
  - Expectation of renewal but with re-bid
    - Must re-bid, but good performance taken into advantage
  - Renewal Expectancy
    - Depending on level of compliance with contract contract is renewed
  - Presumption of renewal
    - If contract has not been terminated, it is renewed

ToR 1b: registry agreement renewal standardization

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.

ToR 1b:
Proposals under discussion

- 2 views on standardization of conditions of renewal
  - The 'right of renewal' should be standardized for all gTLD registry agreements
  - The 'right of renewal" should be standardized for gTLD registry agreements except where there is an exceptional situation, such as a situation of market dominance or market power.

ToR 2a: relationship between registry agreements and consensus policies

Examine whether consensus policy limitations in registry agreements are appropriate and how these limitations should be determined.

ToR 2a
Proposals under discussion

- 3 views on consensus policy limitations
  - Consensus policies limitations are inappropriate; consensus policies should always apply to all gTLD registries.
  - 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.
  - The present limitations to consensus policies are appropriate and should continue.

ToR 2b: relationship between registry agreements and consensus policies

Examine whether the delegation of certain policy making responsibility to sponsored TLD operators is appropriate, and if so, what if any changes are needed.

ToR 2b
Proposed Recommendation

- <u>Support</u> for:
  - 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.
    - Discussion is still pending in several constituencies

ToR 3a: policy for price controls for registry services

Examine whether or not there should be a policy regarding price controls, and if so, what the elements of that policy should be. (note examples of price controls include price caps, and the same pricing for all registrars)

ToR 3a
Proposed recommendations

- <u>Support </u>for:
  - There should be a policy in the area of pricing

ToR 3b: policy for price controls for registry services

Examine objective measures (cost calculation method, cost elements, reasonable profit margin) for approving an application for a price increase when a price cap exists.

ToR 3b
Proposals under discussion

- 3 views on policy relating to pricing
  - When a registry contract is up for renewal, there should be a determination by an expert panel whether that registry is market dominant. If the panel determines that there is a situation of market power, then the registry agreement must include a pricing provision for new registrations, as currently is included in all of the largest gTLD registry agreements. If the panel determines that there isn't market power, then there would be no need for a pricing provision. Regardless of whether there is market dominance, consumers should be protected with regard to renewals.
  - It is too early to formulate a policy. A new PDP should be initiated on this topic.
  - Policy relating to pricing should not be discussed

ToR 4a: ICANN Fees

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.

ToR 4a
Proposal under discussion

- 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.
  - Discussion is still pending in most constituencies

ToR 4b: ICANN Fees

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

ToR 4b
Proposed Recommendation

- <u>Strong support</u> for
  - 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 these issues.

20

ToR 5a: uses of registry data

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.

ToR 5a
Proposed Recommendation

- <u>Strong support</u> for
  – 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.

ToR 5a
Proposals under discussion

- Re: what the elements of that policy should be.
    - *This is an area where the TF still needs to develop proposals for discussion*

ToR 5b: uses of registry data

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

ToR 5b
Proposal under discussion

- 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.
  - Discussion still pending in several constituencies

ToR 6: investments in development and infrastructure

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.

ToR 6
Proposed recommendation

- Support for
  - 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 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.

Timeline

20 Dec 2006: Submission of pending constituency statements on proposals in working document

20 Dec 2006 – 1 Feb 2007: Completion of outstanding work

8 Feb 2007: Release proposed draft Task Force Report to Task Force

15 Feb 2007: TF conference call to confirm draft Task Force Report for distribution to Council

22 Feb 2007: GNSO Council meeting to consider draft Task Force Report

25 Feb 2007: Post draft Task Force Report for public comment period

18 Mar 2007: Public comment period closes and incorporation of public comments and constituency impact statements into report

27 Mar 2007: GNSO Council Lisbon meeting to sign off final Task Force Report

questions

thank you