

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

Note: the original proposed process was posted for public comment on 2 May 2011 at <<http://www.icann.org/en/announcements/announcement-02may11-en.htm>>. The following version is a redline showing proposed changes to the posted process:

Process for Handling Requests for Removal of Cross-Ownership Restrictions on Operators of Existing gTLDs:

In order to lift co-ownership restrictions with respect to new gTLDs, existing gTLD registry operators could request an amendment to their existing Registry Agreement to remove the cross-ownership restrictions with respect to new gTLDs. Any proposed material amendments to gTLD registry agreements would be subject to public comment prior to ICANN approval. The proposed process is as follows:

1. The gTLD registry operator submits a written request to ICANN to amend its Registry Agreement and includes the proposed amendment. The amendment will include:

- A. Adding covenants similar to those that appear in Section 2.9(b) and (c) of the new gTLD agreement (see current draft at <http://www.icann.org/en/topics/new-gtlds/agreement-specs-clean-30may11-en.pdf>) as follows:

"(b) If Registry Operator (i) becomes an Affiliate or reseller of an ICANN accredited registrar, or (ii) subcontracts the provision of any Registry Services to an ICANN accredited registrar, registrar reseller or any of their respective Affiliates, then, in either such case of (i) or (ii) above, Registry Operator will give ICANN prompt notice of the contract, transaction or other arrangement that resulted in such affiliation, reseller relationship or subcontract, as applicable, including, if requested by ICANN, copies of any contract relating thereto; provided, that ICANN will not disclose such contracts to any third party other than relevant competition authorities. ICANN

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reserves the right, but not the obligation, to refer any such contract, transaction or other arrangement to relevant competition authorities in the event that ICANN determines that such contract, transaction or other arrangement might raise competition issues.

(c) For the purposes of this Agreement: (i) "Affiliate" means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person or entity specified, and (ii) "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise."

- B. Adding a covenant to comply with the new Registry Operator Code of Conduct. This is in Section 2.14 of the new gTLD agreement as follows:

"In connection with the operation of the registry for the TLD, Registry Operator shall comply with the Registry Code of Conduct as set forth in the specification at [see specification 9]."

The Registry Operator Code of Conduct would then need to be added as a new Appendix.

- C. Amending Section 7.1(c) of, for example the biz/info/org agreements (or like terms in other agreements), to read as follows:

(c) Restrictions on Acquisition of Ownership or Controlling Interest in Registrar. Registry Operator shall not acquire, directly or indirectly, control of, or a greater than fifteen percent ownership interest in, any ICANN-accredited registrar

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Deleted: "(b) Registry Operator Shall Not Act as Own Registrar. Registry Operator shall not act as a registrar with respect to the TLD. This shall not preclude Registry Operator from registering names within the TLD to itself through a request made to an ICANN-accredited registrar chosen in Registry Operator's sole discretion, or reserving names according to Appendix 6 of this Agreement. .

with respect to the TLD without ICANN's prior consent in writing."

2. Each request to remove cross-ownership restrictions would be subject to a competition review, similar to that which is conducted in the preliminary determination phase of a Registry Services Evaluation Process (see <http://www.icann.org/en/registries/rsep/prelim-competition-issues-en.htm>) request. In the event ICANN (following consultation with its own experts) reasonably determines within 15 days that removal of the cross-ownership restrictions might raise significant competition issues, ICANN shall notify the registry operator that ICANN intends to refer the request to the appropriate governmental competition authority or authorities with jurisdiction over the matter. The registry operator may at this point, at its discretion, withdraw its amendment request. 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. Upon response from the competition authority or authorities, ICANN will complete its review and consideration of the amendment request. If ICANN has not received a response from the competition authority or authorities within 90 days, ICANN in its sole discretion may, taking into account all relevant factors, either proceed to consider the amendment request, or if reasonable under the circumstances, defer consideration of the proposed amendment until such time as ICANN receives a substantive response from the competition authority or authorities.

3. An amendment requested under this process would be posted for public comment.

* Note: this document has been corrected to remove the indication that Section 7.1(b) would be deleted. That section should remain in any amended agreement as it is consistent with the Board's resolution adopted 20 June 2011.

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