

Staff Report of Public Comment Proceeding

Proposed Renewal of .ASIA Registry Agreement			
Publication Date:	31 May 2019		
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Public Comment Proceeding		Important Information Links	
Open Date:	27 March 2019		
Close Date:	7 May 2019		
Staff Report Due Date:	21 May 2019 31 May 2019 (extended date)		
Announcement			
Public Comment Proceeding			
View Comments Submitted			
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Section I: General Overview and Next Steps			
General Overview			
<p>ICANN org posted for public comment the proposed agreement for renewal of the .asia Registry Agreement, which expires on 25 March 2020. The proposed .asia Registry Agreement is the result of discussion and agreement between ICANN org and dotAsia Organization Limited.</p>			
<p>The proposed .asia Registry Agreement is based on the base Registry Agreement updated on 31 July 2017. However, in order to account for the specific nature of the .asia TLD, relevant provisions in the 6 December 2006 Sponsored TLD Registry Agreement have been carried over to the .asia renewal agreement. Specifically, pass-through fees related to the Trademark Clearinghouse (Section 6.4 of the base agreement) and Registry Interoperability and Continuity (Section 2.7 and Specification 6 of the base agreement), will not apply as the TLD has been in operation since 2006. Further, the proposed .asia renewal agreement amends Section 2 of Specification 5 of the base registry agreement, allowing the Registry Operator to allocate two-character labels that were reserved in its prior registry agreements. The allocation of two-character labels is subject to the Registration Policy and Post Registrations Complaint Investigation provisions in Appendix A of the Authorization for Release of Letter/Letter Two-Character ASCII Labels at The Second Level issued to all new gTLD operators on 13 December 2016. Additionally, the provision on the Registry Operator's use of up to 100 names for the operation and promotion of the TLD (Section 3.2) and the provisions on activation of names relating to International Olympic Committee; International Red Cross and Red Crescent Movement (Section 5) and names relating to Intergovernmental Organizations (Section 6) are not included in the .asia renewal agreement.</p>			
<p>ICANN org posted the proposed renewal of the .asia Registry Agreement for public comment from 27 March to 7 May 2019. ICANN org received fifteen (15) submissions during the comment period.</p>			
Next steps			
<p>ICANN org will consider the public comments received and, in consultation with the ICANN Board of Directors, make a decision regarding the proposed registry agreement.</p>			

Section II: Contributors

At the time this report was prepared, a total of fifteen (15) community submissions had been posted to the forum. The contributors, are listed below in chronological order by posting date with initials noted. A full list of contributors, including both individuals and organizations/groups, can be found at the [View Comments Submitted](#) link. To the extent that quotations are used in the following narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials
Internet Commerce Association	Zak Muscovitch	ICA
ICANN At-Large Community	Submitted by ICANN Policy Staff on behalf of the ALAC	ALAC
DotAsia Board of Directors	Edmon Chung	EC
Business Constituency	Steve DelBianco and Vivek Goyal	BC
Intellectual Property Constituency	Brian Scarpelli	IPC

Individuals

Name	Affiliation (if provided)	Initials
Clement Genty		CG
Nate DeSimone		ND
John Dalton	VerveSoftware	JD
Sage Arbor		SA
Eric J. Muller	Heidrick & Struggles	EM
George Kirikos	Leap of Faith Financial Services, Inc.	GK
John Poole	DomainMondo.com	JP
Konstantinos Zournas	OnlineDomain.com	KZ
Peter Leuzinger	Global IP Action	PL

Section III: Summary of Comments

***General Disclaimer:** This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding but does not address every specific position stated by each contributor. The preparer recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above ([View Comments Submitted](#)).*

ICANN org received fifteen (15) comments concerning the proposed renewal of the .asia Registry Agreement. Comments submitted generally fall along the following themes: (i) inclusion of Rights Protection Mechanisms (RPMs), (ii) the registry agreement renewal process, and (iii) other topics including the adoption of Universal Acceptance policies, International Domain Names (IDNs) at the second level, and searchable WHOIS.

1. The inclusion of Rights Protection Mechanisms (RPMs) and safeguards in legacy gTLDs.

Comments indicated mixed views on the inclusion of Rights Protection Mechanisms (RPMs) and safeguards in the proposed .asia registry agreement. Some comments applauded the voluntary adoption of rights protection mechanisms and Public Interest Commitments (PICs) from Specification 11, Sections 3(a) and 3(b) in the proposed .asia Registry Agreement, while other commenters expressed concern over the addition of new gTLD RPMs, including Uniform Rapid Suspension (URS), into legacy gTLD Registry Agreements.

Specifically, the objections to including URS via contract renewal are based on various grounds, including: (i) RPMs are not consensus policy for legacy gTLDs, (ii) the view that incorporating RPMs into legacy gTLD Registry Agreements should be halted until the GNSO's RPM working group completes its policy review of the RPMs and makes its final recommendations, and (iii) the view that ICANN org is setting substantive policy for gTLDs by adopting elements of the new gTLD registry agreement into amended and renewed Registry Agreements for legacy gTLDs.

- *“The BC continues to believe that the Policy Development Process (PDP) is the best path for the implementation of URS, since it works across all gTLDs, instead of depending on individual contract negotiations. However, the RPM Review Working Group (WG) has not yet made recommendations with respect to URS as a Consensus Policy.” Further, “Despite our reservations about second-guessing a PDP, the BC supports importing registrant protections from the new gTLD base agreement – including Specification 7, Specification 11, and URS – in any contractual negotiation opportunity that arises for legacy gTLDs.”*

-BC

- *“The IPC applauds DotAsia Organisation and other Registry Operators that choose to implement enhanced rights protection mechanisms for third party trademark owners, and to take on enhanced responsibilities for the Registry Operator to prevent use of registrations for abusive purposes, including but not limited to violations of intellectual property rights.*

-IPC

- *“ICANN prides itself on bottom-up multi-stakeholder policy development, but yet again, ICANN staff has attempted to circumvent the established policy development process. The Proposed .asia Renewal Agreement includes a Uniform Rapid Suspension (“URS”) when ICANN Staff are well aware that the question of whether URS should become a Consensus Policy is currently undergoing extensive review by the Rights Protection Mechanism Working Group (the “RPM WG”). Further, “...the question of whether URS should be applicable to all gTLDs as a Consensus Policy is one of the primary questions that numerous experts from the ICANN Community have been engaged in for the last two years.” “... ICANN Staff has purported to circumvent the (experts) and render all these efforts largely moot with the unilateral implementation of URS in registry agreements as they come up for renewal.”*

-ICA

- *“We oppose the ability for the registry operators to unilaterally create and impose their own mandatory RPMs upon registrants.” “This should be left to the GNSO, to develop only policies that have consensus, and which balance the needs of both rights holders*

and registrants.”

-GK

- *“.asia domains don't need the URS. There have been a lot of bad decision under the UDRP from the unregulated UDRP providers. The URS is even worse.*

-KZ

2. The Registry Agreement Renewal Process

While some commenters support the transition of .asia to the base Registry Agreement, others raised concerns regarding the process ICANN org has followed to renew legacy registry agreements.

- *“The proposed agreements were already negotiated and agreed by ICANN and DotAsia Organisation Limited. At this point, ICANN seeks public comment not to renegotiate these agreements, but only to make a report of public comments ‘available for the ICANN Board in its consideration of the proposed renewal agreement’”. Further, “The BC again asks ICANN to solicit community input before it enters negotiations with contracted parties so that ICANN understands the priority concerns of business users and registrants when it negotiates on our behalf.”*

-BC

- *“ICANN should seek community input before negotiating Registry Agreement renewals.” Further, “ICANN should be seeking community input as otherwise ICANN will not have the benefit of understanding what stakeholders want or need will thereby not be responsive to the stakeholders that it mandated to serve.”*

-ICA

- *“ICANN's proposed contracts represent a failure of the multi-stakeholder model and are instead evidence that ICANN has been captured by registry operators. ICANN claims these contracts are the result of a negotiation, yet what did registrants receive in return for these contractual changes? We received absolutely nothing in return, except for higher fees and higher regulatory burdens...”. Further, “We expect and demand that ICANN and the registry will simply extend the current contracts, rather than enter into these one-sided arrangements.”*

-GK

3. Other topics including the adoption of Universal Acceptance policies, offering International Domain Names (IDNs) at the second level, and inclusion of searchable WHOIS.

- *“While Clause 1.2 of the proposed .asia (DotAsia) agreement encourages the adoption of Universal Acceptance (UA), it recognizes that registries may experience technical difficulties in its implementation. DotAsia already promotes UA within Asia and is a lead participant in the UASG, supported by the DotAsia Board. Therefore, the ALAC proposes that Clause 1.2 of the agreement be amended to read: ICANN*

encourages Universal Acceptance for all top level domain strings in contract with DotAsia.”

-ALAC

- *“The BC has always championed increasing the accessibility of internet domain names and email addresses and has supported ICANN’s effort to make domains available in multiple languages and scripts.” Further, “... the availability of IDN’s at the second level will go a long way to enable and welcome people with varied languages on the internet.”*

-BC

- *“We also oppose the searchable WHOIS, which ignores the ongoing EPDP on WHOIS.” Further, “... it doesn’t properly balance the privacy rights of registrants against those who would go on fishing expeditions. A searchable WHOIS system should only ever be adopted, if and only if, the Trademark Clearinghouse (TMCH) equally becomes public and searchable, in return. If the TMCH is kept secret and non-searchable, then the WHOIS should not be searchable either.”*

-GK

Section IV: Analysis of Comments

General Disclaimer: This section intends to provide an analysis and evaluation of the comments submitted along with explanations regarding the basis for any recommendations provided within the analysis.

ICANN org appreciates all the comments and suggestions submitted to the public forum on the proposed renewal of the .asia Registry Agreement. ICANN org followed the established practice of offering the Registry Operator the option of migrating to the Base gTLD Agreement for the legacy gTLD. Recent legacy gTLD agreements renewed according to the Base gTLD Registry Agreement include .cat, .jobs, .mobi, .pro, .tel, and .travel. ICANN org migrates legacy TLDs to the Base gTLD Registry Agreement as it provides additional safeguards and security and stability requirements which are more robust than what exists in legacy agreements. Additionally, the Base gTLD Registry Agreement lays the framework for consistency for registries, registrars and registrants, and provides for operational efficiencies for ICANN org.

1. Comments on the inclusion of Rights Protection Mechanisms (RPMs) in legacy gTLDs

In the case of the proposed renewal of the .asia Registry Agreement, as well as other legacy gTLD registry agreement renewals (namely, .tel, .mobi, .jobs, .travel, .cat, and .pro) inclusion of the URS was agreed to via bilateral negotiations between the applicable Registry Operator and ICANN org. ICANN org has not moved to make the URS mandatory for any legacy gTLD. Additionally, there is nothing restricting registry operators from imposing additional RPMs in other ways.

2. Comments on the Registry Agreement Renewal Process

In the registry agreement renewal process, negotiations are initiated between the two contracted parties. ICANN org and the registry operator engage in renewal discussions, where both parties consider whether to renew the agreement in its current form or transition all or part of it to the Base gTLD Agreement. Once the parties are in alignment on the form

of the agreement, a draft renewal agreement is produced by ICANN org for the review and comment of the registry operator. After both parties agree on the terms of the proposed renewal agreement, ICANN org invites the community to comment on the agreement through the public comment process, in order to collect valuable community input before proceeding. The proposed renewal of the .asia Registry Agreement is a result of this established process. The Base gTLD Registry Agreement, which the proposed .asia Registry Agreement renewal is proposed to align with, was developed with substantial community input via the open and transparent multi-stakeholder approach.

Next Steps: ICANN org will consider the public comments received, and in consultation with the ICANN Board of Directors, will make a decision regarding the proposed registry agreement.