

# Staff Report of Public Comment Proceeding

Proposed Renewal of .COOP Sponsored Registry Agreement			
<b>Publication Date:</b>	8 August 2018		
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<b>Public Comment Proceeding</b>		<b>Important Information Links</b>	
Open Date:	11 June 2018		
Close Date:	27 July 2018		
Staff Report Due Date:	10 August 2018		
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<b>Section I: General Overview and Next Steps</b>			
<b>General Overview</b>			
<p>ICANN org posted for public comment the proposed agreement for renewal of the .COOP Registry Agreement, which expires on 22 November 2018. The proposed .COOP Registry Agreement is the result of discussion and agreement between ICANN org and DotCooperation LLC.</p> <p>The proposed .COOP Registry Agreement is based on the current .COOP Registry Agreement and incorporates various terms of the approved base gTLD Registry Agreement modified for a legacy Top Level Domain (TLD) and includes certain provisions incorporated into other recently renewed legacy gTLD Registry Agreements (such as the.MUSEUM Registry Agreement, dated 2 March 2018).</p> <p>From 11 June 2018 through 27 July 2018, ICANN org posted the proposed renewal of the .COOP Registry Agreement for public comment. ICANN org received two submissions during the comment period.</p>			
<b>Next steps</b>			
<p>As a next step, ICANN org will consider the proposed renewal of the .COOP Registry Agreement taking into account the comments received. Thereafter, the proposed renewal of the .COOP Registry Agreement will be considered by ICANN's Board of Directors.</p>			
<b>Section II: Contributors</b>			

*At the time this report was prepared, a total of two (2) community submissions had been posted to the forum. The contributors, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.*

Organizations and Groups:

<b>Name</b>	<b>Submitted by</b>	<b>Initials</b>
International Trademark Association	Etienne Sanz de Acedo	INTA
Business Constituency	Zak Muscovitch	BC

**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 two comments from the community in the comment forum concerning the proposed renewal of the .COOP Registry Agreement. Comments submitted generally fall into the following two categories, each of which is explained in more detail below:

1. The inclusion of new gTLD Rights Protection Mechanisms (RPMs) and safeguards such as Public Interest Commitments in legacy gTLDs registry agreement renewals.
2. The negotiation process for the proposed renewal of the .COOP Registry Agreement and legacy gTLD Registry Agreement negotiations in general.

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

While INTA applauds the voluntary adoption of rights protection mechanisms and Public Interest Commitments (PICs) from Specification 11, Sections 3(a) and 3 (b) in the proposed .COOP Registry Agreement, the BC expressed concern over the addition of new gTLD RPMs, including Uniform Rapid Suspension (URS), into legacy gTLD Registry Agreements. The BC's objection for including URS via contract renewal is 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 Global Domains Division (GDD) staff is setting substantive policy for gTLDs by adopting elements of the new gTLD registry agreement into amended and renewed Registry Agreements for legacy gTLDs.

- "... provisions from the New RA such as the Uniform Rapid Suspension (URS) policy from Specification 7, Section 2(b), or the Public Interest Commitments (PICs) from Specification 11, Sections 3(a) and 3(b) are as beneficial for protecting consumers in new gTLDs as in legacy TLDs. INTA is pleased to see that the new tools that have been developed to help protect consumer and help to preserve the security, stability,

and resiliency of the DNS will be employed by .COOP. Moreover, the URS and Spec. 11 PICs carry important substantive benefits in this context because they carry the added procedural benefit of consistency.” (INTA)

- “The BC remains concerned that GDD continues to studiously ignore ICANN’s established multistakeholder policy development process as again demonstrated by GDD’s unilateral purported implementation of Uniform Rapid Suspension (URS) to .COOP, a legacy gTLD, notwithstanding that the ICANN community is currently engaged in reviewing the URS and its application to gTLDs as part of the ICANN GNSO PDP Review of All Rights Protection Mechanisms in All gTLD’s (the “RPM WG”).” (BC)
- “It is concerning that the Proposal creates new policy by imposing the URS on the .COOP registry, when it is the ICANN community which is supposedly engaged in creating policy, not GDD staff”. The multi-stakeholder community has not completed its deliberations on whether URS should become Consensus Policy applicable to legacy sTLDs like .COOP. These deliberations are ongoing in the RPM WG which was initiated by the GNSO as a Policy Development Process (PDP) to review all RPMs at all gTLDs. The WG charter *specifically tasks it with recommending whether any of the new gTLD program RPMs should become Consensus Policy and thereby applicable to legacy gTLDs*. The WG tasked with evaluating the new RPMs does not expect to complete the task until sometime in 2018. It is an affront to the ICANN community volunteers diligently engaged in the PDP to usurp their proper role in developing policy.” (BC)
- “We make clear at the outset that the BC’s concern is not the adoption of new gTLD rights protection mechanisms (RPMs) for legacy gTLDs, per se. In fact, the BC has been a strong advocate for these RPMs in new gTLDs registries and the WG continues to consider fundamental questions about how the new RPMs should function and how they could evolve in the future. The GNSO may ultimately articulate a Consensus Policy that calls for different measures for legacy gTLDs than are now being used with the new gTLDs. If the GDD persists in forcing registries to adopt these pre-Consensus Policy RPMs, it may widely implement procedures that do not align with the GNSO’s ultimate conclusions. Further, as ICANN policy staff has recognized, application of the RPMs to legacy gTLDs raises certain transition issues that are not addressed by implementation via contract. Finally, in the absence of such RPMs being Consensus Policy, registrants may have legal grounds to question their imposition.” (BC)
- “The new RPMs have not, in their current form, received the support from GNSO constituents and have not met the procedure set forth in the Bylaws to become Consensus Policies.

## **2. The negotiation process for the proposed renewal of the .COOP Registry Agreement and legacy gTLD Registry Agreement negotiations in general.**

While INTA expressed its support for the new gTLD Registry Agreement as the starting point for contract negotiations, the BC raised various concerns, including expressing the views that (i) the renewal negotiation process should be more open and transparent, (ii) imposing RPMs that are under consideration by the GNSO’s RPM Review WG shows disregard for ICANN org’s multistakeholder model, and (iii) ICANN org is effectuating

policy through bilateral contract negotiations. Further, INTA suggests that while ICANN is making progress with the transition of many legacy gTLDs to provisions from the base gTLD Registry Agreement, the same terms should be extended to .COM and .NET.

- “INTA is encouraged to see that ICANN and dotCooperation LLC used the new RA as the bases for their negotiations for the renewal of the .COOP registry agreement.” (INTA)
- “INTA agrees with ICANN that the New RA has important ‘technical and operational advantages’ and ‘benefits to registrants and the Internet community’ over earlier, outdated versions. As such, INTA supports bilateral negotiations between ICANN and legacy gTLD registries in order to transition (as much as is possible) to the New RA as those legacy registry agreements cycle through their various renewals.” (INTA)
- “As ICANN has noted: “Transition to the new gTLD Registry Agreement will provide consistency across all registries leading to a more predictable environment for end-users...”. True to that sentiment, ICANN has bilaterally negotiated for transition to parts of the New RA not only with .COOP, but also with other legacy gTLDs like .TEL, .MOBI, .JOBS, .TRAVEL, .XXX, .CAT, and .PRO. While that transition will take some time to achieve as the legacy gTLD registry agreements cycle through their respective renewals, the march of progress from ICANNs negotiations with those various legacy gTLD registry operators has been steady and is welcomed by the INTA”. (INTA)
- “As INTA has highlighted in earlier submissions, the exceptions to that steady progress have been the .COM and .NET registry agreements both of which ICANN has extended without having modernized their terms comparable to the updates negotiated for .TEL, .MOBI, .JOBS, .TRAVEL, .XXX, .CAT, PRO, .MUSEUM and now, .COOP.” (INTA)
- “The BC objections to this regrettable approach are well known. This is at least the sixth instance in which the GDD has insisted upon proposing such an amendment to a legacy TLD registry agreement and the BC sustains its procedural objection to such proposals, through which GDD staff unilaterally establishes a new status quo for registry agreements. By substituting its judgement instead of GNSO policy development, GDD exceeds its powers and overrides safeguards intended to preserve transparency and inclusion with the multi-stakeholder community.” (BC)
- “GDD personnel should therefore not continue to set substantive policy for gTLDs by adopting elements of the new gTLD registry agreement into amended and renewed Ras for legacy gTLDs. Moreover, the ICANN Bylaws reserve the power to set gTLD policy to the GNSO.” (BC)
- While greater consistency between registry agreements is a worthwhile goal, and convenient for ICANN in terms of contractual compliance, it cannot supersede constancy of action in accord with ICANN’s Bylaws.” (BC)

#### **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 for the proposed renewal of the .COOP Registry Agreement.

### **1. Comments on the inclusion of new gTLD Rights Protection Mechanisms (RPMs) and safeguards in legacy gTLDs**

ICANN org acknowledges the comments submitted for the proposed renewal of the .COOP Registry Agreement and notes that the proposed renewal of the .COOP Registry Agreement is the result of negotiations between ICANN org and DotCooperation LLC.

The proposed renewal agreement for .COOP includes revised covenants and obligations related to security and stability to more closely align to the terms of the base gTLD Registry Agreement, including the following provisions and specifications: (1) consensus and temporary specifications and policies, (2) data escrow requirements and procedures, (3) monthly reporting, (4) publication of registration data, (5) reservation of domain names, (6) definition of Registry Services and requirements to offer additional services, (7) performance specifications for the operation of the TLD, (8) registry interoperability and continuity, (9) rights protection mechanisms, (10) incorporation of the Registry Code of Conduct and Public Interest Commitments and (11) the emergency transition process.

With respect to the inclusion of the URS and safeguards in the proposed renewal of the .COOP Registry Agreement, the BC argued that the URS should only be added to legacy gTLD Registry Agreements only after a full Policy Development Process (PDP) and that including the URS in legacy gTLD Registry Agreements via a contract renewal or amendment process is an unacceptable ICANN org intervention into the policymaking process. Conversely, INTA expressed support for the inclusion of the URS through the proposed renewal of the .COOP Registry Agreement.

The URS was originally recommended by the Implementation Recommendation Team (IRT) as a mandatory RPM for all new gTLDs, reviewed by the GNSO's Special Trademark Issues group, and updated based on public comment. To date, the URS has not been adopted as a consensus policy. ICANN org has no ability to make it mandatory for any gTLDs other than those subject to the base new gTLD Registry Agreement.

In the case of the proposed renewal of the .COOP Registry Agreement, as well as other legacy gTLD Registry Agreement renewals (namely, .TEL, .MOBI, .JOBS, .TRAVEL, .CAT, .PRO, and .MUSEUM) inclusion of the URS was agreed to via bilateral negotiations between the applicable Registry Operator and ICANN org. Additionally, there is nothing restricting Registry Operators from offering additional rights protection mechanisms, such as the URS, in other ways, such as through the Registry Services Evaluation Policy (RSEP) process. In the event that the GNSO develops consensus policy recommendations concerning the inclusion of URS in gTLD registry agreements and the Board approves such recommendations, ICANN org will implement the necessary changes in the relevant agreements.

### **2. The negotiation process for the proposed renewal of the .COOP Registry Agreement and legacy gTLD Registry Agreement negotiations in general.**

ICANN org acknowledges the comments expressing concern over renewal negotiations taking place in a non-transparent manner. It should be noted that all Registry Operators have the ability to negotiate the terms of their Registry Agreement with ICANN org, which inherently means discussions are between the two contracted parties – ICANN org and the applicable Registry Operator.

ICANN org and the Registry Operator engage to discuss whether to renew the agreement in its current form or transition all or part of it to the base gTLD base Registry Agreement. Once both parties agree on the terms of the proposed renewal Registry Agreement, ICANN org publishes the proposed renewal terms to provide transparency and invites the community to comment on the agreement, through the public comment process, so that stakeholder feedback on the terms can be considered before proceeding.

**Next Steps:** Following the completion of the public comment process, the proposed renewal of the .COOP Registry Agreement will be considered by ICANN's Board of Directors.