

Staff Report of Public Comment Proceeding

Proposed Amendment 1 to the .JOBS Registry Agreement

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Public Comment Proceeding

Open Date: 30 September 2020

Close Date: 16 November 2020

Staff Report Due Date: 30 November 2020
(Extended to 11 December 2020)

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Section I: General Overview and Next Steps

The purpose of this Public Comment proceeding is to obtain community input on the proposed modifications to the .JOBS Registry Agreement (RA) to accommodate a change to the TLD Sponsor via an Amendment to the .JOBS Registry Agreement. The proposed Amendment 1 is a result of discussions between the ICANN organization (ICANN org) and Employ Media LLC (Employ Media). Employ Media initiated negotiations of the .JOBS RA with ICANN org pursuant to Section 7.6 (i) and provided notification to ICANN org pursuant to Section 7.9 of the .JOBS Registry Agreement.

After consideration of comments received, ICANN org will make a decision regarding the proposed Amendment 1 to the .JOBS Registry Agreement.

Section II: Contributors

At the time this report was prepared, a total of six (6) community submissions had been posted to the forum, including one from Employ Media in response to a community submission. The contributors, both individuals and organizations/groups, 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:

Name	Submitted by	Initials
ICANN Business Constituency	Steve DelBianco	BC
Noncommercial Stakeholder Group	Tomslin Samme-Nlar	NCSG
Employ Media LLC	Ray Fassett	EM
At-Large Advisory Committee	ICANN Policy Staff in support of the At-Large Community	ALAC

Individuals:

Name	Affiliation (if provided)	Initials
Justine Chew		JC

Section III: Summary of Comments

General Disclaimer: This section intends to summarize broadly and comprehensively the comments submitted to this Public Comment proceeding but may 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 six (6) comments from the community regarding the proposed Amendment 1 to the .JOBS Registry Agreement during the comment period, and received one (1) comment two (2) weeks after the Public Comment period closed. The comment received weeks after the comment period closure is not considered within this report.

Within the six (6) comments received during the comment period, one (1) comment from JC requested information on Employ Media's rationale or reason for wishing to assume the duties of the TLD Sponsor, if Employ Media had received any comments to the publicly shared letter, and if the current TLD Sponsor had expressed a position on the proposed change. In response to JC's comment, Employ Media [published](#) an explanation via the Public Comment forum to provide available information.

The remaining five (5) comments generally touch on themes in the following categories, which are summarized below in further detail:

- (1) Comments in support of the proposed Amendment 1
- (2) Comments with questions or requesting additional clarification of elements of the proposed Amendment 1
- (3) Comments regarding the inclusion of rights protection mechanisms
- (4) Comments offering recommendations or modifications to the proposed Amendment 1
- (5) Comments registering concerns with the proposed Amendment 1

(1) Comments in support of the proposed Amendment 1

ICANN org received two (2) comments in support of the proposed Amendment 1.

- (1) The BC indicated its support and noted it "recognizes the importance of maintaining the TLD Sponsor's role, obligations, and commitments to the sponsored TLD Community. The proposed Amendment 1 maintains this important role." More specifically, the BC stated that the proposed changes appear to maintain the TLD Sponsor's role, obligations, and commitments to the sponsored TLD Community; and that the crucial registration qualifications remain intact. The BC also indicated its belief that "replacing the third-party with the HR Council is not a drastic change from the TLD Sponsor's role, obligations, and commitments to the sponsored TLD Community."
- (2) The NSGC stated that it "welcomes the further streamlining and harmonizing of legacy sponsored TLDs in order to bring them closer to current ICANN contractual practices. Simple and standardized contractual practices benefit the community by making contractual language and outcomes more accessible and predictable."

(2) Comments with questions or requesting clarification

ICANN received two (2) comments with questions and requests for clarification.

- (1) JC's comment inquired for responses to and/or sources with information that would answer the following questions:
 - Could Employ Media LLC provide a reason or rationale for wishing to assume the duties of the Sponsoring Organization for the .JOBS TLD?
 - Has Employ Media LLC received any comments to the proposed change from any member of its .JOBS Community referenced in the letter of 8 April 2020 to ICANN?
 - Has the current Sponsor Organization (i.e. SHRM) expressed a position on the proposed change?
- (2) The NCSG questioned if the additional language in the 'Policy Formulation' in Part V of Specification 12 is enough to truly guarantee that policies are formulated for the benefit of the community. The NCSG also questioned whether or not "substantive policies that were previously expanded upon on Part V of Spec 12 and which have now been removed will continue to be part of TLD policies of .JOBS. Does the change of sponsor entail a 'reset' of existing policies"?

(3) Comments regarding the inclusion of rights protection mechanisms

ICANN received three (3) comments related to the inclusion of rights protection mechanisms.

- (1) The BC commented that it was supportive of the inclusion of the Registry Restrictions Dispute Resolution Policy (RRDRP), which the BC noted "enables third-party complainants to assert that they have been harmed as a result of the community-based gTLD registry operator not complying with the registration restrictions set out in the Registry Agreement. This inclusion provides an additional and important means of ensuring that .JOBS will continue to be a community-focused TLD by enabling a 'community objection'."
- (2) ASA offered the following comment: "Any changes should take care of the rights of brand owners, this can be achieved by ensuring that the TMCH mechanism that has been put in place should be respected. Existing TMCH registrations should be honored even if the Registry Operator has itself registered a domain name. Especially those TM holders who had tried to register their brands as .jobs domains in the past and have TMCH registrations."
- (3) NCSG stated their opposition to existing rights protection mechanisms, such as Uniform Rapid Suspension and the Trademark Post-Delegation Dispute Resolution Policy, that are included in Specification 7 of the .JOBS Registry Agreement.

(4) Comments offering general recommendations or modifications to the proposed Amendment 1

ICANN org received one (1) comment that offered general recommendations or modifications to the proposed Amendment 1.

- (1) The BC stressed the importance of and strongly recommended that ICANN Compliance monitor and evaluate the resulting changes of the proposed Amendment 1 to ensure the HR Council is performing its role as a truly independent policy delegate acting solely in the best interest of the TLD Community. The BC also recommended that the HR Council certify its independence, rather than relying on the registry operator alone to complete this certification.

(5) Comments registering concerns with the proposed Amendment 1

ICANN received two (2) comments identifying concerns about the change in TLD Sponsor via the proposed Amendment 1, organized into 3 categories: (1) reducing restrictions on registrant eligibility requirements and reducing the role of the HR Council; (2) the TLD Sponsor's role, obligations, and commitments to the sponsored TLD Community; and (3) not serving in the public interest.

- (1) Reducing restrictions on registrant eligibility requirements and reducing the role of the HR Council:
 - The ALAC expressed that the proposed changes would “reduce restrictions on registrant eligibility, which changes the essential nature of this sponsored TLD.”
 - The ALAC also indicated its concern that “it appears that the HR Council, which was once a policy development body and a voice of the community, has been reduced to an advisory role, which may turn out to be largely ceremonial.”
 - The NCSG expressed that the independence of the HR Council (as the policy delegate) was not precisely defined, and because of this was “uncertain as to whether this corresponds to the standard of independence that may be expected by the community in the context of sponsored TLDs.”
- (2) The TLD Sponsor's role, obligations, and commitments to the sponsored TLD Community
 - By removing the current TLD Sponsor, the ALAC suggests that “without any additional checks and balances on the new sponsor/registrar,” they are uncertain as to how ICANN would “ensure that this change will ‘not result in a departure from or a drastic change to the TLD Sponsor's role, obligations, and commitments to the sponsored TLD Community or negative impact to the sponsored TLD Community’ as stated in the proposed amendment.”
- (3) Not serving in the public interest:
 - The ALAC indicated that “although the proposed amendment proposes to preserve the HR Council, we wonder who would provide the oversight on the proposed commitment of Employ Media to ensure that this Council ‘functions independently to serve the needs and act in the interest of the .JOBS TLD community’ -- currently a responsibility of SHRM.” The ALAC also expressed its opinion that removing a non-profit entity from the TLD Sponsor role to the registry operator would not be in the public interest, stating “the end-user community places a very high value on the role of non-profits as stewards of TLDs, as was evident in the recent controversy over a proposed sale of PIR. In this proposal, the non-profit organization is removed as sponsor without any additional checks and balances on the new sponsor/registrar.”

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 thanks all contributors for their valuable input and feedback, and appreciates all comments and suggestions submitted to the Public Comment forum for the proposed Amendment 1 to the .JOBS Registry Agreement. The analysis of comments is grouped into the same sections as in the summary of comments above with the addition of the “Conclusion and next steps” section:

- Analysis of comments in support of the proposed Amendment 1
- Analysis of comments with questions or requesting additional clarification of elements of the proposed Amendment 1
- Analysis of comments regarding the inclusion of rights protection mechanisms
- Analysis of comments offering recommendations or modifications to the proposed Amendment 1
- Analysis of comments registering concerns with the proposed Amendment 1
- Conclusion and next steps

(1) Analysis of comments in support of the proposed Amendment 1

ICANN org acknowledges the support for the proposed Amendment 1 in the comments from the BC and NSGC, respectively, that indicate the proposed Amendment 1 maintains the TLD Sponsor’s role, obligations, and commitments as well as standardizes contractual language of a legacy TLD. An objective of the proposed Amendment 1 is to maintain the registry operator’s commitments to its community while updating the .JOBS contract to be more in line with current contractual practices.

(2) Analysis of comments with questions or requesting additional clarification of elements of the proposed Amendment 1

- In response to the inquiry of JC regarding Employ Media’s rationale for the proposed changes, .JOBS community comments, and whether the current TLD Sponsor has expressed a position, Employ Media responded directly to the community forum:

“In assuming the role and duties of the sponsor we expect the effect of this change to be neutral. Our rationale includes preserving the concept of the HR Council maintaining independence in serving the interests of the .Jobs community, adding the RRDRP mechanism for the resolution of registration restriction disputes and simplifying Specification 12 comparable to other legacy sponsored TLD’s. We have not received any objections, oral or written, from the .Jobs community referenced in our letter of 8 April 2020 to ICANN or expressed by SHRM. Sources include Employ Media, SHRM and ICANN.”

- The NCSG questioned if the additional language in the “Policy Formulation” section in Part V of Specification 12 is enough to truly guarantee that policies are formulated for the benefit of the community.

- According to the proposed amendment, the independent HR Council will formulate policies for the benefit of the sponsored TLD Community. As the proposed contractual language also stipulates in Part V the HR Council, composed of HR professionals, will perform its duties independently from the registry operator, and is obligated to act solely in the interest of the sponsored TLD Community. The proposed amendment designates the independent HR Council as the entity primarily responsible for engaging with the sponsored TLD Community and making policy recommendations based on TLD Community input. In addition, Part 1 Charter further reinforces that policies must continue to be made in the interest of the sponsored TLD Community by reaffirming that the .JOBS TLD is managed by the registry operator in accordance with “(i) the provisions of this charter (the “Charter”); (ii) the interests of the Community; and (iii) policy directives from the HR Council...”
- The NCSG also questioned whether or not “substantive policies that were previously expanded upon on Part V of Spec 12 and which have now been removed will continue to be part of TLD policies of .JOBS. Does the change of sponsor entail a ‘reset’ of existing policies?”
 - It is not entirely clear which substantive policies the NCSG is referring to as having been removed. ICANN org notes that the revisions to Part V of Specification 12 focused on simplifying the existing language to remove excess verbiage rather than modifying the substance. Important concepts, such as the registry operator’s “fulfill[ment] of the Community value criteria by (i) protecting the rights of others (ii) assuring charter-compliant registrations and (iii) avoiding abusive registration practices” remain intact in a more concise form. The addition of the “Policy Formulation” section both accommodates for the proposed change in TLD Sponsor and offers updated, simplified language.

(3) Analysis of comments regarding the inclusion of rights protection mechanisms

The inclusion of the RRDRP will provide a formal mechanism for resolution of registration restriction disputes and provide the community a means of challenging whether the community-based registration terms are accurately applied.

The rights protection mechanisms included in Specification 7 of the .JOBS Registry Agreement were included in the .JOBS Registry Agreement during the registry agreement renewal process, which is a separate process from this draft Amendment to the .JOBS Registry Agreement. The focus and scope of the proposed Amendment 1 are changes that would accommodate a change to the TLD Sponsor via an Amendment to the .JOBS Registry Agreement. The referenced rights protection mechanisms in Specification 7 are terms that remain unaffected by the proposed Amendment 1 and are not directly related to the proposed change in TLD Sponsor. As such, they are not within scope of this proposed Amendment 1.

(4) Analysis of comments offering general recommendations or modifications to the proposed Amendment 1

With respect to the BC’s recommendation regarding compliance monitoring, ICANN Compliance’s goal is to ensure that contracted parties fulfill the requirements set forth in their agreements with ICANN org. ICANN Compliance will continue to monitor and ensure the registry operator is fulfilling its in effect contractual obligations and requirements.

ICANN org will consider the BC's suggestion of requiring certification of the independence of the HR Council by both the registry operator and HR Council.

(5) Analysis of comments registering concerns with the proposed Amendment 1

ICANN org's analysis of the two (2) comments identifying concerns about the change in TLD Sponsor via the proposed Amendment 1, is organized into 3 categories: (1) reducing restrictions on registrant eligibility requirements and reducing the role of the HR Council; (2) the TLD Sponsor's role, obligations, and commitments to the sponsored TLD Community; and (3) not serving in the public interest.

(1) Reducing restrictions on registrant eligibility requirements and reducing the role of the HR Council:

- The ALAC expressed that the proposed changes would "reduce restrictions on registrant eligibility, which changes the essential nature of this sponsored TLD."

However, the restrictions on registrant eligibility remain largely unchanged. The eligibility language was only revised for simplification and to address specific reference to the current TLD Sponsor. The existing requirements read that persons engaged in human resource management practices that meet any of the three listed criteria may register, meaning registrants must be persons engaged in human resource management practices who meet at least one of the following:

- "(i) possess salaried level human resource management experience
- (ii) are certified by the Human Resource Certification Institute
- (iii) are supportive of the Sponsor's [SHRM] Code of Ethical and Professional Standards in Human Resource Management...."

The updated, proposed language would also require registrants to be "persons engaged in human resource management practices", who support a code of ethics that fosters an environment of trust, ethical behavior, integrity and excellence (as exemplified in the current SHRM Code or other similar codes). The proposed changes preserve the existing qualifications by ensuring registrants must be engaged in human resource management practices and support the SHRM (or other similar) code(s) of ethics.

- The ALAC also indicated its concern that "it appears that the HR Council, which was once a policy development body and a voice of the community, has been reduced to an advisory role, which may turn out to be largely ceremonial." In addition, the NCSG expressed its uncertainty as to whether the independence of the HR Council (as the policy delegate) met the standard of independence expected by the sponsored TLD Community.

Language in the proposed Amendment 1 states:

- **Part 1. Charter:** "The HR Council shall act as the policy delegate responsible for establishing registration requirements for second level domains in the TLD, consistent with the Agreement and this Charter and in the interests of the Community."

- **Part 1. Charter:** “The TLD will be managed by Registry Operator in accordance with the (i) the provisions of this charter (the “Charter”); (ii) the interests of the Community; and (iii) policy directives from the HR Council (as defined herein).”
- **Part V. Additional Provisions:** The “HR Council duties are to take in requests from members of the sponsored Community regarding .jobs TLD policies and make recommendations to Registry Operator when determined by the Council to be appropriate”, and “HR Council members are obligated to act solely in the best interests of the Community.”

These specific provisions maintain that the HR Council will serve the TLD Community in a policy directive role in the interest of the community. Furthermore, the registry operator has agreed to annually certify to ICANN org that the HR Council performed its duties independently of the registry operator and in the interest of the TLD Community.

(2) The TLD Sponsor’s role, obligations, and commitments to the sponsored TLD Community

- By removing the current TLD Sponsor, the ALAC suggests that “without any additional checks and balances on the new sponsor/registrar,” they are uncertain as to how ICANN would “ensure that this change will ‘not result in a departure from or a drastic change to the TLD Sponsor's role, obligations, and commitments to the sponsored TLD Community or negative impact to the sponsored TLD Community’...”

The registry operator has committed to maintaining the TLD Sponsor’s role, obligations, and commitments to the sponsored TLD Community. This is demonstrated in the Specification 12 language retained in the proposed Amendment 1, where the registry operator as the TLD Sponsor will manage the TLD in accordance with the provisions in the Charter, the interests of the Community, and policy directives from the HR Council. The establishment of an HR Council, that according to the proposed Amendment 1, Part V. Policy Formulation section, “will perform its duties independent of the registry operator” and is “obligated to act solely in the best interests of the Community” further supports and demonstrates this commitment.

(3) Not serving in the public interest:

- The ALAC stated its belief that removing the current TLD Sponsor (SHRM), a non-profit entity, would not serve the public interest and questioned “who would provide the oversight on the proposed commitment of Employ Media to ensure that this Council ‘functions independently to serve the needs and act in the interest of the .JOBS TLD community’ -- currently a responsibility of SHRM.”

With the change in TLD Sponsor, the independent HR Council will fulfill the role of an independent third party that provides policy development oversight and commits to creating policies that are in the interest of the .JOBS TLD Community. As mentioned previously, the registry operator has agreed to annually certify to ICANN org that the HR Council performed its duties independently of the registry operator and in the interest of the TLD Community. If there are legitimate concerns that the registry operator is not fulfilling its

contractual requirements, this matter may be referred to ICANN Compliance. Additionally, the registry operator has agreed to incorporate and adhere to the RRDRP, which provides a formal mechanism to address circumstances in which it is claimed that the registry operator deviates from the registration restrictions outlined in its Registry Agreement.

(6) Conclusion and next steps

ICANN org thanks all of those who commented on this proceeding. ICANN org will consult with Employ Media regarding the feedback provided in this proceeding. After consideration of comments received, ICANN org will make a decision regarding the proposed Amendment 1 to the .JOBS Registry Agreement.