

# Report of Public Comments

## Proposed Renewal of .TRAVEL Sponsored TLD Registry Agreement

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### Comment Period:

Comment Open Date: 12 May 2015

Comment Close Date: 21 June 2015

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## Section I: General Overview and Next Steps

### General Overview

ICANN has posted for public comment the proposed agreement for renewal of the 2005 Registry Agreement for .TRAVEL, which is set to expire on 21 July 2015. This proposal is a result of discussions between ICANN and Tralliance Registry Management Company, LLC, based on the [approved new gTLD Registry Agreement as updated on 9 January 2014](#) with specific provisions contained in the [5 May 2005 Sponsored TLD Registry Agreement](#) which have been carried over to this renewal agreement to account for the specific nature of the .TRAVEL TLD, a [Sponsored TLD](#).

### Next Steps

After taking into consideration the public comments received (see summary and analysis below), some revisions to the proposed renewal of .TRAVEL Registry Agreement are proposed.

The proposed renewal of .TRAVEL Registry Agreement includes substantial and material changes to the original .TRAVEL Registry Agreement, which are based on the existing New gTLD Registry Agreement terms (as described above). Similarly, .JOBS Registry Agreement, another Sponsored TLD, was renewed on 20 February 2015 (see: <https://www.icann.org/resources/agreement/jobs-2015-02-20-en>).

As a next step, ICANN intends to consider the renewal proposal taking into account the comments.

## Section II: Contributors

*At the time this report was prepared, fifteen (15) community submission had been posted to the Forum. 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:**

<b>Name</b>	<b>Submitted by</b>	<b>Initials</b>
Rook Media GmbH	Rook Media GmbH	RM
Electronic Frontier Foundation	Jeremy Malcolm	EFF
Intellectual Property Constituency	Gregory S. Shatan	IPC
Donuts Inc.	Mason Cole	DO
Business Constituency	Steve DelBianco	BC
Internet Commerce Association	Philip S. Corwin	ICA
IP Justice	Robin Gross	IPJ
Non-Commercial Stakeholders Group	Edward Morris	NCSG

**Individuals:**

<b>Name</b>	<b>Submitted by</b>	<b>Initials</b>
Global Ventures	Chad Folkening	CF
HolidayRentals.com	Tim Hall	TH
Leap of Faith	George Kirikos	GK
HebeiDomains.com	Zdenek Kubik	ZK
Domain Mondo	John Poole	JP
Digimedia	Jay Chapman	JC
Dotrader Pty Ltd	Phil Temperly	PT

**Section III: Summary of Comments**

*General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff 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).*

A total of 15 comments were submitted and are considered in the summary and analysis below:

**Comments opposed to the inclusion of the URS to the proposed renewal of .TRAVEL Registry Agreement:**

12 of the commentators objected to the inclusion of URS in the Specification 7 of the proposed .TRAVEL Registry Agreement. (CF, TH, GK, ZK, JP, RM, EFF, JC, ICA, IPJ, NCSG, PT)

A total of 7 comments stated that "All the new gTLD RPMs were implementation details of the new gTLD program and are not ICANN consensus policies applicable to all registries and registrars. The URS

can become a consensus policy only after a full policy development process (PDP) engaged in by the entire ICANN community of stakeholders. (CF, TH, ZK, JP, RM, JC, PT)

EFF also reiterated the above comments, adding that “If the URS is to be extended to legacy domains such as .travel, this would place many further domains at risk of rapid suspension, which raises significant free speech concerns. It would also set a bad precedent for the extension of the URS to other legacy domains such as .com, .net and .org as their registries' contracts come up for renewal.” (EFF)

ICA also raised their concern that “The potential addition of these RPMs to legacy gTLDs through this inappropriate avenue will have a substantial and deleterious effect on ICANN’s policy making process going forward, will create a new and dangerous precedent whereby de facto Consensus Policy can be created by contractual fiat in violation of ICANN Bylaws, and will substantially and adversely affect third parties around the world consisting of the existing registrants of more than one hundred million legacy gTLD domains.”, adding that “the RPMs could be imposed on legacy gTLDs only after their impact and efficacy was fully assessed, and then only via a standard PDP to create new Consensus Policy in conformity with ICANN Bylaws.” (ICA)

#### **Comments relating to ICANN’s method of renewing legacy TLD Registry Agreements:**

10 of the commentators objected to ICANN’s method of renewing legacy TLD Registry Agreements (CF, TH, ZK, JP, RM, JC, BC, ICA, IPJ, NCSG, PT)

A total of 6 comments expressed that “Imposing URS on an incumbent gTLD via the contracting process is an absolutely unacceptable staff intervention into the policymaking process. Approval of this draft contract would constitute top-down, staff-driven policymaking in direct violation of ICANN’s stated commitment to the bottom-up, private sector led policy development process.” (CF, TH, ZK, JP, RM, JC)

While BC stated that their concern is not in regards to the adoption of new gTLD RPMs for legacy TLDs, BC, ICA and NCSG expressed their objection to the decision by ICANN staff to take the new gTLD registry agreement as the starting point for renewal RAs for legacy gTLDs since it has the effect of transforming the PDDRP and the URS into de facto Consensus Policies without following the procedures laid out in ICANN’s Bylaws for their creation.

Both BC and NCSG also stated that they understand ICANN’s desire to keep consistency with in registry agreements, however they both emphasized that gTLD policy development should not take place outside of the GNSO.

Both BC and ICA indicated in their comment that their comments also apply to similar proposed renewal of .CAT and .PRO Registry Agreements currently under public comment period.

One of the comments opposes “this illegitimate attempt by ICANN staff to further circumvent proper policy development processes in the creation and imposition of new gTLD policy. In addition to the inappropriate process utilized, the policy itself will chill freedom of expression as domain names will be quickly suspended without any fair opportunity for consumers to defend their lawful rights to use their domain names.” (IPJ)

Several comments also raised their concern on ICANN staff's decision to include RPMs to the renewal of a legacy TLD Registry Agreement while "the ICANN community has not even received the new gTLD RPM Issues Report that staff will be providing to the GNSO in September 2015". (CF, TH, ZK, JP, RM, JC, PT)

Both BC and ICA also raised their concern on ICANN staff's seeking to insert specific new gTLD program RPMs in legacy gTLD renewal RAs when ICANN policy staff have yet to define the issues they implicate, and the GNSO has yet to receive the Issues Report that may be the basis of one or more PDPs; including one addressing whether they should become Consensus Policies applicable to all gTLDs.

"On May 1st the public comment period on "Draft Report: Rights Protection Mechanisms Review" (<https://www.icann.org/public-comments/rpm-review-2015-02-02-en>) closed, and on May 29th ICANN staff issued a "Report of Public Comments"

(<https://www.icann.org/en/system/files/files/report-comments-rpm-review-29may15-en.pdf>)

based upon community input. The Background on that Draft Report states that it "is intended to be available to inform the Issue Report requested by the GNSO as well as the independent review of Trademark Clearinghouse recommended by the GAC. In addition, this paper will serve as input to the Review Team on Competition, Consumer Trust, and Consumer Choice to be convened under Section 9.3 of the Affirmation of Commitments, charged with assessing the effectiveness of the safeguards developed for the New gTLD Program." None of these additional reviews have been completed. Further, one of the major reasons that the GNSO requested the referenced Issue Report was so that GNSO's stakeholders could decide whether those RPMs should become Consensus Policy for all gTLDs. And that Issue Report will not even be delivered until late September because policy staff requested a six-month extension of the delivery date so that additional studies and analysis could be conducted – and the GNSO Council granted that request on January 29th of this year." (BC, ICA)

#### **Comments in favor of the proposed renewal of .TRAVEL Registry Agreement:**

Both IPC and Donuts, in their comments, expressed their disagreement with the claims stated in other comments.

On the claims about requirement for a PDP to implement RPMs, IPC expressed their support for Registry Operator's "voluntarily going above and beyond the minimum rights protections", adding that "Whether adding new restrictions against abusive registrations, implementing blocking or creating new dispute procedures, those best practices should be encouraged and do not require a PDP for TLD Operators to implement". IPC also clarified that "the URS was adopted pursuant to a multistakeholder process and was the result of discussion, compromise and consensus." (IPC)

On the comments opposed to URS adoption by .TRAVEL, IPC expressed their disagreement with the claims that URS "has largely displaced the existing UDRP system for the new gTLDs ", adding that "a

review of proceedings since the launch of the new gTLDs shows significant use of both the URS and the UDRP.” (IPC)

On the inclusion of the URS in the renewal of legacy TLDs Registry Agreement “Donuts disagrees with the premise that doing so as a matter of contract renewal violates the tenets of the multistakeholder model”, explaining that the agreement is between Tralliance and ICANN and that to adopt such provision, no PDP is required and also “the implementation of the URS was agreed to in a consensus-based, multistakeholder fashion through the unanimous approval of the ICANN Special Trademark Issues Review Team (see <http://gnso.icann.org/en/issues/sti/sti-wt-recommendations-11dec09-en.pdf>). While the STI process didn’t cover legacy TLDs, there certainly was no view of the STI that the URS should not be included in legacy TLDs. It was never considered.” (DO)

#### **Comments relating to suggestions for the next steps:**

Eight of the commentators stated that “.TRAVEL renewal RA should be referred for Board consideration only after Specification 7/URS has been removed from the agreement, along with all other provisions derived from the new gTLD RA that are not established consensus policies applicable to incumbent gTLDs.” (CF, TH, ZK, JP, RM, JC, NCSG, PT)

One of the comments suggested that “if the decision is made by staff to retain these RPMs in the .Travel renewal RA following the close of the public comment period, we believe that the proposed final contract must be forwarded to, reviewed by, and voted upon by the ICANN Board.” (ICA)

#### **Section IV: Analysis of Comments**

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

At the time of this report was drafted, a total of 15 comments was added to the public comment announcement for the renewal of .TRAVEL Registry Agreement. In the comments received, two key concerns were raised:

- Legacy TLDs’ adopting new gTLD Registry Agreement
- Legacy TLDs’ adopting URS through Registry Agreement renewal based on the new gTLD Registry Agreement

On legacy TLDs’ adopting the new gTLD Registry Agreement by way of Registry Agreement renewal, concerns were expressed on ICANN’s process to take the new gTLD registry agreement as the starting point for renewal RAs for legacy gTLDs since it has the effect of transforming the PDDRP and the URS into de facto Consensus Policies without following the procedures laid out in ICANN’s Bylaws for their creation. On the other hand, few of the comments supported ICANN’s seeking consistency within registry agreements.

On legacy TLDs’ adopting URS through Registry Agreement renewal based on the new gTLD Registry Agreement, most of the comments received expressed their objection to the inclusion of the URS to

the proposed renewal of .TRAVEL Registry Agreement, claiming that the URS can become a consensus policy only after a full policy development process (PDP) engaged in by the entire ICANN community of stakeholders and that imposing URS on an incumbent gTLD via the contracting process is an unacceptable staff intervention into the policymaking process. On the other hand, few comments expressed their support of inclusion of the URS to the proposed renewal of the .TRAVEL Registry Agreement, stating that the implementation of the URS was agreed to in a consensus-based, multistakeholder fashion through the unanimous approval of the ICANN Special Trademark Issues Review Team.

It should be noted that the URS was recommended by the Implementation Recommendation Team (IRT) as a mandatory RPM for all new gTLDs. In [the IRT Final Report](#), it is stated that “Therefore, the IRT recommends that ICANN implement the URS, which would be mandatory for all new generic Top Level Domain (gTLDs), implemented through the new gTLD registry agreements, which would in turn bind registrars supplying new gTLDs to the marketplace.”

The GNSO was asked to provide its view on whether certain proposed rights protection mechanisms (which included the URS) were consistent with the GNSO’s proposed policy on the introduction of new gTLDs and were the appropriate and effective option for achieving the GNSO’s stated principles and objectives. The STI considered this matter and concluded, “Use of the URS should be a required RPM for all New gTLDs.” (<http://gnso.icann.org/en/issues/sti/sti-wt-recommendations-11dec09-en.pdf>) That is, the GNSO indicated that the URS was not inconsistent with any of its existing policy recommendations.

Although the URS was developed and refined through the process described here, including public review and discussion in the GNSO, it has not been adopted as a consensus policy and ICANN staff has no ability to make it mandatory for any TLDs other than those subject to the new gTLD registry agreement. Accordingly, ICANN staff has not moved to make the URS mandatory for any legacy TLDs, and it would be inappropriate for staff to do so. In the case of .TRAVEL and other legacy TLD registry agreement renewals (.JOBS) and proposed renewals for .CAT and .PRO registry agreements, inclusion of the URS was developed as part of the proposal in bilateral negotiations between [the registry operator](#) and ICANN. It should also be noted that there are no restrictions on Registry Operators to impose further rights protection mechanisms, such as the URS, which could also be included in the Registry Agreement in other ways, such as through the RSEP process. However, due to the approaching expiration date of the .TRAVEL Registry Agreement and the interest of the Registry Operator to renew their Registry Agreement based on the new gTLD Registry Agreement, the proposed renewal language is similar to the new gTLD Registry Agreement except for the provisions stated above and also explained in detail in the public comment announcement.

Since the changes included in the proposed renewal of the registry agreement were material, ICANN posted the proposed renewal registry agreement for public comment. Finally, It is noted no comments against the substance of the renewal agreement were submitted.

As for the next steps, several comments proposed that renewal of .TRAVEL Registry Agreement should be referred to ICANN Board after URS in Specification 7 is removed, while 1 of them proposed taking it to ICANN Board to review and vote if the RPMs section will remain in place.

As mentioned in the [Public Comment announcement](#), as part of the renewal process, ICANN

conducted a review of performance under the .TRAVEL Registry Agreement. Tralliance Registry Management Company, LLC was found to be in substantial compliance with their contractual requirements.

The renewal process will therefore follow its course as described in “Next steps” in Section I above.