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Peter Dengate Thrush
Chair, ICANN Board of Directors
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Dear Mr Dengate Thrush

This is in response to the May 8, 2009 letter to you and the ICANN Board of Directors from PIR, Afiliis, and NeuStar regarding registry-registrar separation. It is important to .PRO and to the prospective community of new gTLDs that the ICANN Board of Directors hear the views of a smaller registry, arguably with greater similarity to the prospective new registries, to balance the perspective of the larger registries reflected in the above referenced correspondence. The introduction of new gTLDs presents an opportunity for ICANN to adjust current policies to accommodate the evolution of the domain-name market place. The CRA report and commentary by various members of the community have been submitted for consideration in the reassessment of registrar-registry separation policy. This letter is intended to add to that commentary.

Diversity, choice and competition will only be served if ICANN regulates separation of function and not ownership or affiliation, while it affords relaxation in restrictions to new and small accredited entities, and carefully establishes and maintains safeguards applicable to accredited entities with market power. This would require that ICANN shift perspective from regulation of registries on one hand, and registrars on the other, and move to a perspective that ensures viability of entrants and end user access to domain names by regulating accredited entities according to their market influence. While restrictions on functional separation ought to be applied symmetrically between registrars and registries, relaxation of rules, as well as the application of more rigorous restrictions to protect competition and nurture innovation, ought to be applied to both registrars and registries according to their size and power.

The experience of .PRO dictates that separation between registry and registrar functions can be preserved without the imposition of strict cross ownership or affiliation restrictions. .PRO is a subsidiary of a technology company that also owns an accredited registrar. In spite of this common ownership .PRO has maintained functional separation in accordance with ICANN regulations. ICANN is encouraged to regard this as an example of the effectiveness of functional separation. The regulations applicable to .PRO are buttressed by market realities: if .PRO favored a related or affiliated entity they might suffer a more difficult task in securing access to markets through other registrars. Restricting ownership and affiliation represent unnecessary incremental barriers to entry for new and small accredited entities.

Whereas registries may have had greater market power than registrars in the past, justifying greater restriction on behavior, the introduction of new gTLDs combined with the consolidation of market share in entities such as Verisign and GoDaddy have shifted the balance of power. In the current market, it is not function that dictates market power, but size and market share. ICANN would be well advised to note this reality as it develops and revises policies with respect to registry-registrar separation. The challenges of .PRO are representative of those that will be faced

by new gTLDs. .PRO struggles to secure market access where a few accredited registrars control, and to be accessible to prospective end users to establish demand. This access to markets is controlled entirely by a few large registrars who, without reciprocal fairness obligations, control the end user market and can, under the current and proposed rules, create instant success or sure failure of any TLD.

As a relatively small registry, .PRO is cognizant of the significant challenge faced by smaller registries in establishing demand and securing registrar commitment to distribution. The difficulty in securing this support, in an environment where only accredited registrars can sell domain names, and significant market consolidation has occurred, is a barrier to competition among TLDs that would be exacerbated by ownership and affiliation restrictions such as those recommended by the larger registries. To create an environment where new gTLDs can be competitive and end users truly are not constrained by a few powerful accredited entities, ICANN would be wise to look at regulating market access and viability, and not restricting ownership and affiliation. Restrictions on ownership and affiliation will only further impair the ability of small registries to establish access to markets, and portals through which end users might access a wide array of domain names.

If ICANN is truly committed to increasing access to the internet and the domain-name market, it must facilitate competition between registries and market access for small and early stage registries. This will not be achieved with strict prohibitions on ownership and affiliation. Small and early stage registries and registrars ought to be afforded relaxed ability to contract with service providers such as back end services, auction services and to establish end user market access so that they can achieve viability in the domain space. Large accredited entities ought to be obliged to facilitate competition and access. Differences in treatment ought not depend on function. Rather, functional separation ought to be enforced while regulation of accredited registries and registrars adjusted according to their size and market influence.

Thank-you in advance for your consideration.

Yours Sincerely,

Catherine Sigmar
General Manager, .PRO