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AL-ALAC-ST-0423-01-00-EN
ORIGINAL: English
DATE: 30 April 2023
STATUS: Pending Ratification

AT-LARGE ADVISORY COMMITTEE

Proposed Renewal of the Registry Agreement for .NET

Ratification

On 24 April 2023, the Public Comment proceeding opened for the [Proposed Renewal of the Registry Agreement for .NET](#). An At-Large [workspace](#) was created for the Public Comment submission. The At-Large Consolidated Policy Working Group (CPWG) decided it would be in the interest of end users to develop and submit an At-Large Advisory Committee (ALAC) statement. Michael Palage, Bill Jouris, and Jonathan Zuck volunteered to draft the initial ALAC statement.

On 26 April, Michael and Bill presented to the CPWG on initial positions for the ALAC statement. On 22 May, Michael, Bill, and Jonathan drafted the initial ALAC statement, which was posted to its workspace by ICANN Policy staff in support of the At-Large community. The recommendations and At-Large positions were discussed during prior CPWG calls. ALAC members and At-Large members via the CPWG mailing list were invited to provide input during the call and via email. On 24 May 2023, the CPWG finalized the At-Large Public Comment submission for ALAC ratification.

Per the ALAC Chair, the statement will be submitted prior to ratification given the 25 May deadline. Ratification is expected to continue through Wednesday, 31 May.

AT-LARGE ADVISORY COMMITTEE

Executive Summary

The At-Large Advisory Committee (ALAC) appreciates this opportunity to comment on the proposed renewal of the .NET registry agreement. The ALAC and At-Large community are supportive of the majority of updates to the .NET contract including provisions concerning RDAP; DNS Abuse mitigation commitments; and use, by ICANN, of the Bulk Registration Data Access (BRDA) for research.

We have recommendations related to the boundaries of consensus policy with respect to .NET, the need for a comparison between .NET and the Base Registry Agreements (RAs), and the need to revisit Registry Operator participation in economic studies (including .NET).

Comments

The ALAC appreciates this opportunity to comment on the proposed renewal of the .NET registry agreement. While the At-Large Community, as represented by the ALAC, is supportive of the majority of updates to the .NET contract, there are several areas of concern.

One area of potential concern in the draft new contract is the language granting the registry the right to obey takedown orders from national governments with relevant jurisdiction. While the ALAC recognizes the need for companies to adhere to government demand and court orders, and this new clause is unlikely to change registry behavior, the question arises whether the community is sufficiently informed of the frequency and significance of such orders. Accordingly, the ALAC would like to propose the following:

ICANN, in conjunction with the contracted parties, should explore the development of a disclosure framework for court and government ordered domain takedowns.

The ALAC also notes that many of the revisions, to the .NET contract, originated as language in the Base RA agreement. This begs the question what other language from the Base RA should find its way into the .NET RA and what barriers exist to migrating the .NET contract to the Base RA. To this end, the ALAC would like to propose that:

ICANN should prepare a detailed comparison of the .NET and Base RAs with an eye towards the global public interest.

During the transition of .ORG to the Base RA, removing their price caps, the Board indicated that such migration is in the global public interest. The result of a detailed

comparison of the Base RA and the .NET RA might reveal a path to the eventual migration of .NET to the Base RA but more likely will identify language and provisions in each that would benefit the other. Two potentially significant items revealed themselves with a cursory comparison of the two agreements.

First, there appears to be a disparity between the two agreements in what the community might consider to be the most important section: Consensus Policy. In the .NET RA, the outer bounds of consensus policy (the picket fence!) are defined in section 3.1(b)(iv). The phrase “Security and Stability” is used twice in Section 3.1(b)(iv)(1) and 3.1(b)(iv)(3). In each instance, the phrase appears using the uppercase “S” which is defined in Section 3.1(d)(iv)(G). That definition is extremely narrow and appears to focus on registry services.

The corresponding language in the Base RA, drafted many years later, contains similar provisions but with a subtle difference. In Section 1.2 the phrase “security and stability” is again used twice. However, for the first time in Section 1.2.1, it is in lowercase, whereas in Section 1.2.3, the relevant words in the phrase are capitalized. The use of lowercase “s” in security and stability in Section 1.2.1 seemingly exempts the terms from the narrow definition and provides the ICANN community with a broader mandate within which it can impose Consensus Policy. There is even language in the Base the RA calls out the importance of capitalization of terms.

So while it’s possible that this is merely an accidental distinction, it has potential significance in the future. Accordingly, the ALAC would recommend:

ICANN should explain why “security and stability” were not capitalized in section 1.2.1 of the Base RA. If intentional, ICANN should explore making this update to the corresponding language in the .NET RA.

Another potentially significant area of disparity between the agreements is the language surrounding economic studies. Section 2.5 of the Base RA requires the Registry Operators to “reasonably cooperate” with any ICANN org “economic study on the impact or functioning of new generic top-level domains on the Internet, the DNS or related matters.” Neither Verisign’s .NET or .COM RA appears to contain a similar provision, although these two TLDs account for approximately 80% of the global gTLD market.

ICANN should explain why this requirement to cooperate is not included in the .NET RA.

There are several aspects of the domain name market that directly impacts ICANN Org’s own economic well-being as well as its authority to impose bottom-up consensus policies on the contracting parties. Therefore, ICANN Org should be looking at the following trends within the domain name marketplace: e.g. impact of vertical integration, growing

consolidation in registry operator and registry service provider marketplace, secondary domain name market, the role of resellers, privacy/proxy service providers, and the impact of new gTLD on retail domain name pricing. Accordingly, the ALAC recommends that:

As part of its upcoming five-year strategic plan, ICANN Org needs to undertake a comprehensive economic analysis of the domain name marketplace.

Again, the ALAC appreciates the opportunity to comment on the proposed changes to the .NET RA and have taken the opportunity to suggest others which may be prudent.