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AT-LARGE ADVISORY COMMITTEE

ALAC Statement on Registry Agreement Renewals .org, .biz and .info

Introduction

On 18 March 2019, public comment opened for the [.org](#) and [.info](#) Registry Agreements. On 03 April 2019, public comment opened for the [.biz](#) Registry Agreement. The At-Large Consolidated Policy Working Group (CPWG) decided it would be in the interest of ALAC to develop a consolidated statement on all three Registry Agreement public comments, given several overarching themes in the public comments affecting Internet end users. During the [CPWG meeting that week](#), members of the working group discussed the comments, as well as the end user stance on pricing in relation to the Registry Agreements. Greg Shatan, member of the North American Regional At-Large Organization (NARALO), volunteered as penholder for the consolidated ALAC statement.

On 24 April 2019, a first draft of the ALAC statement was posted by Greg onto the At-Large [workspace](#) and presented during the weekly CPWG call. Substantive discussion ensued in the community regarding the themes of the Registry Agreements and the end user interest, particularly in regards to pricing. ICANN policy staff in support of the At-Large community sent a call for comments to the CPWG and ALAC mailing lists. Comments from the substantive discussions on the mailing list were copied to the At-Large workspace on the statement.

On 28 April 2019, a formal request for extension to submit the statement was approved by staff, as two of the three Registry Agreement public comments were to close on 29 April, before the [CPWG would finalize the statement on its weekly call](#).

On 30 April, an updated, second draft of the ALAC statement was posted by Greg onto the At-Large [workspace](#) and presented during the CPWG call that week. Justine Chew, member of the Asian, Australasian and Pacific Islands Regional At-Large Organization (APRALO), volunteered as co-penholder to help Greg refine the statement according to community input.

On 01 May 2019, an updated draft was posted by Justine onto the At-Large [workspace](#), which was then edited by Greg and Judith Hellerstein, NARALO member, as a final draft for discussion.

On 02 May 2019, the penholders presented the statement during the [weekly CPWG meeting](#). The CPWG voted to endorse the statement and submit to public comment. The ALAC Chair, Maureen Hilyard, requested that the statement be transmitted to the ICANN public comment process, copying the ICANN staff member responsible for this topic, with a note that the statement is pending ALAC ratification.

ALAC Statement on Registry Agreement Renewals .org, .biz and .info

Background

The proposed renewals of the .ORG¹, .BIZ², and .INFO³ Registry Agreements are the latest in a series of Registry Agreement renewals over the last several years. In most cases, the proposed renewal Agreement followed (with some variations) the form of the then-current “base Registry Agreement” of 31 July 2017, first developed for use with “new gTLD” registry operators. These renewals have included Registry Agreements for .COOP, .MUSEUM, .NET, .MOBI, .TEL, .CAT, .PRO, .JOBS, and .TRAVEL.

The ALAC generally refrained from commenting on these prior proposed Registry Agreement renewals, with the exception of the proposed renewal of the .NET Registry Agreement in 2017. This is because unlike most other renewals, the then-proposed .NET renewal Agreement did not adopt the form of the then-current base Registry Agreement. Instead, it was based on the .NET Registry Agreement it was replacing, with modifications agreed between ICANN and Verisign, Inc. (as the .NET Registry Operator), along with certain provisions from the base Registry Agreement and certain provisions incorporated into legacy gTLD Registry Agreements (e.g., the 2013 .ORG Registry Agreement). Thus, in June 2017, the ALAC submitted the following statement (quoted here in its entirety):

“The ALAC does not have any comment to make on the changes to the content of the contract overall as we believe that much of it has been predetermined by agreement. However, the increasing cost of .NET domains is a concern as it would make them unaffordable and thus an accessibility issue for end-users, especially for those in already underserved regions. The proposed 10% annual increase which all goes to the registry is significantly high and should be re-considered. A query was raised as to whether or how .NET funds are returned to serve the Internet community in line with the redistribution of .org funds into the community by the Internet Society, to support Internet development.”

To be accurate, the provision in the .NET Registry Agreement⁴ allowed a 10% *maximum* annual price increase (i.e., a “cap”); it did not compel a 10% price increase. In the case of .NET, this distinction was largely a formality, since Verisign had in fact instituted the full 10% price increase each year since at least 2005.

Statement

(I) Standardizing Registry Agreements

The ALAC in general, favors standardizing Registry Agreements as this allows for transparency and predictability, as well as ease of review and compliance monitoring of one standard contract (with necessary but controlled variations through Addendums) instead of managing many disparate/varying

¹ <https://www.icann.org/public-comments/org-renewal-2019-03-18-en>

² <https://www.icann.org/public-comments/biz-renewal-2019-04-03-en>

³ <https://www.icann.org/public-comments/info-renewal-2019-03-18-en>

⁴ Although the 2017 ALAC Statement called this a “proposed 10% annual increase” for .NET domains, the 10% cap was in the then-current NET Registry Agreement, as well as prior agreements. It was not a new proposal.

contracts. Being supportive of this approach, the ALAC has not objected to the base Registry Agreement, or to its use in prior renewals.

In respect of the intent to standardize the said 3 proposed Registry Agreement renewals, the ALAC welcomes the following proposals:

- (i) inclusion of Public Interest Commitments (per Specification 11),
- (ii) inclusion of Minimum requirements for Rights Protection Mechanisms (per Specification 7)⁵,
- (iii) adoption of the Registry Code of Conduct (per Specification 9), and
- (iv) amendment of the relevant section in Specification 5 to govern the allocation of two-character labels at the second level to avoid confusion with corresponding country codes.

We have supported and continue to strongly support the use of the Public Interest Commitments (PICs) mechanism to verbalize commitments proffered by or solicited from Registry Operators in the public's interest. Accordingly, we welcome the formalization of such PICs through the Registry Agreement renewals.

The Rights Protection Mechanisms proposed as set out in Section 2 of Specification 7 – mandating the compliance of Registry Operators in respect of the Uniform Rapid Suspension (URS) system, the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) and the Registration Restrictions Dispute Resolution Procedure (RRDPP) – supports the inclusion of mechanisms for resolving disputes over domain name registration thought to infringe a third party's trademark and for addressing circumstances in which a registry operator deviates from any applicable registration restrictions. These are indirectly beneficial to building consumer trust from the perspective of Internet end-users since they provide concerned parties with clarified means to determine the proper registration and use of a domain name by the rightful party.

Adoption of the Registry Code of Conduct into the proposed Registry Agreement renewals is another constructive step in ensuring Registry Operators conduct themselves in an appropriate and mutually agreed manner.

With the permitted release of two-character labels for allocation at the second level, it is highly important that Specification 5 be amended for such allocations to be subject to the Registration Policy and Post Registration Complaint Investigation provisions so as to avoid making allocations, which may lead to a conflict with a corresponding two-character country codes.

So, in brief, these said inclusion/adoption/amendment collectively set a welcomed path in the ongoing management of contractual relations between ICANN and Registry Operators.

⁵ We do not see the present proposed inclusion of URS in the Registry Agreement renewals as rendering academic the GNSO Review of Rights Protection Mechanisms in All gTLDs PDP Working Group's task in reviewing the effectiveness of the URS. The fact that the URS has been introduced as a complement to the Uniform Dispute Resolution Procedure (UDRP) but only with respect to new gTLDs and having been operational since 2013 sufficiently supports its inclusion in the proposed Registry Agreement renewals. Should the RPM PDP WG recommend any policy changes with respect to the URS – and assuming those recommendations (if any) are adopted/approved by the GNSO Council and the ICANN Board, then those changes can be effected through an addendum to each of the renewed .ORG, .BIZ and .INFO Registry Agreements.

(II) Price Cap

We note that while the 10% cap on annual price increases is a feature of the current .ORG, .BIZ, and .INFO Registry Agreements, it no longer appears in the corresponding proposed Registry Agreement renewals. The 3 Public Comment pages offer the following identical explanation for this material change:

“Pricing for Domain Name Registrations and Registry Services (Section 2.10 of the .info renewal agreement): In alignment with the base registry agreement, the price cap provisions in the current .ORG agreement, which limited the price of registrations and allowable price increases for registrations, are removed from the .ORG renewal agreement. Protections for existing registrants will remain in place in line with the base registry agreement. This change will not only allow the .ORG renewal agreement to better conform with the base registry agreement, but also takes into consideration the maturation of the domain name market and the goal of treating the Registry Operator equitably with operators of new gTLDs and other legacy gTLDs utilizing the base registry agreement.”

Removing the price cap from .ORG, .BIZ and .INFO should not, however, be viewed merely as a standardization measure. It is potentially a significant change for the TLD and one that again predicates the same concerns, which the ALAC expressed about the potential for price increases in .NET when that Registry Agreement was being renewed.

At this juncture, there are several considerations which merit highlighting.

On the one hand, .ORG, .BIZ and .INFO (along with .COM and .NET) are part of the same group of legacy TLDs which, having been introduced over 15 years ago if not longer, are amongst the very first TLDs available for domain name registrations. This undoubtedly gave their respective Registry Operators first-to-market advantage and as can be seen, put together, .ORG, .BIZ and .INFO command a 5.61% share of the global domain name registrations (which, put in proper context, exceeds the 4.53% share of the second most popular TLD of .net) (And with the inclusion of .COM and .NET, that share jumps to 53.47%).⁶

Price caps were deliberately instituted in recognition of such first-to-market advantage as the means to prevent foreseeable abuse in pricing of domain name registration renewals on existing registrants.⁷ It could be said that once a registrant has registered a domain name and invested resources to build a web presence around the same, the cost of switching that presence onto another domain name could well be

⁶ Statistics sighted on 26th April 2019 at <https://domainnamestat.com/> show a total of 346.8 million domain name registrations were recorded across all TLDs, and which *inter alia* are attributed as follows:-

TLD	All 1,572 TLDs	.com TLD	.net TLD	.org TLD	.info TLD	.biz TLD	All 322 ccTLDs	All 1,243 New gTLDs
Total DN registrations (in millions)	346.8	150.3	15.7	11.3	5.9	2.3	126.9	42.6
Percentage of Total	100.00%	43.33%	4.53%	3.26%	1.70%	0.65%	36.6%	12.3%

⁷ Section 2.10(c) of the proposed [.ORG] Registry Agreement includes the following sentence: “The parties acknowledge that the purpose of this Section 2.10(c) is to prohibit **abusive and/or discriminatory Renewal Pricing practices** imposed by Registry Operator without the written consent of the applicable registrant at the time of the initial registration of the domain and this Section 2.10(c) will be interpreted broadly to prohibit such practices.” [emphasis added]

significant. Further, in the case of the .org TLD, many registrants rely on their example.org domain names to signify their not-for-profit status, in very much the same way entities in many jurisdictions are obliged to carry suffixes in their names as the means of whether they are publicly-traded companies or privately-held ones.⁸ (It is also not inconceivable that newly-established not-for-profit organizations would want a .ORG domain name upon which to build their web presence, so the proposition of availability of choice to switch falters with these entities.)

Thus without price caps in place, certain registrants of domain names under these 3 TLDs may foreseeably have no reasonable recourse against their respective registrars/Registry Operators' action in instituting immediate unrestrained price increases in domain name registrations and/or renewals (as the case may be).

On the other hand, while seemingly counterintuitive, price increases could be a positive development in the DNS space from the broader end-user perspective. It has been suggested that price caps suppress prices to a point that makes it difficult for new entrants to compete in the TLD space and thus removal of price caps is likely to be good for competition. Price caps also obscure the true value of a domain name and allows the perpetuation of their treatment as commodities, where artificially low prices of domain names keep the door open to “abuse” – such as confusingly similar strings, typo squatting, phishing and fraud – in detriment to Internet end-users. Hence the removal of price caps is seen by some as a strategic move to boost prices as one way to deter bad actors, even portfolio domain investors, which in turn would increase choices in the primary market for potential registrants. So, while complex economic analysis is well beyond the scope of this comment, an increase in the median price of gTLDs could be good for competition, security and trust in the domain name space.

Also, uncapped pricing may or may not automatically translate to significant price increases, unreasonable increases, pricing beyond the current cap or for that matter any price increases across the board or in any particular TLD.

The ALAC and At-Large community have a particular interest in .ORG, due to its connection to the Internet Society. As noted in ALAC's .NET comment, a significant portion of .ORG registration fees “are returned to serve the Internet community [through] redistribution of .org funds into the community by the Internet Society, to support Internet development.” Notably, this includes support for the IETF, an “organized activity” of the Internet Society (ISOC). The IETF is a critical organization in the development, safety, security, and resiliency of the Internet and the DNS. Furthermore, ISOC's goals and priorities, while far broader than At-Large (and even ICANN), parallel those of At-Large and the interests of end-users. Many At-Large Structures are also ISOC Chapters, further demonstrating the commonality of interests.

When considering this issue in the context of the .ORG renewal, it is important to note that Public Interest Registry (PIR) has not increased rates at all over the last three years, even though it had the right to increase prices cumulatively by more than 30% during that time period. It is our understanding that when PIR has contemplated an increase in .ORG pricing, the matter has been discussed thoroughly by the Board, which analyzed the pros and cons, taking into account the potential benefits, the impact on the market, and the impact on the image of PIR. This approach is consistent with the mission and priorities of Public Interest Registry, as set forth on its website at <https://pir.org/resources/faq/>:

⁸ It should be noted, however, that .ORG is not limited to not-for-profit entities, and that .ORG registrants run the gamut, including investors holding domain names for resale.

“As our name implies, we exist to serve the public interest online. Our globally diverse team is committed to providing a stable online platform where everyone has a voice. As an advocate for collaboration, safety and security on the Internet, Public Interest Registry's mission is to empower the global noncommercial community to use the Internet more effectively, and to take a leadership position among Internet stakeholders on policy and other issues relating to the domain naming system.”

In sum, there is no particular reason to believe that PIR will engage in excessive price increases; rather, there are substantial reasons to believe that PIR will consider the public interest and act in a measured and prudent fashion when it considers possible price increases. Nevertheless, there is nothing in the Registry Agreement that actually prevents PIR from raising prices to any level it chooses.

Contrastingly, the .BIZ and .INFO TLDs are operated by for-profit registries (i.e. Registry Services, LLC and Afiliis Limited, respectively). It is not entirely clear how often and how much the Registry Operators for the .BIZ and .INFO TLDs have raised their prices in the past, and it is unknown how often or how much they will do so in the future. (If the price caps were to be removed for .ORG, .BIZ and .INFO under the call for “standardization”, then it is foreseeable that the .com and .net TLDs (both run by Verisign as registry operator) would also lose their price caps at some point, and there is no way to tell whether Verisign would then increase prices significantly or how often it would do so, even with the knowledge of them having instituted the full 10% annual price increase each year for .NET since at least 2005).

Again the dynamics may be different in the context of domain name renewals. As alluded to earlier, when a domain name has been actively used by an entity for many years, e.g., for numerous emails as well as a website, there may be significant switching costs for the registrant. The renewal Agreement recognizes this, to an extent, in Section 2.10. Section 2.10(c) of the proposed [.ORG] Registry Agreement includes the following sentence: “The parties acknowledge that the purpose of this Section 2.10(c) is to prohibit **abusive and/or discriminatory Renewal Pricing practices** imposed by Registry Operator without the written consent of the applicable registrant at the time of the initial registration of the domain and this Section 2.10(c) will be interpreted broadly to prohibit such practices.” [emphasis added] However, Section 2.10(c) merely imposes the obligation to have uniform renewal pricing, which would only prohibit certain abusive renewal practices. Section 2.10(b) provides some additional “notice” protections for renewing registrants, which will allow registrants to lock in the current renewal price by renewing for up to 10 years. While these steps may not fully protect the interests of renewing registrants, this concern is dampened considerably here by the mission, priorities and practices of PIR.

So, we are essentially grappling with competing considerations and uncertainties. After balancing the same, we do not find support for a particular position regarding the removal of price caps.

As to the omission and quantum of price caps, there are differences in opinion within At-Large:

Some think that the proposed removal of price caps should not be contemplated at all for these 3 legacy TLDs given the potential effects this proposal may have, especially on domain registrations and renewals under these 3 legacy TLDs, particularly in the case of the .ORG TLD. This group therefore urges reversing the proposal entirely and reinstating the current provisions for price caps in the proposed Registry Agreement renewals for the .ORG, .BIZ and .INFO TLDs.

Some think that the removal of price caps should be welcomed as a constructive step towards facilitating increased competition and choice for non-portfolio-registrant end users in the primary market, which should then lead to increased consumer trust for the Internet. This group therefore supports the proposed removal of price caps for the .ORG, .BIZ and .INFO TLDs. Even so, this group remains

concerned about the future effects these price cap removals could have. Therefore, this group thinks it is important that ICANN carefully monitor and study the effect of the removal of price caps in .ORG, .BIZ, .INFO and other TLDs, any resulting price increases, the market responses to those price increases, and the secondary effects of these price increases. ICANN has previously conducted economic studies of competitive effects in domain name markets. ICANN should do so again here. For a change of such potential significance, ICANN should commit to commissioning economic studies of the competitive effects of lifting price restrictions. If these effects run counter to ICANN's mission and core values, ICANN may need to take significant corrective action. But ICANN needs knowledge, data, metrics and analysis to evaluate these significant changes in the DNS and their effects. Economic studies will provide the basis for future evaluations and inform future decision-making.

Others think that the immediate removal of price caps constitutes **too material a change** and could have a material impact on a significant number of registrants (predominantly looking forward at the 53.47% of global domain name registrations if .COM and .NET are uncapped), even though the removal could bring about benefits for both non-registrant end users and non-portfolio-registrant end users. Therefore, this group urges ICANN to temporarily reinstitute the provision of price caps in the proposed Registry Agreement renewals for the .ORG, .BIZ and .INFO TLDs, with a covenant that the cap remains in place for a specified time of say, 3-5 years and with a condition precedent that the Registry Operators give ample prior and effective notice of at least 1 year to their existing registrants so as to allow them time to react to the eventual price cap removal.

Greater flexibility in managing the price cap is another alternative. For instance, registries could have the option to "roll over" the 10% from year to year, allowing them to increase prices less often but in larger increments.

We also note with interest another approach, suggested by the NCSG, which sets out a somewhat different middle ground: "Rather than removing price caps from the agreement entirely, these should be retained but raised by an appropriate amount. In addition, this aspect of the contract should be subject to a review midway through the contract, based on the impact of the price changes on non-profit registrants."

"The NCSG disagrees with the decision to remove price cap provisions in the current .org agreement. On the one hand, we recognize the maturation of the domain name market, and the need for Public Interest Registry to capitalize on the commercial opportunities available to it. Public Interest Registry, as a non-profit entity, supports many excellent causes (including, it is worth noting, the NCSG). On the other hand, as the home for schools, community organizations, open-source projects, and other non-profit entities that are run on shoestring budgets, this registry should not necessarily operate under the same commercial realities that guide other domains. Fees should remain affordable, with domains which are priced within reach of everyone, no matter how few resources they have. Consequently, we support leaving the price cap provisions in place. We would not object to the price cap being raised by a reasonable level."

In any event, the offer by the Registry Operators to existing registrants to secure their domain names for up to 10 years at (prevailing) current prices should also be encouraged regardless.

(III) Fees to be paid to ICANN org

In respect of Section 6.1 of the 3 proposed renewal Agreements, the ALAC counsels for **both** the registry fixed fee (presently proposed at \$6,250 per calendar quarter) and the registry-level transaction fee

(presently proposed at \$0.25 for each annual increment of an initial or renewal domain name registration) to be adjusted for inflation on an annual basis. This adjustment ought to also be adopted in the base Registry Agreement.

(IV) Universal Acceptance

Additionally, we are hopeful that in future some clear commitments for the inclusion of the Universal Acceptance (UA) principle can be framed for Registry Operators – particularly but not limited to the Registry Operators which offer Internationalized Domain Name (IDN) registrations – in a similar way commitments towards IDNs, IPv6 and DNSSEC have been incorporated into the base Registry Agreement. Given the increased interest in the ICANN Community on UA, we are hopeful that a holistic inclusion of UA principles can be undertaken in the future by way of amending Specification 6, or possibly by way of a consensus policy addition in Specification 1.