**Working Document**

Topic D: Adjustments in registry agreement, registry service, registry transition process, and other processes/procedures related to the domain name lifecycle

| **CHARTER QUESTIONS** |
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**Early written input from RySG:**

In consideration of questions in sections “D” and “G” of the Early Input Request, the RySG stresses that implementation of any outputs should adhere to established contractual and procedural mechanisms. This is key to preserving a stable and predictable contractual and operational environment. Suggesting specific language or contractual processes for Registry Agreements would be inappropriate for this work and out of the scope of the IDN EPDP as contractual changes cannot be initiated or made unilaterally by the Board or ICANN Org. The RySG believes that existing contractual structures should be maintained and contractual considerations should take place only between the two parties of the contract, understanding that contracted parties do comply with Consensus Policy requirements as part of our obligations under the Registry Agreement.

The RySG also strongly supports clear separation of Guidelines (i.e. recommendations, guidance) from contractual obligations as it provides predictability and is in line with the provisions of the Registry Agreement and existing procedures. The RySG also acknowledges that certain contract obligations are tied to strict compliance to Internet Standards, such as those from the Internet Engineering Task Force (IETF). However, unlike IETF Internet Standards,

the IDN Guidelines define policy. In this sense, the RySG looks forward to contributing to the deliberation of this important topic to determine the appropriate process to amend or update work that has contractual impacts to contracted parties.

| **d1)** The same entity principle for variant TLDs -- having the same registry operator and the same back-end registry service provider for gTLD and its variant labels at the top-level -- needs to be effectuated legally and operationally.  From a legal standpoint there will be a binding document(s) between ICANN and the registry operator (e.g., Registry Agreement), which should memorialize the relationship between each allocated TLD and its variant labels, as well as the obligations to maintain such condition during the life of the contract(s).  From an operational standpoint, an application process, testing of registry services, fee structure, and other aspects need to be defined and developed.  The EPDP should discuss and develop the proper legal and operational framework in order to strike a balance between conservatism, innovation, adoption and other aspects of the IDN implementation. The WG and the SubPro IRT to coordinate and consider the following questions in order to develop a consistent solution: |
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| **d1a)** A TLD is subject to a Registry Agreement with ICANN. In case of IDN variant TLDs, ICANN would execute the Registry Agreement with the same entity but potentially diverge in future Registry Agreement amendments, addendums, and renewals. Should each TLD label be the subject of a separate Registry Agreement with ICANN?[[1]](#footnote-0) If not, should each TLD label along with its variant labels be subject to one Registry Agreement with the same entity? Rationale for such definition must be clearly stated along with the answer, including goals and motivations. |
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**D1a High-level Notes:**

* The EPDP Team agreed that each TLD label along with its variant labels be subject to one Registry Agreement (RA). The rationale for this recommendation includes the following:
  + Having separate RAs would be inefficient, take significant amount of time to create, and make the relationship between the ways the Registry Operator manages the variant TLD labels confusing;
  + It seems logical and efficient that the same base terms and conditions in the RA comes in a single form and apply to all the variant TLD labels in the same set; special provisions for the variant relationship can be included in a schedule, exhibit, or annex to provide details about the variant set; Annex A of the RA may be a place to include provisions relating to variants;
  + The RA is an important part of mapping the variant labels together, as they are closely linked;
  + The variant TLDs are supposed to behave as a set, and the “same entity” principle will exist throughout the lifecycle of the domains;
  + Having one agreement for multiple TLDs is common practice in the industry (e.g., RRAs);
* Some members support the idea of creating a glossary to define label states as discussed in A9 and A10, as well as clarifying additional terminology, such as “set”, “reserved strings”, etc..
* Some support an implementation guidance to include the requirement that variant TLD labels have the same Registry Service Provider; Registry Operator cannot change a material subcontractor for one part of the set without changing it for the rest of the set.

| **d1b)** What should be the process by which an existing registry operator could apply for, or be allocated, a variant for its existing gTLD? What should be the process by which an applicant applying for a new IDN gTLD could seek and obtain any allocatable variant(s)? What should be the associated fee(s), including the application fees and annual registration fees for variant TLDs? Should any specific implementation guidance be provided?[[2]](#footnote-1) |
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**D1b High-level Notes:**

The question may cover three scenarios: 1) a new applicant is applying for a new gTLD and also a variant label of that TLD; 2) an existing RO is applying for a variant of its existing TLD; 3) other scenarios, such as an RO is applying for more than one variant TLD at the same time. Each scenario may call for different sub-processes.

Part 1: A new applicant seeks to apply for a new gTLD and allocatable variant label(s) of that gTLD

* There is general agreement that the application for a new gTLD and its variant set should go through one application process. The applicant needs to prove to the evaluator that it can manage both the gTLD and its variant, as well as explain how it can manage the set from a technical and security/stability perspective. There need to be additional application questions to address how the set will be handled operationally.
* If variants in a set are applied for at different times, there needs to be separate applications.
* Some members support the idea of completing the evaluation and objection of the applied-for variant set up front, as the entire set goes through the application process from the beginning to the end. This will help reduce redundancy from a technical perspective. The EPDP Team will be able to discuss more in detail about objection, string similarity, reserved strings, contention set, and other steps of the application process in Topic E of the charter.
* The EPDP Team agreed that a draft recommendation can be developed with regard to one application covering a primary new gTLD and its variant label, as well as an implementation guidance regarding the need for the applicant to demonstrate to the evaluators why it wishes to activate the variant labels, their intended usage, and how they will be managed.
* The EPDP Team has not reached a conclusion regarding the idea of “pre evaluation” of the set of variant labels the applicant wishes to obtain. While pre-valuation of the desired variant set could increase efficiency, it may add complexity due to string contention, fee implications, potentially large number of allocatable variant labels (especially in Arabic), etc. The EPDP Team also discussed that the applicant may wish to request to activate some additional variant labels some time after the initial application is approved. This idea is parked and will be dealt with after the EPDP Team tackles later part of the charter (e.g., Topic E).

Part 2: An existing Registry Operator seeks to activate allocatable variant label(s) of its existing gTLD

* The EPDP Team began to discuss the second scenario where an existing RO is applying for a variant of its existing gTLD. Some members asked whether this could happen outside an application round, and would the registry operator be required to demonstrate the ability to manage the set.
* The EPDP Team further discussed the scenario of an existing registry operator requesting to activate allocatable variant label(s). Staff [presented](https://community.icann.org/download/attachments/183992744/EPDP%20Team%20Meeting%20%2324%20Slides%20-%20D1b.pdf?version=2&modificationDate=1645113005000&api=v2) on data related to the existing IDN gTLDs potentially eligible to activate allocatable variant labels, as well as the application process and IDN specific questions in the 2012 round. There is a considerable difference between the number of self-identified variants from the 2012 round (about 180) and those generated through the RZ-LGR (about 20,000). Excluding Arabic, the number of self-identified variants from the 2012 round is around 170, whereas the number of variants generated through the RZ-LGR is around 1,000.
* When considering whether existing registry operators can activate variants between application rounds, the EPDP Team discussed the importance of staffing needs to be put into place to conduct the evaluation, as well as the evaluation elements that do not need to be completed repeatedly.
* Another core issue to consider is to ensure that the variant is being evaluated to ensure it is being introduced and managed in a safe and secure manner. The EPDP Team needs to make sure that the necessary elements are taken into account in completing the evaluation. There are two elements of the evaluation processes: those involving the applicant vs. those involving the string itself. In the 2012 round, the processes involving the string itself allowed the community/public to provide their input on the string. The EPDP Team should consider which elements are applicable to evaluating variants.
* There is some support for a simplified process for existing ROs to request to activate variants on an ongoing basis and before the next round opens. The rationale includes:
  + The next round may not happen any time soon.
  + Existing ROs are entitled to the allocatable variant labels of their gTLDs.
  + ICANN already has processes for evaluating labels in general and IDN labels specifically, including evaluating technical competency for IDN services.
* In such a simplified process, ROs should be asked additional questions regarding their management of variants. In addition to the technical evaluation, other processes from the 2012 round may need to be taken into account, e.g., string similarity review. There is a suggestion to draw on the model of the ccTLD Fast Track Process. The next step is to develop a strawman proposal of a simplified process for further consideration, including assumptions and minimum level of evaluation elements for variant labels.
* There is another view that some ROs may be at a disadvantage in such a simplified process, specifically, a RO requesting a label that it considers to be a variant but is not a variant according to the RZ-LGR (e.g., .quebec). Such RO needs to wait until the next round to apply.
* There is general support from EPDP Team to send out a questionnaire, as suggested by staff in the [slides](https://community.icann.org/download/attachments/186778169/EPDP%20Team%20Meeting%20ICANN73%20Slides%20-%20D1b%2C%20B4%2C%20B4a%2C%20B5.pdf?version=2&modificationDate=1646856693991&api=v2), to eligible registry operators (Chinese and Arabic only) to determine whether there is demand for variant labels, before embarking on developing a standalone process for activating variant TLDs. Staff are tasked to develop such a questionnaire.
* Suggested additional questions in the questionnaire include: 1) which specific variant label(s) the RO is interested in, 2) pricing related question (e.g., $185K, free, somewhere in between). However, one member opposed asking fees related questions as ROs will always want to pay lower fees and the EPDP Team does not know what evaluation costs for variant labels would be.
* When the EPDP Team discussed whether the “existing ROs” also include future ROs who wish to request for variant label outside an application round, two perspectives were shared: 1) the ROs from the 2012 round can have a different process compared with those future ROs who wish to activate variant labels later, as the 2012 round has already passed and they did not have the option of applying for variants back then; 2) there should be one process that applies to both ROs from the 2012 round and future ROs, so the existing ROs do not get unfair advantage. If a process for current eligible ROs is developed, certain components of the process should be repeatable for future processes.
* Since the goal of the survey is to get a sense of demand for variants among existing ROs, there is support to collect such data to support deliberation of this question and confirm the direction. It is suggested to use WeChat and its embedded survey tools to distribute the questionnaire among Chinese TLD registries; ICANN staff in China can also help distribute and promote the survey.

Part 3: Associated fee(s) and specific implementation guidance

* Regarding application fees, members stressed the importance of the “cost recovery basis per round” principle. Some applications are more complicated and some are less complicated, but they pay the same fee. IDN applications should not be treated as “second class” or required to pay more. In some cases, the TLD is not complete without variants, and the variants are part of the TLD experience. The applicant should not be penalized by getting charged more in these cases.
* The EPDP Team also discussed fees pertaining to existing ROs requesting to activate variant label(s). The principle of cost recovery / revenue neutral should be taken into account in the calculation of fees. Applicants from the 2012 round have already paid the application fee of $185,000 and this should potentially be considered in the activation of variants.
* There is some support for additional fees being applicable for variants, but not the full amount. For future applicants, it means the application fee for the primary gTLD plus some additional fees for the variants. This could be handled in a similar process in the 2012 application round that requires additional fees in some instances (e.g., CPE, registry services evaluation, etc.).
* The rationale for the above suggestion is that IDN variants are not necessarily a commercial opportunity to explore a new market. It is intended for end users and registrants to have a seamless experience online, as end users consider the primary domain and its variants as the same. From a market perspective, it is like operating a single gTLD.
* To help address the fee question, the next step may be an analysis of what elements in the evaluation process are necessary for evaluating variant TLDs, and what elements would not apply.
* With regard to ongoing fees, some members suggested that the concept of the primary gTLD and its variants being a single gTLD should be considered. A related suggestion is that transactions be aggregated for the primary TLD and its variants to determine the number of transactions.
* Any preliminary agreements regarding the fee question (during the ICANN73 session) depend upon members’ consultation with their appointing community groups.
* The EPDP Team generally agreed to affirm SubPro’s “cost recovery” principle, which should also apply to the application and activation requests for variant labels. ICANN should determine the exact calculation with regard to the fees.

| **d2)** In order to ensure that the same entity principle is maintained for a gTLD and its allocated variant TLD labels, what are the operational and legal impacts to the:   * Registry Transition Process or Change of Control in the Registry Agreement;[[3]](#footnote-2) * Emergency Back-End Registry Operator (EBERO) provisions; and * Reassignment of the TLD as a result of the Trademark Post-Delegation Dispute Resolution Procedure (TM-PDDRP)?[[4]](#footnote-3) |
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| **d3)** In order to ensure that the same entity principle is maintained, what are the operational and legal impacts to the data escrow policies, if any.[[5]](#footnote-4) |
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| **d4)** Regarding second-level domain names, should a variant set behave as one unit, i.e. the behavior of one domain name is replicated across the other variant domain names? Or should each variant domain name have its own independent domain name life cycle?[[6]](#footnote-5) Consider the operational and legal impact of the “same entity” principle, if any, to all aspects of a domain name lifecycle, including but not limited to:   * Registration, including registration during the Sunrise Period, any Limited Registration Period, any Launch Program and during General Registration * Update * Renewal * Transfer * Lock * Suspension * Expiration * Redemption * Deletion |
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| **d5)** For reporting and fee accrual purposes, should each variant domain name be considered an independent registration? Or should such variant labels be considered as an atomic set (irrespective of whether any of the names is actually activated in the DNS, and whether any of the variants is actually registered)? Rationale for such definition must be clearly stated. Should any specific implementation guidance be provided? For example, what would be the impact to the registration payment at the Registry Operator level and at ICANN org? |
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| **d6)** To ensure that the “same entity” principle is followed, the transfer of a domain name registration to a new entity -- voluntary or involuntary, and inter-registrants or inter-registrars -- should result in transfer of all variant domain names (i.e., if s1.t1 is to be transferred, s1.t1, s1.t1v1, s1v1.t1 and s1v1.t1v should all be transferred).  The WG, the Transfer Policy PDP, and the RPM PDP Phase 2 to coordinate and consider the following questions in order to develop a consistent solution: to what extent should the Transfer Policy be updated to reflect domain name relationships due to variants and the “same entity” requirement? |
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| **d6a)** Should transfers ordered by the Uniform Domain-Name Dispute-Resolution Policy (UDRP) or any other dispute resolution mechanisms be treated the same way to follow the “same entity” requirement?[[7]](#footnote-6)  **d7)** Should the policies and procedures related to domain name suspension be updated to ensure that the “same entity” principle is followed for all variant domain names (i.e., if s1.t1 is to be suspended, s1.t1v1, s1v1.t1 and s1v1.t1v1 should all be suspended)? In other words, if one domain label is suspended, either voluntarily or involuntarily, should all the variant labels related to that domain be suspended? |
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| **d7a)** Should the suspensions ordered by the Uniform Rapid Suspension System (URS) or any other dispute resolution mechanisms be treated the same way to follow the “same entity” requirement?[[8]](#footnote-7) |
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| **d8)** What additional updates to the Registry Agreement are necessary to ensure the labels under variant TLDs follow the “same entity” rule? For example, the Staff Paper recommends that the following requirements must be included in the Registry Agreement; some of the charter questions are also related to those topics:[[9]](#footnote-8)   * Subordinate names allocated by the Registry Operator in the TLD be treated as an atomic set. This is true irrespective of whether any of the names is actually activated in the DNS, and whether any of the variants is actually registered. **[related to questions c1, d4, d5]** * All the different IDN tables being used by the IDN gTLD and its variant gTLDs be harmonized. **[related to questions c4, c5]** * All the IDN variant TLDs be implemented through the same registry service provider, to promote a consistent and stable implementation across all such variant TLDs. **[related to questions b2, b4]**   Are there any additional updates that need to be considered that are not included in this list? |
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1. Based on the premise that an IDN variant TLD label is a TLD label with its status indistinguishable from any other TLD label in the root zone, the Staff Paper recommends that each variant TLD would be the subject of a separate Registry Agreement with ICANN, as each variant TLD is, in effect, one a TLD. See Section 3.6 in the Staff Paper, p.15: <https://www.icann.org/en/system/files/files/idn-variant-tld-recommendations-analysis-25jan19-en.pdf#page=15> [↑](#footnote-ref-0)
2. SubPro PDP did not have substantive discussion about this question. Some SubPro PDP members believe that allocatable variant TLDs should be made available to IDN gTLD registry operators and applicants, with only limited procedures and costs in place. As these deliberations arose late in the SubPro PDP’s life cycle, the group elected to only recommend the “same entity” principle for variant TLDs but refrained from providing recommendations on how variant TLDs can be obtained. However, SubPro includes in its recommendation that the “same entity” policy for the top-level must be captured in the relevant Registry Agreement. See Rationale for Recommendation 25.5 in the SubPro PDP Final Report, p.117: <https://gnso.icann.org/sites/default/files/file/field-file-attach/final-report-newgtld-subsequent-procedures-pdp-02feb21-en.pdf#page=117> and Recommendation 25.5 in the SubPro PDP Final Report, p.115: <https://gnso.icann.org/sites/default/files/file/field-file-attach/final-report-newgtld-subsequent-procedures-pdp-02feb21-en.pdf#page=115> [↑](#footnote-ref-1)
3. The Staff Paper recommends that each set of registry agreement(s) must contain provisions requiring all the labels in the Internationalized Domain Label (IDL) set to follow the same process in the event of any registry transition via a Registry Transition Process or Change of Control. In no event, should the composition of the allocated and delegated set of variant TLDs be allowed to change at the same time as the change of the Registry Operator. The SubPro PDP also agrees that to the extent that the TLD were to change hands at any point after delegation, the variant TLDs must remain linked contractually, which should be considered a persistent requirement (e.g., this would impact gTLD registry transition procedures). See Section 3.6 in the Staff Paper, p.15: <https://www.icann.org/en/system/files/files/idn-variant-tld-recommendations-analysis-25jan19-en.pdf#page=15> and Rationale for Recommendation 25.5 in the SubPro PDP Final Report, p.117: <https://gnso.icann.org/sites/default/files/file/field-file-attach/final-report-newgtld-subsequent-procedures-pdp-02feb21-en.pdf#page=117> [↑](#footnote-ref-2)
4. The Staff Paper recommends that an emergency transition of a TLD to an EBERO must trigger an emergency transition of all variant TLDs to the EBERO. In addition, the SubPro PDP also agrees that EBERO would be impacted due to the persistent requirement of ensuring that variant TLDs must remain linked contractually. See Section 3.6 in the Staff Paper, p.16: <https://www.icann.org/en/system/files/files/idn-variant-tld-recommendations-analysis-25jan19-en.pdf#page=16> and Rationale for Recommendation 25.5 in the SubPro PDP Final Report, p.117: <https://gnso.icann.org/sites/default/files/file/field-file-attach/final-report-newgtld-subsequent-procedures-pdp-02feb21-en.pdf#page=117>. In the case where a Registry Agreement is terminated as a result of a TM-PDDRP determination, this would trigger the Registry Transition Procedure and various outcomes could apply. The Staff Paper notes that in the case of a reassignment of the TLD, the same entity rule should continue to apply so that the variant TLDs would be assigned to the same entity together. See Section 3.7 in the Staff Paper, p.18: <https://www.icann.org/en/system/files/files/idn-variant-tld-recommendations-analysis-25jan19-en.pdf#page=18> [↑](#footnote-ref-3)
5. Data escrow is the act of storing data with a neutral third party in case of registry or registrar failure, accreditation termination, or accreditation relapse without renewal. ICANN requires all registrars and gTLD registries to contract with a data escrow provider in order to safeguard registrants. Because each variant of the IDL set is just another registration, data escrow policies for TLDs apply individually to each. The Staff Paper notes that the data escrow requirements are automatically satisfied for variant TLDs. See Section 3.9.2 in the Staff Paper, p.22: <https://www.icann.org/en/system/files/files/idn-variant-tld-recommendations-analysis-25jan19-en.pdf#page=22> [↑](#footnote-ref-4)
6. One view is that if each variant allocation is simply a different registration, it follows that names can be created and can expire at different times, despite the “same-entity” rule. See Section 3.9.4 in the Staff Paper, p.22: <https://www.icann.org/en/system/files/files/idn-variant-tld-recommendations-analysis-25jan19-en.pdf#page=22>. Another view is that if each variant allocation is supposed to be the same registration, it follows that names should expire at the same time, however some registry operators may implement it differently and consider them billable transactions instead. [↑](#footnote-ref-5)
7. See more details about the UDRP related discussions in Section 3.7 in the Staff Paper, pp.17-18: <https://www.icann.org/en/system/files/files/idn-variant-tld-recommendations-analysis-25jan19-en.pdf#page=17> [↑](#footnote-ref-6)
8. See more details about the URS related discussions in Section 3.7 in the Staff Paper, p.18: <https://www.icann.org/en/system/files/files/idn-variant-tld-recommendations-analysis-25jan19-en.pdf#page=18> [↑](#footnote-ref-7)
9. Section 3.6 in the Staff Paper, p.16: <https://www.icann.org/en/system/files/files/idn-variant-tld-recommendations-analysis-25jan19-en.pdf#page=16>: [↑](#footnote-ref-8)