

ICANN



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Internet Corporation for Assigned Names and Numbers

POLICY DEVELOPMENT PROCESS (PDP) - FEB06

POLICIES FOR CONTRACTUAL CONDITIONS, EXISTING gTLDs

TERMS OF REFERENCE

Introductory Note

Prepared by the ICANN Staff

As noted above, the original version of this document is the English text, which is available at <http://gnso.icann.org/issues/gtld-policies/tor-pdp-28feb06.html>. The process of gaining agreement on the contents of the original text was all conducted in English. Where a difference of interpretation exists or is perceived to exist between this document and the original text, the original shall prevail.

Context

The GNSO initiated a policy development process in December 2005 [PDP-Dec05] to develop policy around whether to introduce new gTLDs, and if so, determine the selection criteria, allocation methods, and contractual conditions.

During 2005, ICANN commenced a process of revising the .net and .com agreements. There has been substantial discussion amongst members of the GNSO community around both the recently signed .net agreement (dated 29 June 2005), and the proposed .com agreements (dated 24 October 2005 and 29 January 2006). As a result, the GNSO Council recognized that issues such as renewal could be considered as part of the broader issue of contractual conditions for existing gTLDs, and that it may be more appropriate to have policies that apply to gTLDs generally on some of the matters raised by GNSO members, rather than be treated as matters to negotiate on a contract by contract basis.

Subsequently on the 17 January 2006, GNSO Council requested that the ICANN staff produce an issues report "related to the dot COM proposed agreement in relation to the various views that have been expressed by the constituencies." This issues report is available at: <http://www.gnso.icann.org/mailing-lists/archives/council/msg01951.html>.

Section D of this issues report provides a discussion of many of the issues that had been raised by the GNSO community in response to the proposed revisions to the .com agreement. In the issues report the ICANN General Counsel advised that it would not be appropriate to consider a policy development process that specifically targets the .com registry agreement.

At its meeting on 6 February 2006, members of the GNSO Council clarified that the intention of the request for the issues report was to seek an issues report on the topic of the broader policy issues that relate to the contractual conditions of gTLD agreements, which have been identified from the various views expressed by the GNSO constituencies on the proposed .com agreement.

At its meeting on 6 February 2006 the GNSO Council recognised that while the PDP initiated in December 2005 [PDP-Dec05] included within its terms of reference the topic of contractual conditions, a possible outcome of that PDP would be that there should be no additional gTLDs, and thus the Council could not depend on this PDP to address the issues raised by the GNSO community.

Thus at its meeting on 6 February 2006, the GNSO Council, by a super-majority decision, decided to initiate a separate PDP [PDP-Feb06] to look at specific areas of contractual conditions of existing gTLDs.

The work of PDP-Feb06 will naturally be conducted within the context of the work on PDP-Dec05, and if it is decided that new gTLDs should be introduced, the policy work of PDP-Feb06 will be incorporated into a single gTLD policy.

Goal

The overall goal of this PDP therefore is to determine what policies are appropriate, for the long term future of gTLDs within the context of ICANN's mission and core values, that relate to the issues identified in the specific terms of reference below.

Terms of Reference

1. Registry agreement renewal

1a. Examine whether or not there should be a policy guiding renewal, and if so, what the elements of that policy should be.

1b. Recognizing that not all existing registry agreements share the same Rights of Renewal, use the findings from above to determine whether or not these conditions should be standardized across all future agreements.

2. Relationship between registry agreements and consensus policies

2a. Examine whether consensus policy limitations in registry agreements are appropriate and how these limitations should be determined.

2b. Examine whether the delegation of certain policy making responsibility to sponsored TLD operators is appropriate, and if so, what if any changes are needed.

3. Policy for price controls for registry services

3a. Examine whether or not there should be a policy regarding price controls, and if so, what the elements of that policy should be. (note examples of price controls include price caps, and the same pricing for all registrars)

3b. Examine objective measures (cost calculation method, cost elements, reasonable profit margin) for approving an application for a price increase when a price cap exists.

4. ICANN fees

4a. Examine whether or not there should be a policy guiding registry fees to ICANN, and if so, what the elements of that policy should be.

4b. Determine how ICANN's public budgeting process should relate to the negotiation of ICANN fees.

5. Uses of registry data

Registry data is available to the registry as a consequence of registry operation. Examples of registry data could include information on domain name registrants, information in domain name records, and traffic data associated with providing the DNS resolution services associated with the registry.

5a Examine whether or not there should be a policy regarding the use of registry data for purposes other than for which it was collected, and if so, what the elements of that policy should be.

5b. Determine whether any policy is necessary to ensure non-discriminatory access to registry data that is made available to third parties.

6. Investments in development and infrastructure

6a. Examine whether or not there should be a policy guiding investments in development and infrastructure, and if so, what the elements of that policy should be.