

## New gTLD Continuous Operation Instrument (COI)

At the last ALAC meeting I was assigned the task of producing a statement on the COI. In retrospect I do not know if the question was meant to produce something in time for the end of the comment period. If it was, I failed to deliver. On reflection however, I realized it was more of likely a task assignment for the ALAC New gTLD WG (ANg WG?). In order for the ANgWG to give ALAC a perspective on this we need to discuss it. The following is a first cut of what I think the issue concerns.

The COI is discussed in the “gTLD Applicant Guidebook” Version 2011-09-19 Page A-41

The Continuing Operations Instrument (COI) is invoked by ICANN if necessary to pay for an Emergency Back End Registry Operator (EBERO) to maintain the five critical registry functions for a period of three to five years. Thus, the cost estimates are tied to the cost for a third party to provide the functions, not to the applicant's actual in-house or subcontracting costs for provision of these functions.

The COI payment can be expected to be expensive, especially for developing economy applicants, but really for everyone it may be a problem. Using calculations derived from the business plan prediction in their application, applicants will need to produce letter of credit or other financial guarantee to show that they can continue operations for at least 5 years. While making it an undue burden for Developing economy applicants is that the cost will not be based on the cost of operation in the developing economy itself but will be based on costs as calculated on incumbent Back end Registry Operators.

The Registries SG (RySG) from GNSO made a proposal, which was put out for public comment. The [review period closed on 2 December 2011](#), The synthesis of the comments has not been released yet.

### JAS Discussions

There was a rich set of discussions on this topic in the JAS WG. One of the major proposals in the JAS WG relied on various notions of shared risk groups of cooperating new registries<sup>1</sup>. This is not a proposal that shows up in the Applicant Guidebook, and is not even represented in the current board proposal.

The final JAS report on page iv said the following:

The relaxing or deferring of the upfront costs of the required “continuity instrument”

The final JAS report on page 6 said the following:

21. Further adjustments to financial requirements might include, for example, a reduction in basic registry-service-related expenses through modifications to certain guidelines such as the continuity instrument or other adjustments.

as on Page 41:

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<sup>1</sup> This description does not do the discussion justice. I have not gone back to the record of the JAS WG recommendation to give reference to some of the rich proposals discussed on the list and in some of the interim releases of the JAS report.

The Milestone Report suggested several support mechanisms, including:

- a)...
- b)...
- c) Modifications to the financial continuity instrument obligation;
- d)...

### Registries Proposal

The Registries Stakeholder Group (RySG) [alternative](#)<sup>2</sup>, proposes the creation of a Continuing Operations Fund (COF). This COFT proposes that each applicant escrow a \$50,000 fee per new gTLD ICANN was designated as the holder of these funds, and it was proposed that this would have provided sufficient resources to ensure continuity of the required key registry functions.

Comments on this have spanned from support, to question regarding the size fits all solution<sup>3</sup>, to objection.

### Other Models

Other models have been suggested such as insurance.

Reference:

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<sup>2</sup> <http://www.icann.org/en/public-comment/rysg-proposal-cof-17oct11-en.htm>

<sup>3</sup> Though the Applicant Guidebook (AG) Emergency Back End Registry Operator (EBERO) proposal does seem like it comes in only one size.