

## 1.5 Registrar Support for New gTLDs

### *a. What is the relevant policy and/or implementation guidance (if any)?*

Recommendation 19: Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars.

### *b. How was it implemented in the 2012 round of the New gTLD Program?*

The 2007 Final Report, the Registrar Constituency (RC, and now known as the Registrar Stakeholder Group, or RrSG), noted in relation to introducing new gTLDs that, "...new gTLDs present an opportunity to Registrars in the form of additional products and associated services to offer to its customers. However, that opportunity comes with the costs if implementing the new gTLDs as well as the efforts required to do the appropriate business analysis to determine which of the new gTLDs are appropriate for its particular business model."

The gTLD Registries Constituency (RyC, and now known as the gTLD Registries Stakeholder Group, or RySG) noted in relation to Recommendation 19 that, "...the RyC has no problem with this recommendation for larger gTLDs; the requirement to use accredited registrars has worked well for them. But it has not always worked as well for very small, specialized gTLDs. The possible impact on the latter is that they can be at the mercy of registrars for whom there is no good business reason to devote resources. In the New gTLD PDP, it was noted that this requirement would be less of a problem if the impacted registry would become a registrar for its own TLD, with appropriate controls in place. The RyC agrees with this line of reasoning but current registry agreements forbid registries from doing this. Dialog with the Registrars Constituency on this topic was initiated and is ongoing, the goal being to mutually agree on terms that could be presented for consideration and might provide a workable solution."

Section 2.9 of the Registry Agreement implemented Recommendation 19 above. It states "All domain name registrations in the TLD must be registered through an ICANN accredited registrar; provided, that Registry Operator need not use a registrar if it registers names in its own name in order to withhold such names from delegation or use in accordance with Section 2.6.<sup>1</sup>" In addition, Registry Operator must provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with the registry-registrar agreement for the TLD; provided that Registry Operator may establish non-discriminatory criteria for qualification to register names in the TLD that are reasonably related to the proper functioning of the TLD.

In addition, Specification 9 which requires Registries that are Affiliated with Registrars or vice versa, to adhere to a Code of Conduct, which among other things, requires Affiliated Registries and Registrars to maintain structural separation and separate books and records. Only so-called

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<sup>1</sup> Section 2.6, which refers to Specifications 5 and 9, allows the registration of up to 100 names without the use of an ICANN Accredited Registrar necessary for the operation or promotion of the TLD.

.Brand TLDs that execute Specification 13 or TLDs for which all registrations are registered to the Registry Operator and/or its Affiliates are exempt from that Code of Conduct. In all cases, whether exempt or not, only ICANN Accredited Registrars may be used to register names within the TLD.

Although there is a requirement for Registries to use Accredited Registrars, there is no requirement that all ICANN-Accredited registrars must carry any particular new gTLDs. It was, and continues to be, up to registrar discretion. As such, some new gTLD Registries have complained that this model of having to sell through ICANN Accredited Registrars has made it difficult for them to try new and innovative models because the distribution channel that they are required to use is unable or unwilling to implement the new gTLD Registry's requirements. ICANN Accredited Registrars on the other hand argue that they should not be forced to distribute TLDs for which they do not believe a commercial market exists or for TLDs that require extensive time, development and resources to implement which could easily outweigh the fees generated from registrations in that TLD. As a result, it is believed that in some instances (e.g., locale, type of TLD, etc.), it may be difficult to get a registrar to agree to sell certain TLDs.

ICANN-Accredited Registrars have also made the point that some TLDs are tough for them to distribute because certain gTLD Registries require that the Registrars establish deposit accounts for each TLD and maintain minimum balances in those accounts so that when a registration is made in a TLD, the Registry can immediately deduct the Registry fees from that account. This is the model that was traditionally in place for TLDs prior to the 2012 Introduction of new gTLDs and is often referred to as "Prepayment." There are some registries, particularly those participating in the 2012 new gTLD round that have allowed registrars to register names (on behalf of their registrants) without drawing down on a deposit account, but rather have relied on the payment of periodic invoices after names are registered. This is referred to as "Post Payment."

Section 2.10.2 of the Initial Report, on Registrar Non-Discrimination, discusses the topic of vertical integration in detail. This section deals with whether there should be any additional exceptions to the requirement that gTLD Registries use only ICANN-Accredited Registrars and whether there are any measures that can be taken to assist those new gTLD Registries that are unable to attract Registrars to carry their TLDs.

***c. What are the preliminary recommendations and/or implementation guidelines?***

None at this time.

***d. What are the options under consideration, along with the associated benefits / drawbacks?***

The following proposals have been discussed by the Working Group as options which can be pursued if there is support from the community to do so. Many of them require substantial

resources by ICANN. No cost benefit analysis on these options have been performed and the Working Group is seeking input from the community on these proposals.

- ICANN org could select a “last-resort” wholesale registrar that would provide resellers with the ability to sell TLDs that lacked market interest and/or have their target markets in regions or verticals lacking ICANN-Accredited registrars. In order to not burden ICANN org or the selected registrar with making initial deposits for TLDs, only registries allowing Post Payment terms would be eligible for this resource.
- ICANN org could provide a “clearinghouse” for payments between the registries and registrars that operate in different currencies.
- In order to assist smaller registries during their launch period, ICANN could allow an increase to the number of names that can be registered without the use of an ICANN-Accredited Registrar. Expanding the number of names while at the same time allowing these names to be registered for purposes other than the promotion or operation of the TLD could allow these smaller registries to “get off the ground” and gain the momentum needed to become attractive enough for ICANN Accredited Registrars to carry.
- The Applicant Guidebook could encourage potential applicants to communicate with ICANN accredited registrars before submitting an application, so that they fully understand potential market and technical integration issues that might be encountered.
- Some members of the Working Group also proposed that the Registry contract should bundle the capacity of becoming an Accredited Registrar.

**e. *What specific questions are the PDP WG seeking feedback on?***

- Please comment on each of the proposal set forth above. What are the pros and cons of those proposals? Should any or all of them be adopted? Why or why not?
- Are there any other proposals that could assist TLD Registries that have difficulty attracting ICANN Accredited Registrars?
- Should ICANN even get involved in assisting Registries or is this outside the scope of ICANN’s mission, bylaws, or mandate? Please explain.
- The Working Group has not yet found a way to identify whether a TLD with low market performance has low performance due to lack of demand or lack of sales channels. How could the underlying issues be identified?

**f. *Deliberations***

This topic was initially discussed on 25 June 2018 at ICANN62 during the Working Group’s second face-to-face session and was later considered further in Working Group discussions.

As a foundational consideration, the Working Group discussed whether the issue should be treated as a policy issue or a subject that should be addressed by market forces. The Working Group generally agreed that it is difficult to establish whether an underperforming TLD is suffering from “product defect,” (the TLD would not attract many registrations even if it was

readily available at an attractive price) or from “channel defect” (the TLD is not successful because deficiencies in the market structure prevent registrations). Some support was expressed for treating this issue as a policy concern, although one Working Group member stated that it may not be ICANN’s responsibility to address every aspect of this issue through policy, and that some problems faced by registries should be resolved through market forces.

The Working Group discussed the issue of market standardization. The Working Group noted that registrars are less likely to adopt niche TLDs or TLDs that are operated in a unique manner. Some Working Group members supported the idea that standardization (e.g., simple and straightforward pricing, the same renewal pricing, the same expiry process, etc.) could promote registrar adoption of TLDs and reduce concerns about TLDs that are unable to attract registrar resources. From another perspective, it is not realistic for there to be a standard pricing model across TLDs and indeed, placing restrictions on pricing is generally seen outside of ICANN’s remit. One Working Group member suggested that the Applicant Guidebook should encourage potential applicants to interact with ICANN accredited registrars before submitting an application, so that they fully understand potential market and technical integration issues that might be encountered.

The Working Group discussed possible policy measures that could address the issue of registries with insufficient registrar resources. The Working Group discussed the possibility of a “must-carry” obligation, under which ICANN could require registries of a certain size to sell domains under these TLDs. Working Group members noted that they could only possibly support this option if there was clear evidence of a sales channel defect.

An additional proposal was put forward in which wholesale registrars carry all gTLDs that request it. ICANN would pay wholesale registrars to be the “last-resort” registrars who would develop and support integration of these gTLDs. One of the benefits identified for this proposal is that it would allow gTLDs to reach markets for jurisdictions or verticals that have few or no accredited registrars. One Working Group member stated that ICANN should not spend money subsidizing the development of gTLDs, some of which may be poorly conceived or poorly funded. From this perspective, if ICANN wanted to help potential registrants identify registrars that carry certain TLDs, it could create an online resource providing information about which registrars carry certain TLDs. Another member raised a concern that a registry might have unreasonable requirements, such as a very large and non-refundable initial deposit, and ICANN would be required to pay the bill.

A third proposal focused on the number of names that a registry can allocate directly. Currently, registries are permitted to allocate up to 100 names directly for purposes of operating or promoting the TLD. The limit could be raised to allow a TLD to grow enough to attract market interest from registrars. Working Group members suggested a new limit of 5,000 or 10,000. A variant on this proposal would be to include Registrar Accreditation as a benefit of all registry contracts.

Working Group members identified additional issues that might be addressed through policy measures. First, the fact that many TLDs require deposits result in registrars selecting a small set of TLDs to carry, with a focus on those that have clear market demand. Second, currency issues can create challenges for registry-registrar business relationships in certain jurisdictions. To address these issues, a proposal was put forward for a payment clearinghouse sitting between willing registrars and registries, where a single deposit could vouch for a larger set of smaller TLDs, and where local currency could be used for both parties of a contract. One Working Group member pointed out that in the current environment, there is nothing stopping registries from switching from a pre-pay to post-pay model. From this perspective, some issues should be left for market forces to resolve.

***g. Are there other activities in the community that may serve as a dependency or future input to this topic?***

None identified at this time.